

CULTURAL TRADITIONS, VALUES AND HUMAN RIGHTS

Edited by

China Society for Human Rights Studies



图书在版编目 (CIP) 数据

文化传统、价值观与人权：英文 / 中国人权研究会编. — 北京：五洲传播出版社，2012.6
ISBN 978-7-5085-2281-4

I. ①人… II. ①中… III. ①人权—学术会议—文集—英文 IV. ①D082-53

中国版本图书馆CIP数据核字 (2012) 第079510号

文化传统、价值观与人权

主 编 陈振功 任丹红

责任编辑 高 磊

封面设计 田 林

制 作 张 红

出版发行 五洲传播出版社

地 址 北京市海淀区北三环中路生产力大楼B座7层

邮政编码 100088

电 话 010-82005927 82007837 (发行部)

网 址 www.cicc.org.cn

印 刷 北京市联华宏凯印刷有限公司

开 本 787mm * 1092mm 1/16

印 张 28

字 数 380千

版 次 2012年6月第1版

印 次 2012年6月第1次印刷

定 价 138.00元

Foreword

From September 21 to 23, 2011, the China Society for Human Rights Studies successfully held the fourth session of “Beijing Forum on Human Rights” in Beijing. Nearly one hundred high officials, experts and scholars from 26 countries, international organizations and regions attended the forum, including China, Britain, France, Netherlands, Austria, Hungary, Belarus, Ukraine, Saudi Arabia, Indonesia, the Philippines, Brazil, New Zealand, Malaysia, Mexico, Cuba, Uzbekistan and the United Nations and Hong Kong, Macau and Taiwan of China, etc.

The theme of the forum “Cultural Traditions, Values and Human Rights,” was supported by three sub-themes: “Values and Human Rights,” “Cultural Traditions and Human Rights,” and “Human Dignity and Human Rights.” The participants held frank and animated discussion around the theme of the forum. It was generally held that the forum had provided a valuable platform for dialogues on human rights between countries, which were not only able to improve the mutual understanding and acquaintance of multiple cultures, but also boost the further development of international human rights co-operation. The participants hold that the spread and popularity of human rights concept has never been solely determined by a certain human rights culture but, on the contrary, reflected the exchange and integration of various cultures. Diversity of cultures and civilizations is an objective reality, which evolved from the social development over hundreds of years, constituting the primary character of the present world and is an important impetus to drive human beings forward. We should actively protect the diversity of the world and promote the dialogue and integration between different civilizations, cultivate the fertile soil of human rights protection, make the world more colorful and human beings happier and their coexistence more harmonious. Respecting the diversity of values, setting up and improving the negotiation mechanism and forming and sticking to a scientific development model for human rights protection will surely largely widen the room for developing the protection of human rights. The attendees highly praised the human rights development mode of China and the achievements it has made.

This book, divided into four parts according to theme, is a compilation of 53 theses received by the forum.

The viewpoints expressed in the theses of this book reflect merely the opinions of the authors, and do not represent the views of the China Society for Human Right Studies.

China Society for Human Rights Studies
December 2011

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Different Cultures Show Same Respect for Human Dignity

Address at the Opening Ceremony of the Fourth Beijing Forum on Human Rights

Luo Haocai

President of China Society for Human Rights Studies

(September 21, 2011)

Distinguished guests, experts and scholars, ladies and gentlemen,

In September the clouds are thin and the sky is high in Beijing. In such a fine season, the 4th Beijing Forum on Human Rights, jointly sponsored by the China Society for Human Rights Studies and the China Foundation for Human Rights Development opens today. On behalf of the sponsors, I extend my warm welcome and sincere thanks to all friends who have come to attend this forum.

Since 2008, the Beijing Forum on Human Rights has convened three times. The forums held in-depth discussions on human rights and their development as well as security. Today we meet again and will focus on the topics of cultural traditions, values, human dignity and human rights. The objective of the forum is to promote development through dialogues and reach a consensus. We hope that this time the forum will produce practical results which respect cultural diversity and the various ideas on human rights. I would like to make a few remarks as an introduction to more of those valuable ideas.

I. To Enhance Mankind's Happiness and Dignity and Build a Solid Foundation to Protect Human Rights

Man's dignity, by definition, is man's inherent nobility and stateliness, which are the essential qualities of being a person. From a historical perspective, the concept of dignity derives from man's reason and morality. In terms of content, dignity incorporates a generality and recognition of the importance of man's value, and the need to ensure equal treatment for everyone and oppose discrimination and unfair treatment. In other words, one should treat man as man.

Man's dignity is the basis on which man becomes a man and is the foundation where other ideas of human rights are based on. The realization of human rights is to safeguard human dignity. Recognizing and respecting human dignity is the theoretical point of departure and fundamental principle of international human rights laws and the basic opinion of the Chinese government.

The 1945 *Charter of the United Nations* stressed in its preamble the “faith in fundamental human rights, in the dignity and worth of the human person.” The 1948 *Universal Declaration of Human Rights* pointed out that “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.”

As the two most important human rights covenants of the United Nations, the 1966 *International Covenant on Civil and Political Rights* and *International Covenant on Economic, Social and Cultural Rights* both reaffirmed in their preambles that basic human rights derive from the core values of human dignity, that is “recognizing that these rights derive from the inherent dignity of the human person.” The Vienna Declaration on Human Rights in 1993 clearly pointed out that “all human rights derive from the dignity and worth inherent in the human person.”

The Chinese government places great importance on respecting human dignity. In April 2006, President Hu Jintao said in a speech delivered at Yale University that “the Chinese civilization has always given prominence to the people and respect for people’s dignity and value.” While delivering the Report on the Work of the Government at the Third Session of the 11th National People’s Congress in March 2010, Premier Wen Jiabao pointed out that “everything we do, we do to ensure that the people live a happier life with more dignity and to make our society fairer and more harmonious.” Safeguarding and promoting human dignity has become both the starting point and the final objective of the work of the Chinese government. Currently the Chinese government has ratified over 20 international human rights treaties, indicating that China has clearly approved the international human rights norms and that China is willing to work with other countries to promote international exchanges and reach a wide consensus on human rights.

We believe that in order to improve human dignity, we need to eliminate all social conditions which jeopardize man’s inherent nobility and stateliness and subject people to servitude and discrimination. This is to ensure the rights to equal development and equal participation for all members of society. We should make efforts in the following three aspects. Firstly, we should guarantee citizens’ liberty and rights according to the rule of law. Every citizen shall be endowed with freedoms and rights in accordance with the constitution and law. We should ensure that all citizens are equal before the law and systematically provided a guarantee of human dignity.

Secondly, we need to clarify China’s development goals. We must stick to the “development for the people and by the people and its benefit should be shared among the people.” We should clarify that the final development goal of the nation is to satisfy people’s growing material and cultural needs.

Thirdly, we should ensure people’s free and all-round development. “The free



development of each person is the condition for the free development of all” and also the prerequisite for the comprehensive development of the whole society.

Therefore, we should actively create favorable conditions to ensure guarantee individuals’ free and all-round development to give their intelligence and wisdom full play. In a nutshell, we should put people first and use scientific development concept and the rule of law to protect and guarantee citizens’ happiness and dignity.

II. To Protect and Promote Cultural Diversity and Cultivate Fertile Soil for Human Rights Protection

Human rights are a cultural phenomenon. The nourishment of culture is indispensable for human rights protection. Culture is a historical phenomenon and it originates from social and historical development of human beings. Culture is also a social phenomenon. It is closely connected with society. Without society there is no culture. Culture includes outlook of the world, life, values and a multitude of other ideas.

With these ideas, culture affects people’s cognition and understanding of other people, nations, nature and society. As a result, it produced certain human rights outlooks and practices. Cultural diversity produces diverse values and outlooks of human rights. The basic human rights values represented by the Universal Declaration of Human Rights are the consensus reached by the entire human race, and they are the contribution of all human beings and the result of exchanges and integration of different cultures of the world.

In fact, the modern concept of human rights itself is a product of cultural integration. The concept of human rights originated from the age of Western Enlightenment and flourished and spread widely during the bourgeois revolutions.

After World War II, human rights concept was raised to the level of international politics and became a universal pursuit. Compared with the French *Declaration of Human Rights* in the 18th century, the 1948 *Universal Declaration of Human Rights* not only largely expanded the outlook of human rights, but also enriched the contents, absorbing and integrating values of the world’s major religions and cultural traditions. Article I of *the Universal Declaration of Human Rights* reads that “all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.” The use of the word “conscience” is a proposal made by Chinese representative Zhang Pengchun and is incorporated in the declaration considering the value of Confucian culture. Historically speaking, the spread and popularity of human rights concept has never been solely determined by a certain human rights culture but, on the contrary, reflects the exchange and integration of various cultures.

The Chinese nation has a history of 5,000 years and Chinese cultural traditions dated back to ancient times. Many thoughts crystallized during the long process of cultural

development constituted the source of modern human rights concept. For example, the Chinese civilization has always given prominence to the people. Hundreds of years ago, Chinese pointed out that “people are the root of a country; when the root is firm, the country is in peace” and that “nothing is more valuable in the universe than human beings.” The Chinese always put people at the core of social and value systems, which coincides with the basic idea of modern human rights’ concept of respecting people and putting people first.

Here is another example: Mencius’ thoughts raised and defined the concept of “righteousness” and expounded “discrimination of righteousness and benefit,” pointing out that human dignity has absolute value and cannot be replaced by other equivalents. These thoughts include theoretical presupposition of human dignity in modern human rights concept.

Here is one more example: traditional Chinese culture has always stressed the coordination between one man and another and between man and society, advocated self-restraint and self-control and the philosophy “don’t do unto others what you don’t want others do unto you.” It also emphasized collective awareness and social responsibility. It is the historical explanation and cultural roots why currently we stress the unity of rights and obligation in human rights protection and why we place great importance on collective human rights.

We have many other similar examples. In fact, traditional Chinese culture has countless modern human rights ideas that provide new perspectives and arguments for the human rights concept that was first developed in the West. These ideas enrich the human rights connotation and become an important element of the multicultural soil of the human rights concept.

Diversity of cultures and civilizations is an objective reality, which evolved from the social development over hundreds of years, constituting the primary character of the present world and is an important impetus to drive human beings forward. The historical development of human beings is a process of constant exchanges, integration between various civilizations. All kinds of civilizations have made their spectacular contributions to the advancement of humankind and collectively decorated the colorful garden of world culture, just as the old saying goes: “A single flower doesn’t make a spring.”

The coexistence and integration of various cultures have created a sound environment for further development of the human rights cause. We should actively protect the diversity of the world and promote the dialogue and integration between different civilizations, cultivate the fertile soil of human rights protection, make the world more colorful and human beings happier and their coexistence more harmonious.

III. To Respect Different Value Systems and Expand the Reach of Human Rights Protection

Value is people’s reflection toward social existence, which determines people’s attitude towards issues and reflects the relationship between people and conflicts of interests. In



modern society, there are different values, which are determined by the level of social development and its various stages. The many value systems are comprehensive reflections of history, culture and geography. There are no superior or inferior values; people just choose their values according to their own perspectives.

A diverse culture offers a variety of choices in terms of value systems, and the objective reality is that this leads to differences of opinion on the subject of human rights and the ways they are achieved. Such differences may cause misunderstandings and sometimes even conflicts. This has happened quite often in history.

Facing diverse value systems and outlooks of human rights, we believe that those improper self-centered stance and attitude should be discarded and that we should hold high the flag of consultation and reason, trying to build a consultation mechanism on the basis of quality and mutual respect.

A rational and mature consultation mechanism should include the following three aspects: equality between different parties, openness of the topics and interactivity of the process. Equality between different parties is a precondition for democratic consultation. Openness of topics decides extensiveness of consultations. Interactivity of the process can ensure the effectiveness of the consultation results. In this regard, Chinese traditional culture, especially the Confucian humanism of unity and harmony, can provide support of rich ideas for the implementation of the consultation mechanism.

We believe that the forming of a nation's culture and values is the growing process of a nation. Culture and values embody a nation's cognition of the world and life and include a nation's in-depth spiritual pursuits and basic code of conduct. Respect for diversity of culture and value is itself a guarantee of human rights. Respecting the many values, setting up and improving the negotiation mechanism and forming and sticking to a scientific development model for human rights protection will surely largely widen the room for developing the protection of human rights.

The commonality of culture and the outlook of human rights between different countries form the basis for dialogue. The differences make the dialogue and exchanges necessary and more colorful.

I hope all parties should stimulate each other and complement each other through this forum. We shall hold an all round discussion of the human rights problems that include concepts, systems, theories, practices, history and reality so as to expand the existing consensus, increase understanding and continuously make new contributions to the realization of human rights for all human beings.

Finally, I wish all guests and deputies good health, pleasant experiences working here and I wish the forum a complete success.

Speech at the Opening Ceremony of the Fourth Beijing Forum on Human Rights

Wang Chen
Minister of the State Council Information Office, China
(September 21, 2011)

Respectable Chairman Luo Haocai,
Distinguished guests,
Ladies and gentlemen,

Good Morning! In this beautiful autumn season, the 4th Beijing Forum on Human Rights, co-sponsored by the China Society for Human Rights Studies and China Foundation for Human Rights Development, is opened. This is an important event in the realm of international human rights, and it offers a great opportunity for China to cooperate and exchange ideas with other countries on human rights. Human rights experts, personages and government officials from all over the world gather here to discuss the topic of “cultural tradition, values and human rights,” and jointly explore and advance the development of global human rights theory and practice. I have the honor to extend sincere congratulations on the opening of the symposium and express a warm welcome to our friends present on behalf of China’s State Council Information Office.

China has a long history and a splendid culture, and is also the largest developing country in the world. Since the introduction of the reform and opening-up policy, the Chinese government has combined the universality of human rights with China’s own situation. It has inherited and enhanced China’s outstanding culture and tradition, drawn on the experiences of other countries, promoted socialist core values, taken effective measures to promote the development of human rights and opened a path of socialist human rights development with Chinese characteristics.

Firstly, we should stick to the principle of “prioritizing people,” thereby safeguarding people’s economic, political, social and cultural rights. The principle of “prioritizing people” is a cardinal virtue of traditional Chinese culture, which advocates that people are the foundation of a country, that people are more important than rulers, and deems that people should be given the top priority. While inheriting this people-oriented concept from traditional Chinese culture, the Chinese government has also proposed the scientific



concept of development resting on the principle of “prioritizing people,” and insisted on development for the people, development by the people and development of the people. The Chinese government has pursued several targets: realizing people’s overall development, seeking development which serves the fundamental interests of the people, continuing to meet people’s demand for materials and culture, and forming a complete concept of human development. In other words, the Chinese government has improved the quality of people’s lives and health, promoted social security and strived for a common wealth. The government has unswervingly developed socialist democratic politics, exerted more democracy, improved democratic systems, enriched democratic forms, widened democratic channels, and legally carried out democratic elections, decision-making, management and supervision. Furthermore, it has safeguarded people’s rights for information, participation, expression and supervision and ensured that the people are their own masters.

Secondly, we should pursue the idea of a harmonious society and strive for equality and justice. Traditional Chinese culture values harmony, and demands harmonious relationships between individuals and among nations, and between people and society. We advocate preserving harmonious interpersonal relationships to avoid and conquer confrontation and conflict between individuals, between people and society, among nations and different ethnicities. We endeavor to build an ideal society that can enable old people to live a good life, provide young people with jobs, protect children from harm, and extend a helping hand to people in need. The Chinese government has absorbed beneficial elements from traditional culture in its long pursuit of a socialist harmonious society. It has righteously dealt with internal disputes, as well as other social disputes, properly aligned all societal interests in order to realize social equality and justice. The Chinese government has put an emphasis on social construction, with a focus on protecting and improving people’s wellbeing. It has also emphasized the expansion of public services in order to build a society where people can receive education, get paid through work, have access to medical services and old-age support, and have a place to live, and the Chinese government has instituted and continued to improve its social organization system, which has resulted in better social management and a better social order which enables people to live in peace and enjoy their work in a stable and peaceful society.

Thirdly, we should uphold the concept of ruling in the people’s interests and protecting the interests of the people. Traditional Chinese culture emphasizes that people are the basis of a country, which echoes two old Chinese sayings: “The people are the foundation of a country; the country will be safe if the foundation is firm” and “The most critical thing for politics lies in the heart of people.” The Chinese government requires officials at all levels to constantly bear in mind the government’s mission and principles, always put the people first, take the stance of the people as their fundamental political stance, and hold to the idea

of serving the interests of the people and remaining loyal to the people. All work should be conducted for the sake of the people, and we should stay true to the ideas of ruling for the people, establishing close ties with the people, acting in the best interests of the people, and serving the people in a down-to-earth and sincere way.

Fourthly, the Chinese government has placed great emphasis on the harmonious relationship between people and nature during the course of modernization. The harmonious relationship between nature and people, which is a typical concept in traditional Chinese culture, refers to the fact that human behavior should be conducted in compliance with nature's rules to achieve harmony between people and nature. For the sake of people's environmental requirements, the Chinese government has proposed the concept of ecological civilization. This will set tasks for an ecological civilization, set targets for people's peaceful coexistence with nature, ensure recycling, and well-rounded development and sustainable prosperity. Furthermore, it will set up a sustainable economic development pattern and rational consumption pattern; address the need for the balanced development of both people and nature, as well as construction of an ecological environment.

Since the implementation of the reform and opening policy, China's human rights undertakings have seen remarkable achievements which have gained world-wide acknowledgement and ushered in a new phase of development.

– The lives of Chinese people have been improved significantly and a historic leap has been made to catapult people from poverty to “xiaokang.” From 1978 to 2010, China's gross national product per capital grew rapidly from US\$200 to more than US\$4,000. The income of urban and rural residents also increased dramatically, with net income for rural residents growing 44 times from 133.6 yuan to 5,919 yuan and disposable income for urban residents growing 54 times from 343.4 yuan to 19,109 yuan. The proportion of income spent on food for urban and rural residents, i.e. Engel's Coefficient, has fallen by 20.96 percentages from 56.66 percent to 35.7 percent, and fallen by 27.61 percentages from 67.71 percent to 41.1 percent respectively. The living conditions and environment for both urban and rural residents have also been greatly improved, with per capital living floor space rising from 4.2 square meters and 8.1 square meters to more than 22.6 square meters and 31.6 square meters respectively. The number of modern home appliances owned by urban and rural residents has multiplied, as the purchasing of home appliances has become more widespread. Also, durable goods undergo constant updates and more families can afford a car. People have a greater choice of cultural and entertainment activities and they spend more on them.

– The number of people in rural China living in poverty has been dramatically reduced. Through the implementation of the 8-7 National Plan for Priority Poverty Reduction and China Rural Poverty Alleviation and Development Outline (2001-2010), China has stepped up aid grants for poverty-stricken areas, which has done an extraordinary job in alleviating



poverty and managed to lift 250 million people out of poverty. In 1978, 250 million people lived in poverty, equivalent to 30.7 percent of the rural population. At the end of 2010, 26.88 million people in China's rural areas lived in poverty, accounting for 2.8 percent of the rural population. China's achievements in poverty alleviation have contributed enormously to the world's anti-poverty efforts, and gained wide praise from the international community.

– China has accelerated the construction of a socialist nation under the rule of law. The Chinese government has shifted from a policy-oriented administration to a law-oriented administration, as the rule of law has become a fundamental part of social politics. China has enacted 236 laws, which are effective currently, more than 690 administrative regulations, and more than 8,600 local laws, and set up a multiple-layered, all-round legal system. A legal system with Chinese characteristics is now close to completion. China's judicial system has gradually improved and matured. Further to this, a judicial trial system, a procuratorial system, a system for the profession of lawyers and a unified judicial test exam have been formed in light of China's actual conditions. Under the framework of the socialist democratic law, Chinese citizens' civil rights and basic freedoms have been effectively maintained and protected. Currently, 99 percent of Chinese citizens over the age of 18 have the right to vote and stand for election. Chinese citizens are entitled to extensive basic freedoms and basic human rights. They are also entitled to freedom of speech and beliefs and extensive free private space.

– China's system for human rights protection has undergone continual improvement. Since the introduction of the reform and opening-up policy, China has continuously beefed up its efforts to strengthen the human rights protection system and written respect for, and protection of, human rights into the Constitution. It has amended the codes of criminal procedure, set up an open trial system, ratified the principle of innocent until proven guilty, granted the right to review the death penalty in the Supreme People's Court, formulated a number of laws related to human rights protection, such as the State Indemnity Law and Administrative Litigation Law, and further streamlined the petition system which enables the average citizen to voice their views and have their appeals heard. China's human rights education has gained popularity gradually thanks to a growing social awareness of human rights.

– The Chinese government has paid much attention to human rights protection. During the legislation process, China takes the need for human rights protection into full consideration. During enforcement, the Chinese government requires law enforcement agencies and law enforcement officers to respect human rights. In 2009, China formulated *the National Human Rights Action Plan of China (2009-2010)*, which was the first national human rights-themed plan devised by the Chinese government. As the result of the relentless efforts in two years, all the measures stipulated in the action plan have been implemented



effectively, the pre-set targets have been met as scheduled, and indexes have been achieved successfully, signaling that China's human rights undertaking has entered a new phase of development.

Meanwhile, we are fully aware of the fact that China is still a developing country. Many problems remain to be dealt with, such as the limits set by available resources and environmental conditions on economic growth, a relatively wide income gap, the uneven paces of development between urban and rural areas, the uneven distribution of education and medical services both in quality and quantity, skyrocketing housing prices in some cities, growing economic pressure caused by inflation, increasing social conflicts stemming from illegal land requisitions, and relatively serious food safety issues. The issues of limited resources, historical and cultural elements, and the level of economic and social development mean that the progress of human rights in China still faces many obstacles, and there is still a long way to go before we could achieve the ultimate goal that citizens are fully entitled to human rights.

Guests, ladies and gentlemen,

The Chinese government has placed a high priority on international exchanges and cooperation with regard to human rights. It is willing to learn from others' strengths to offset its own weaknesses on the basis of full equality and mutual respect while participating fully in global efforts to advance the sound development of international human rights. The Chinese government has put a premium on the active role that the Universal Declaration of Human Rights has played in prompting the development of human rights across the globe. It also places great importance on cooperation, and fully acknowledges the aims expressed in the declaration. The Chinese government has signed 25 international human rights treaties, including the International Covenant on Economic, Social and Cultural Rights. It has faithfully fulfilled the obligations set out by those conventions, and submitted timely reports to the relevant bodies on how it implements the conventions. It has also established good working relationships with international human rights institutions, including the United Nations Human Rights Council. This forum offers a valuable platform for China to exchange views with other human rights institutions. I believe that this forum, which will cover a wide range of topics, can increase understanding and affinity between different cultures, and can also substantially deepen the development of international human rights cooperation.

I wish the forum a complete success!



SPEECH AT THE CLOSING CEREMONY OF THE FOURTH BEIJING FORUM ON HUMAN RIGHTS

Ji Peiding

Vice-Chairman of China Foundation for Human Rights Development
(September 22, 2011)

Distinguished President Luo Haocai,
Guests, Ladies and Gentlemen,
Good Afternoon!

The two-day Fourth Beijing Forum on Human Rights jointly held by China Society for Human Rights Studies and China Foundation of Human Rights Development will soon conclude successfully. Nearly 100 experts and scholars from 26 countries, regions and international organizations participated in the forum which features wide coverage, high level and great representativeness. The Chinese government attaches great importance to the forum and has provided solid supports. Mr. Wang Chen, Minister of the State Council Information Office addressed the forum and reiterated the Chinese government's principles and insistence of respecting and protecting human rights.

During the past two days, the participants had open and hot discussions around the theme of "Cultural Traditions, Values and Human Rights," believing that the two-day exchanges have enhanced consensus, deepened friendship, increased mutual trusts and achieved positive fruits.

The forum has three outstanding features:

The first feature is: Closely following the trend of the era progress and conforming to the world tendency of harmonious development.

This forum interprets the era concept of harmonious progress. Beijing Forum on Human Rights has been held four times. All the forums adhere to the era concept of peaceful development and harmonious progress, featuring equality, tolerance, openness and diversified exchanges. Our forum has been gradually developed into a platform of exploring human development model, sharing human rights protection experience and expecting the promising prospect of human rights. It is exerting positive influences on the international community.

This forum highlights the era image of peaceful development. Peace and development



are the themes of the contemporary world. During this forum featuring human rights concept, participants carefully researched the trend of the international human rights cause development and earnestly discussed the important issues related to the fate of the human race, breaking through the borders of nationality, belief and culture, and embodying the world theme of seeking peace and aspiring after development.

This forum conforms to the era trend of equal dialogue. Human rights reflect the yearning and appeal of the human race for liberty and equality that collectively show value and dignity of human beings. Dialogue on human rights, as an important form of international cooperation on human rights, is an effective way of promoting international human rights development. During this forum, participants explored the relations between cultural tradition and human rights, discussed values and human rights development and interpreted the dignity and fate of the human race. All these activities reflected the essence of human rights of “liberty and equality,” and showed the era glory of mutual respect and equal exchanges.

The second feature of our forum is: Focusing on the profound issues and illustrating the latest fruits of human rights studies.

We have received more than 40 written discourses from participants of the forum with wide topic coverage. During the forum, nearly 30 officials, experts and scholars of human rights from different countries and regions delivered speeches. All your speeches have raised and discussed some issues of important theories and practices related to human rights development, especially the profound and target-oriented issues that attract universal attentions from various countries, reaching a lot of consensus. The forum reflects the diversified cultural versions, open academic atmosphere and precise researching attitudes.

– On the issue of culture tradition and human rights. As a cultural phenomenon, human rights have extremely close connections with particular cultural concepts and their historical inheritances. At the opening ceremony, President Luo Haocai pointed out that the coexistence and integrative development of diversified cultures have created a sound environment for the constant progress of human rights cause. We should actively maintain the world diversity, promote dialogues and integration of different civilizations and foster the rich soil for human rights protection so as to make the world more colorful and the human race more harmonious and happier. Around the spirit, the participating experts and scholars fully exchanged their views. Mr. Akmal Kholmatovich Saidov from Uzbekistan started from historical experience, international experience and national experience and illustrated the influences of cultural tradition on human rights cause development. He also cited the experience of the Republic of Uzbekistan in maintaining cultural diversity and realizing coexistence of different ethnic groups to prove that every tradition has elements that can lend experience to the global



development of human rights cultures. Mr. Pierre Bercis from France refuted the practice of forcing one's human rights outlook into other countries by military actions. He pointed out that cultural tradition is the great wealth contributed by every ethnic group to the whole human race, and every nation should decide its own outlook on human rights according to its own tradition. Mr. Chui Sai Peng from Macau of China gave the example of the three special forms of human rights cause in Macau – consultation culture, tolerance culture and charity culture, pointing out that while carrying out human rights, one should take into consideration the national reality and cultural tradition so as to create and develop a set of human rights protection system that can stabilize their own development. At his speech entitled *Cultural Transformations in China and Progresses in Human Rights Cause*, Mr. Li Junru introduced that China is gradually deepening its understanding of human rights during the cultural reforms and has formed the human rights theory with Chinese characteristics, providing us with a panorama observation and thinking vision to deepen our understanding on this issue.

– On the issue of values and human rights. Setting eyes on the differences between values of the east and the west, participants believed that values, the products of particular social and economic situations, are determined by social productivity levels. Different values directly lead to diversity of human rights outlooks and variety of human rights protection modes. Madam Elisabeth Steiner compared the differences of human rights outlooks in China and Europe and pointed out that the human rights outlook of every country is the reflection of its own tradition, culture, ideology and political system. In an era when the human race is going global, exchanges of different values can bring new prospects and hopes to the intelligence development of human race. Mr. Lew Mon Hung from Hong Kong of China introduced the experience that human rights in Hong Kong were profoundly protected with the progress of the ruling concepts and values of the Chinese government and the smooth implementation of “one country two systems.” In his speech, Mr. Shad Saleem Faruqi from Malaysia appealed to use principle of relativity and diversified values to reject monism and universal values. Mr. Otto Kobl from Switzerland analyzed the human rights outlooks of three western dailies and specially emphasized the internal reasons of the divergence in human rights outlooks of China and Western countries, providing an important enlightenment for us to understand the issue.

– On the issue of dignity and human rights. After earnest exchanges and discussion, the participants believed that human dignity is a key concept in the process of human rights protection. Every single human right contains the spirit of human dignity; respecting and protecting human dignity is the unavoidable duty of the state. The participating representatives paid close attentions to the practices of human rights protection. Mr. Chang Jian introduced the dispute between interests and freedom of the existence of human rights essence. He noted that interest and freedom are two undividable parts of human rights;

viewing from the angle of human rights protection practice, we should establish the human rights protection system with balanced interest and freedom. Mr. Zhan Zhongle believed that since the connotation of human dignity has objectivity, sociality and relativity to some extent, its protection should not be unchangeable, but should be completed gradually through concrete human rights protection system. Mr. Feng Jiancang illustrated that personality dignity is the right that cannot be deprived or limited through analyzing the protection of human dignity of criminal prisoners. Ms. Manuela D'Avila from Brazil, Mr. Vong Hin Fai from Macau and other representatives also introduced their experience of respecting human dignity and protecting human development from different angles.

The third feature of our forum is: Facing the future and demonstrating tolerance and respect to diversified cultures.

Starting from the development trend of political multi-polarization, economic globalization and cultural diversification, and the beautiful human ideal of realizing human rights in an all-round way, the forum this year has provided a platform for representatives of various countries to conduct earnest communications and pool consensuses. The forum exhibits tolerance and respects to different cultures of different regions, different beliefs and different systems from its form to its contents. The forum was held in a friendly and harmonious atmosphere.

The forum this year explored human rights issue through combining theory and practice. We had theoretical illustration of the relations between cultural tradition and human rights cause development, case introduction of the protection of intangible cultural heritages of ethnic minorities and cooperative culture, explorations of the value of human dignity and its realization and cares for women's rights and interests and personality dignity of prisoners. All the presentations are persuasive and infectious.

The forum this year deepened human rights researches in the process of exploring commonness and individuality. Around the theme, the participating experts and scholars paid close attention to the dynamic relations between the universality of human rights and the relativity of cultures, and compared and researched human rights outlooks in the East and the West, reflecting unification between the commonness and individuality and between universality and specialty.

The forum this year interpreted human rights development from history and from reality. We had summarization of historical experience, analyses on reality problems, systematic classification of cultural inheritance, as well as institutional designs of human rights protection. This forum has put forward many penetrating judgments for the promotion of human rights cause development.

Friends,



Though we are from different countries, regions and organizations and are influenced by different elements such as historical traditions, cultural concepts, religious beliefs and living customs, we are here for the human rights cause and friendship. During the two-day forum, all the participants sought consensus through communications and explorations and enhanced understandings during friendly exchanges by facing the realities, problems and contradictions, reserving differences and seeking common background from differences. I believe, with unremitting efforts from all of you, our forum will become the example of human rights communications with more extensive influence and make more contributions to the progress of the world human rights cause.

Guests and friends,

On the occasion when the forum is about to conclude, please allow me, on behalf of the forum sponsors, to express my earnest appreciation to representatives from all over the world, and to friends from the media who care for and support our forum, to the interpreters who have provided excellent services and to all the staff of our forum!

We look forward to meeting all of you and more experts and scholars in Beijing the next year to discuss human rights development.



CULTURAL TRADITIONS AND HUMAN RIGHTS





Cultural Traditions and Human Rights

Pierre BERCIS

France

Cultural traditions are the huge riches contributed by each nationality to the human beings: natural knowledge, literatures, music, spirituality, lifestyle, etc. Cultural traditions are the collective intelligence of human beings, which reflect the biodiversity of animals and plants. If people destroy the biodiversity, we will be impoverished. If we continue to follow the logic, our world will be uniform and dark and we will have no future. Our planet will become flat and soulless and will be an unlivable land. People will have no mean to live independently after killing all other life.

I know everyone here, my friends. Though it is the third time that we meet in Beijing, we have totally different cultures. And that is the reason I appreciate everyone here: the difference. My life becomes colorful because of you, and I can also enrich your life. This does not need abundant material wealth, but the literature, philosophy, music, science and technology of various kinds accumulated for thousands of years by little Europe, or even little France.

For me, I inherited from philosophies of Greece, Roman, Christian, the French Revolution and socialism, and even automobile, airplane, radio and television...

I do not neglect the negative and tragic influences of the Western nations in terms of human rights.

On your side, you have brought me the culture traditions which are totally different from mine, and not higher or lower than my culture. Without your cultures, I would turn around intellectually as a caged animal. When Europeans like Marco Polo first reached China, it was a mystical country for us. We realized that there were other ethnic groups with totally different philosophies and literatures from ours. They had created different technologies and had different lifestyles...

We have the same discovery when we discovered America, and later, Africa, India and Oceania...

In his masterpiece *Tristes Tropiques*, the great French anthropologist Claude Lévi-Strauss in the 20th century depicted his life in Amazon. He called for people to respect local customs.

The Western imperialism once wanted to rule the whole world and impose its values on



other countries, though it denied its own values several times. This is totally wrong because human rights do not mean conflicts of power, but dialogues among different civilizations, which is also known as “clash of civilizations” today.

Fortunately, people have resisted. As time went by, people impeded the error. The confrontation lasted for a long time. But what does 100 or even 200 years mean compared with thousands of years of people’s cultural activities?

We also have confrontation in ideological area. The disintegration of the former Soviet Union is the best example. People believed that was the end of the socialism... Today, the world situation has changed greatly and even the United States needs to borrow money from China.

Return to the Equilibrium

Triumphs have past and we need to be modest. In today’s world, just as Confucius had said, harmony should prevail.

We must remember that every culture is respectable. But we must distinguish them.

But how? I believe various countries should reach consensus and reverse the parts in some cultural traditions that are detrimental to human dignity according to the universal moral standards in human rights declarations issued by the United Nations in 1948.

We have numerous examples and here, I just explain some of them. The first example in our minds is the gender inequality. Due to traditions, especially religious traditions, women cannot have the same rights as men in political and civil fields in many countries. A man can have several wives; a daughter inherits fewer assets than a son; and a girl must get his father’s permission in marriage.

In addition, though slavery has long been abolished by the United Nations, it still remains in many countries. Slavery exists in some West African countries and the Near East.

Clitoridectomy and infibulations, which are popular in many regions in Africa, are the scourge from cultural traditions. Young girls are physically harmed to keep their purity.

In some regions, children, especially girls, do not have the right of education. Or education is open only to religious circle, not the public...

In fact, the biggest issue for all of us here is the universality of human rights. Do human rights have a unified philosophic and political angle?

Not long ago, some westerners said that Asians and Muslims did not accept the universality of human rights, and that human rights were the hypocritical ways for the Westerners to impose their values and interests on others.

Regarding this, I found that our Chinese friends have similar philosophy. Although we have disagreements on the detailed contents of human rights, we can have democratic debates between us.



It is certain that we belong to one world; we cannot and have no right to do as the United States did by trying to impose their outlook on human rights upon others by force and imperial war. Each nation should determine on its outlook for itself on human rights according to its tradition. The human rights declaration issued by the United Nations in 1948 was recognized by all nations. All what we need to do is to put the declaration into practice.

We believe that China should be the first to stand up to demand respect of human rights. As a developing country, she should require other countries to recognize new human rights. Here, I have the right to peace in my mind. Though unrecognized, it is the basic right of human beings; I have secularism in my mind. It does not mean to be against religion itself, but the practice of forcing religious rules into others. I have the idea of respecting people's physical integrity in a scientific manner in my mind. Science can free people from pains. Though people tried to change our common genetic genes, science will not change its nature.

Finally, I would like to express my gratitude for inviting the New Human Rights Association for the discussion. What I have brought here is not negative views, but hopes of human rights, just like what Martin Luther King said, "I have a dream."

I hope China and Russia (that want to develop human rights) to join hands to take their due responsibilities. Since they are two big nations, I hope they could persuade other countries for more human rights. I hope they are the locomotives in the process of striving for human rights, not the last cars...

Utopia? I don't think so. Otherwise I would not be here. I made the presentation because I am confident with our common future. Silence can destroy everything. We must be careful.

The continent I represent cannot adopt the ostrich policy. We cannot put our heads in the sand and say that we see nothing and hear nothing. Winston Churchill said, "Democracy is the worst form of government...except for all others."

I hope I have made myself clear enough in my representation.

(The author is President of New Human Rights Association,
Member of National Consultative Commission of Human Rights.)

Cultural Traditions, Values and Human Rights

Jane CONNORS
UN

I am very pleased to participate in the Fourth Beijing Forum on Human Rights on behalf of the Office of the High Commissioner for Human Rights. I would like to thank the organizers and compliment them on the excellent arrangements relating to the Forum. I also offer my personal thanks as this Forum has given me the opportunity to return to Beijing which I last visited at the time of the Fourth World Conference on Women in 1995. I congratulate the organizers for choosing the important theme of cultural traditions, values and human rights.

I am convinced that debates and exchanges on topics such as these among different stakeholders are essential in order to increase engagement and promote implementation of rights in practice at the national level. Events such as this Forum, which allow for sharing of perspectives among global human rights advocates and local organizations, are also essential to create a strong human rights movement focused on ensuring that all – women, men, girls and boys – truly enjoy all their human rights.

Significant progress in international human rights law has been made over the past few decades. We now have an extensive system for human rights protection created through the human rights treaty system, and the expert and intergovernmental mechanisms aimed at the promotion and protection of human rights. States have shown strong support for advancing human rights through ratification and accession of the comprehensive web of human rights treaties which they have concluded within the context of the United Nations. China has taken an active part in these efforts, and is now party to five core human rights treaties, and the two substantive protocols to *the Convention on the Rights of the Child*, thereby assuming significant legal obligations. Progress made in international human rights law has also inspired individuals who have found the language of human rights empowering, as it promises entitlements, rather than privileges.

In my remarks today, I will reflect on the range of international human rights mechanisms which we have at our disposal today through which the full range of human rights can be promoted and protected. At the outset I would like to recall that human rights are indivisible and interdependent. There is no hierarchy of human rights, with civil, cultural,



economic, political and social rights being equally important, and the realization of the right to development crucial. Great progress has been made in China in the realization of economic and social rights. However, this can only be sustained through equal attention to all rights given their indivisibility.

Three human rights mechanisms are currently available to advance the enjoyment: the special procedures of the Human Rights Council, the Council's universal periodic review mechanism, and the human rights treaty body system.

Special Procedures

The Special Procedures of the Human Rights Council consist of independent experts who work on themes identified by the Council as requiring attention, or specific country situations. There are currently 33 thematic special procedures on subjects as diverse as freedom of religion and belief, extrajudicial executions, violence against women, health, water and sanitation, internally displaced persons and freedom of assembly. In 2009 the Council created an Independent Expert in the field of cultural rights who has presented several thematic reports to the Council and undertaken country visits. The Council has also created ten country mandates, the most recently established being on Cote d'Ivoire. The Special Procedures mandate holders are appointed by the Council following a rigorous selection procedure, and currently all geographic regions are equitably represented and gender balance has almost been attained. These are the most agile human rights mechanisms we have. They undertake country visits, issue urgent appeals and allegation letters to States and press releases. Last year, Special Procedures carried out 67 country visits to 48 Members States and issued over 600 communications.

Country visits by Special Procedures provide a valuable opportunity to bring together stakeholders, including authorities and civil society, and pursue dialogue on particular human rights issues and practical experiences. Visits also provide an opportunity to share best practices and identify specific measures, such as technical cooperation, which could contribute to the enhancement of human rights protection at the national level. The visit to China of the Special Rapporteur on the Rights to Food in December last year was a very positive example of this. Other Special Procedures mandate holders have expressed their desire to visit China and to build on this constructive interaction and I hope such engagement can be further explored. Eighty States have now issued open invitations to these mechanisms, and the Office of the High Commissioner for Human Rights encourages all States to follow their lead. Cause and effect is of course very difficult to correlate, but it is clear that States have adopted legislation and changed policies as the result of these mechanisms. The mandate of the Special Rapporteur on Violence against Women, for example, has consistently urged States to adopt legislation on harmful traditional practices, and countries which have

done so include Chad (2002), Niger (2003), Mauritania (2005), Eritrea (2007) and Sudan (2008). Confidential urgent appeals have also allowed Governments to investigate cases of individuals and good outcomes have resulted.

Universal Periodic Review (UPR)

This is the newest human rights mechanism, being introduced in 2008. It is the process by which the human rights performance of all Member States of the United Nations is considered periodically by their peers: the Members of the Human Rights Council and Observer States. The basis of the review, the first round of which will conclude in March next year, is a report of the State, a report compiling the output of human rights mechanisms, and a report compiling the views of 'stakeholders': civil society, including non-governmental organizations. China was reviewed on 9 February 2009, with the report of the review being adopted in June of the same year, and many of the recommendations made by its peers were accepted. As the first round of the UPR comes to an end, States should be well-advanced in the preparation of the second round of the review. Reporting on follow-up to and implementation of the commitments made will be a crucial part of this process and should be undertaken in an open and constructive fashion both within Government structures and through dialogue with civil society. It is important to note that although UPR is new it has already had impact. Many States have introduced reforms in the lead-up and after the review. All reviews are webcast, this allowing those who have not been able to travel to Geneva to observe their countries as they are considered. This webcast provides a framework for cooperative discussion at the national level.

Human Rights Treaty Bodies

The third human rights mechanism available is the system of Human Rights Treaty Bodies. These are committees of independent experts created to assist States parties to implement the human rights treaties to which they are a party. Ratification of human rights treaties requires implementation of their substantive provisions at the national level. This is often achieved by the incorporation of those provisions in national legislation. A comprehensive study by UNICEF in 2007 of more than 60 countries, for example, concluded that in two-thirds of these the Convention on the Rights of the Child (CRC) has been directly incorporated into national law and courts have made decisions applying the provisions of the convention. States parties to international human rights treaties also assume obligations to submit periodic reports (generally every four to five years) on the measures they have taken to implement the rights in the specific treaty. These reports are considered by the relevant committee which discusses implementation with representatives of the State concerned and then formulates 'concluding observations' highlighting



progress made and recommendation for further action. These, which should be read in concert with recommendations of Special Procedures and UPR constitute a roadmap of human rights action for the State and an advocacy tool for civil society to be used in discussions with Government and amongst other national actors. China has demonstrated a strong engagement with the Treaty Bodies and actively participates in the consideration of State Party reports with large and highly qualified government delegations. China is to be commended for being one of the very first State Parties to submit a report under the new Convention on the Rights of Persons with Disabilities. Let me emphasize again indivisibility of all human rights and highlight the fact that the administration of justice and the rule of law are key elements for the effective exercise of human rights. As such I would like to recall China's signature of *the International Covenant on Civil and Political Rights* in 1998 and encourage ratification of that important instrument. Human Rights Treaty Bodies also issue 'general recommendations' or 'general comments' on a provision in a treaty or overarching themes. These are often very influential documents which benefit from the input of researchers, UN system entities and civil society. They assist States to develop legislation, policies and programmes and can also be used by judiciaries to interpret legislation from a human rights perspective. For example, general recommendation 19 of the Committee on the Elimination of Discrimination against Women (CEDAW) on violence against women adopted in 1992 has been used by courts to address this issue. A notable example here is a 1997 case of the Supreme Court of India which used the general recommendation to establish guidelines and norms to be observed in all workplaces to prevent and address sexual harassment. In 2009, the Committee on Economic, Social and Cultural Rights formulated a general comment on the right of everyone to take part in cultural life. CEDAW and CRC are currently formulating a general recommendation on harmful traditional practices which participants may wish to contribute to.

I am hopeful that the ideas I have put forward will encourage use of the human rights mechanisms whose true potential remains untapped. They provide space to raise awareness and advocate for enhanced promotion and protection of human right and provide a context for vibrant and fruitful dialogue on human rights. This requires the active participation of multiple stakeholders. Respect for the role of civil society and freedom of expression are indispensable elements in the creation of a culture which is based on respect for human rights. Such dialogue must be inclusive and allow the voices of all members of society, including those in situations of vulnerability and marginalization, to be heard.

On behalf of the Office of the High Commissioner for Human Rights, I look forward to strengthening our cooperation with China in a number of areas. As an example of cooperation, I would like to take this opportunity to draw to your attention that over the past



year we have sought to develop our webpage (www.ohchr.org) in Chinese. We hope this will facilitate interaction and access to documentation.

Finally, I would look forward to our discussions during the coming days, and particularly how we can take the important theme of this Forum forward.

(The author is the Chief of Special Procedures Branch, Office of the High Commissioner for Human Rights, UN.)



The Exploration of Universality and Particularity of Human Rights in Chinese Culture – Taking Macau as an Example

CHUI Saipeng
Macau, China

I. Preface

As we all know, human rights values, whose core is about concern, respect and the development of human rights, originated from Western world and formed with *Universal Declaration of Human Rights*, *International Covenant of Economic, Social and Cultural Rights* as well as *International Covenant on Civil and Political Rights* mainly developed by Western countries. Although China has signed a series of international conventions on human rights, China has certain differences from Western countries on implementing the details of human rights. The foremost is the differences between Chinese longstanding traditions and culture and Western civilization that have shaped different human rights values.

There is a Chinese proverb: Customs varies from one area to another, even in a quite short distance of ten or a hundred miles. The differences in space have shaped different geographical and cultural characteristics, while time has formed different historical and cultural backgrounds. When we open our eyes to the whole world, there are more than ten miles or even a hundred miles between two countries, and there are more than a hundred or even a thousand years in the historical development process among different countries. So under the dual construction of space and time, different countries have their own cultural traditions. “One culture has constructed a country of its own. The country with such culture has a tradition, which has made Chinese have different values, habits and ethos.”¹ Longstanding history has created profound culture, while traditions have shaped peoples’ mind and behaviors. The rational thinking, moral judgments, values and ideals are rooted in those cultural traditions they live in. Therefore, for the Western doctrines of human rights, China can not completely copy them as they are. Instead, China should confirm certain basic principles, then consider actual situations and cultural traditions, and draw on experience of the world so as to create and develop a proper system for the protection of human rights.

¹ Ge Zhaoguang, *Ten Lectures on Chinese Ancient Society and Culture*, Hong Kong: The Commercial Press, 2003, P188.



Compared to other regions in China that have suffered colonial rules, Macau has been ruled by Portuguese colonists for hundreds of years, but the subjectivity of Chinese culture in Macau has never been wavered. What's more, Chinese culture has co-existed there with Western culture during communion. The unique geographical and historical backgrounds have determined particularity of human rights concepts in Macau. This paper has briefly analyzed the universality and particularity on concepts on human rights between Chinese culture and Western culture, and then introduced the cultural blend and exchanges between China and Western countries by taking an example of the development of human rights cause in Macau.

II. Values of Chinese Culture

When we tell the differences among countries, the most important basis is to examine the cultural traditions and humane spirits of two countries and make a comparison between the two countries from the horizontal perspective. The cultural concepts in Chinese traditions do not have relevant explanations on Western concepts on human rights, but it has the soil for moving toward such direction. The following two concepts of “person” and “heart” have explained the traditional values of Chinese culture.

Chinese traditional culture prefers the discussion of “person.” The definition of “person” is that “benevolent person always cares for others,”¹ which is a clear removal of “self” boundary. The Chinese character (仁) is consisted of two other Chinese characters – “person” (人) and “two” (二). In other words, one party can define the other only in a ‘two-person’ corresponding relationship. “In ancient China, such ‘two-person’ corresponding relationship includes: sovereign and subject, father and son, husband and wife, brothers and friends. This definition of “person” has been expanded to the community and collective relationship in the modern times, but the meaning of “deep structure” remains essentially unchanged. However, the preference of collectivity of Chinese does not mean the disappearance of ‘individuals’, but the expression of ‘individuals’ is not apparent.”² In this regard, Chinese traditional humane concepts are very much aligned with the right to life, human dignity and values in Western concepts on human rights. However, Chinese traditional culture has attached more emphasis to the harmony of groups and personal relationships, which is the special aspect of Chinese culture.

On the other hand, as Mencius said: “If you fully explore your mind, you will know your nature. If you know your nature, you know Heaven.” His understanding of “mind” refers to conscience whose function is “to think.” Therefore, “the function of mind is to think. If you think with your mind, you can get it; otherwise you won’t.” However, Mencius’s “mind” (also

1 *Book of Rites-the Doctrine of the Mean*, No. 20.

2 Sun Longji, *Deep Structure of Chinese Culture*, Guilin: Guangxi Normal University Press, 2004, P12.



known as the “original mind”) also refers to “conscience” and “intuitive ability,” thus it has covered the “rationality and conscience” regulated in the Article I of *Universal Declaration of Human Rights*.¹ The more significant difference between Chinese and Western culture is that our traditional humane spirit was born in the Confucius environment, while Western culture originated from the legal environment. In comparison, we pay more attention to self-discipline. It can be seen that although Chinese traditional culture do not have a clear definition on human rights, we have our own ideological path for human rights and do not need to be caught in the Western concepts on human rights.

III. Universality of Human Rights in Chinese and Western Culture

Undoubtedly, people with different geographical culture and historical background, and people in countries or regions with different stages of development have certain differences on the recognition of human rights culture. Nevertheless, there is still universality between Eastern and Western culture. In today’s world, the universality of human rights has two meanings: the first one refers to the universality of the subjects of human rights, i.e., all nations and countries shall enjoy the right to liberty and equality at the international level. The second one refers to the universality of principles and contents of human rights. The universality of human rights requires the equality of human beings on rights and dignity.² The above two meanings can be called the principle of “universal values.” In Chinese traditional culture, we can find its corresponding contents, which are blended with Western concepts on human rights, or even favorable to their development. For instance, the benevolence or compassion advocated in the “benevolence” of Confucian thought is gradually expanded. “First, benevolence or compassion refers to self-cultivation, then shows concerns to those who have family or social relationship (such as family or friends), and then further promotes such feelings to circles which are farther away from one’s own, until to the whole body of mankind (It is the most fundamental ethical principle for the relationships among human beings.). For example, Confucian culture also has special emphasis on education, through which the goodness in the hearts of everyone has the possibility to be truly reflected. Moreover, Confucian culture recognizes that everyone has moral independence and improvement, and believes men are basically good and “everyone could be Yao and Shun (who are excellent leaders in ancient China)” (i.e., it recognizes the equality of human beings on study, moral cultivation as well as the ability to achieve personal growth.). In addition, the later emergence of emphasizing various vulnerable groups in human rights concepts (such as the right to women, children, the elderly and disabled people) works in concert with the

1 Li Minghui, “Confucian Traditions and Human Rights,” *Conflicts and Harmony of Traditional Chinese Culture and Modern Values*, Vol. I, Taipei: Himalaya Foundation, 2002, P235.

2 Xinhua Net: <http://big5.xinhuanet.com/>.



Confucian philosophy of love for the less fortunate people in society.¹

The values of liberty and equality reflected in human rights are the common pursuit of mankind and reflect the common ideals of mankind. We have realized that the most essential universality of human rights is to call on the noble sentiment and humane care lying in human nature, compassionate for vulnerable groups and uphold human dignity, which is a pursuit for common values. The various aspects of inclusiveness in Macau is another implementation for the universal values, which becomes true common values by mixing Chinese and Western culture as well as spiritual civilization.

IV. Western Countries and China Learning from Each Other on Human Rights

In fact, in the history of Eastern and Western civilizations, both “democracy” and “human rights” have the common pursuit of values, but periodic and regional differences in their own different periods of social development. In Eastern countries, China and Japan have periodic differences, while in Western countries the U.S., Britain and Germany have such periodic differences as well, which is precisely a powerful proof for the diversity of social civilization of human beings. In this sense, the neglect of the development of human rights means ignoring the diversity of the development of civilization. The attempt to unify other civilization has been recognized as detrimental to the development of civilizations. Similarly, it’s also questionable for some countries to try to replace other practices on human rights and democracy with unified standards of human rights and democracy, regardless of regional culture and historical traditions. Therefore, if the Western values were imposed on China, a country with a 5,000-year history, there would be conflicts and contradictions with the social traditions and humane spirits during its implementation. According to the sociologist Elias *Norbert Elias*, “Civilization” gradually reduces the differences among various ethnic groups and represents the universal behaviors and achievements of human beings. It is related to the future, indicating the universal trend and direction of the future. “Culture” makes various ethnic groups show their differences and often reflects the ego and features of a certain nation. It is related to traditions, indicating the influences on the present days exerted by the past.² From the above description, it is easy for us to understand why the Western concepts of civilization can not be mechanically transplanted to China. As China is a country with a 5,000-year cultural heritage, its own humane spirits and moral standards have been handed down since ancient times, which has become the humane foundation for most Chinese and highlighted the particularity of Chinese civilization. However, due to the concept of modern

1 Chen Hongyi, *Chinese Cultural Traditions and Modern Concepts on Human Rights*, China Civil and Commercial Law Net, http://www.legalinfo.gov.cn/index/content/2011-05/13/content_1189400.htm?node=7879, 2009.

2 Norbert Elias, translated by Wang Peili and Yuan Zhiying, *Progress of Civilization: Researches on the Social and Psychological Origins of Civilization*, Shanghai: Shanghai Translation Publishing House, P49.



global village, different countries have linked up via various mechanisms and objectives. Therefore, it is natural for different countries to learn from other countries' civilization and culture, which requires understanding the differences of national spirits and development situations among different countries so as to conclude agreements and conventions agreed by most of the people for global cooperation in the future.

Of course, the concepts of human rights established in Western countries are not the absolutely sole criteria, which are not entirely suitable for all countries of the world. Marx once said: "Rights can never exceed the economic structure of the society and the cultural development constrained by economic structure."¹ China, as the world's largest developing country, has a long way to go in the development of society, economy and livelihood. At present, China regards the right to life and development as the primary human rights, poverty alleviation and development as the starting point of China's human rights cause, which adapts to the objective requirements of social and economic development in China, and is the most urgent and primary task for China. Therefore, in order to maintain and develop human rights, we can not use a single standard to substitute them, but respect different national conditions and unique needs with an open inclusiveness. Western concepts of "human rights" and "democracy" have distinctive epoch characters and stages in development, so do Chinese concepts of "human rights" and "democracy." Nowadays, China is willing to learn from Western countries about maintaining and developing human rights, democracy and liberty; while a considerable part of the Western countries pay attention to Eastern countries and learns Chinese culture to address internal conflicts faced by Western culture. Actually, this phenomenon is not new to both worlds. Human civilization is based on mutual exchanges and jointly promotion carried out by different cultural groups. Therefore, China is willing to learn from civilized perspectives about human rights from Western countries, and Western countries also respect the cultural identity of China, so that different cultures can complement each other and seek for real well-being for all mankind.

V. Macau – An Achievement of Blending Chinese and Western Culture

In summary, the implementation of human rights must proceed from the specific situations and conditions of different regions so as to stabilize their own development as well as protect human rights. A Chinese saying goes "seeking the cause in oneself instead of someone else." When we review the human rights development in Macau, we may provide the experience of forming harmonious values by the blending of Chinese and Western culture to indicate the uniqueness of Macau. Moreover, our motherland has also attached great importance to safeguarding human rights in Macau. As Macau was a Portuguese

¹ *Selected Works of Marx and Engels*, Vol. III, 1972, P12.



colony before the handover, so the *European Convention on Human Rights* was applicable to Macau. However, having returned to our motherland, *European Convention on Human Rights* is not applicable to Macau, which results in the gap of Macau in the aspect of human rights treaties. Due to the above reasons, Macau suggested to add some provisions that can be applicable to Macau from the aforesaid *International Covenants on Human Rights* into *Macau Basic Law* during its drafting and consultation period, so that residents in Macau can feel at ease. The Central Government stressed and accepted this proposal, and negotiated with Portugal via Sino-Portuguese Joint Liaison Group. Eventually, before the first session of the 8th NPC adopted *Macau Basic Law* on March 31, 1993, the Congress of Portugal had passed No. 92/413 Resolution and published it on *Macau Government Gazette* on January 12, 1993.

The aforesaid *International Covenants on Human Rights* is applicable in Macau, and Macau has its unique way to implement and protect human rights to show the harmony and wisdom of residents in Macau. Macau has combined Chinese culture with Western culture to form a special social form with the Chinese culture as the main body and the Western institutions as the tools – consultative culture, inclusive culture and charitable culture are the achievements of the development of human rights cause in Macau. If we discuss the concepts of human rights at a philosophical dimension, the safeguard of human rights is to strike the balance between the spiritual dignity and material world of human beings. By learning from the Western institutions of the rule of law, Macau protects spiritual needs of human beings by relying on laws about human rights and provides equal opportunities to obtain material civilization. In short, human rights can be seen as a triangle relationship with the balance of laws, spirits and material. Thus, this paper has combined three special forms of human rights cause in Macau to describe Macau's achievements on human rights by blending Chinese and Western culture.

A. Consultative Culture – Voluntary Communication beyond the Law

There are about 5,000 registered communities in Macau. Besides providing recreation, counseling and help, these communities also carry out non-official but authoritative consultation and dialogues to pursue reasonable interests for residents and seek for favorable rights to development; therefore, the strong association culture in Macau has contributed to the effective implementation of consultative culture. Such consultative culture is not formed by legal provisions, but its unique values and functions are beyond the law. Such culture was based on the self-discipline of Chinese traditional culture in Macau, but affected by the consultative culture brought by Portuguese. The Eastern and Western heritages have combined with each other, resulting in Macau communities making voluntary consultation, which is beyond the law, for the welfare of residents. The most typical example is that Macau Association of Building Contractors and Developers and Macau Construction Industry



General Union have been consulting on the lowest reasonable salary for building workers. Since 1970, they have carried out a negotiation on the lowest salary of construction craftsmen and women each year to seek for a salary level that can be acceptable for both employers and employees. The consultation between a chamber on behalf of the industry and a union representative on behalf of all employees of the industry is a kind of practice to “the right to collective negotiation” in the absence of laws. Although two associations are not the only relevant representatives among the industry, but such action still remains effective. And facts have proved that the unique consultative culture in Macau is a kind of social management mode with high efficiency and low costs.

In addition, since 1990s, Macau had a large number of blockhouses that needed demolition. However, as the then Portuguese Macau Government and property developers could not coordinate the demands of residents, so demolition plan was hindered. At that time, the Union General of Community Association of Macau played a bridge role in bringing people and the Government as well as property developers to reach an agreement via consultation, which maintained and safeguarded public interests on the one hand, and promoted the normal development of society on the other.

Macau has promoted the effective collaboration between officials and the public, as well as employers and employees via such kind of non-official consultation culture of civil society. Macau still has effective way to safeguard the right to development and property and maintain social harmony without the regulations of laws. Undoubtedly, the consultation culture in Macau carries out effective communication and collaboration by means of beyond the law and advocates the merits of self-discipline of Chinese culture. It is a higher level of humane spirit, and has created another road, which is beyond the law, to safeguard human rights at a higher level.

B. Inclusive Culture – Practical Expression of Mutual Respect

Macau is a city that blends Chinese and Western culture, showing a high degree of inclusiveness. As the above-mentioned coordinated triangle relationship among laws, spirits and material, it indicates the co-existence of diverse culture and spirits. The memorial statue “Embrace” which is located at Pigeon’s Nest Park, symbolizes the mutual exchanges and harmonious co-existence of different races and religions in Macau. “Religious belief and dissemination is completely free. The world’s major religions and denominations have their own target objects. All religions live together in peace without disturbing each other.”¹ The world’s five major religions (Catholic, Christianity, Islam, Buddhism and Taoism) and other religious branches have their branches in Macau, such as Soka Gakkai International, Bahai, and Universal Buddhist Merciful Society and so forth. Therefore, you can often see different

1 Wu Zhiliang and Yang Yunzhong, *Encyclopedia of Macau*, Macau: Macau Foundation, 2005, P13.

religious leaders host religious rituals at the same place in the public occasions of Macau. Macau shows a high degree of inclusiveness towards religious culture, which maintains the right to freedom of religion for Macau residents. It is in such atmosphere that different religions have no just or evil differences and no hierarchy among them, so that different religions can spread and develop in Macau. Such concept of harmony with mutual respect and co-existence has colored Macau's culture, shaped the rainbow culture of citizens' spirits in Macau, and presented another way to recognize the concept of universal values, which has made the best descriptions for advocating the ideology of fusing Chinese and Western cultural characteristics.

On the other hand, the architecture in Macau has also highlighted the peculiarity that Macau has blended Chinese and Western culture together. Some representative architecture has blended Chinese and Western styles together. For instance, Paul's Cathedral is the ruin of St. Paul, which was designed by Italian Jesuit priest and constructed by the techniques of Japanese craftsmen. "The original architecture is the baroque style, but we can still see some decorative sculptures with Oriental colors. It has status of stone lions on the third or fourth layer which are popular among Chinese folks. The remnants on the back wall have indicated that such Western-style architecture was designed with traditional Oriental techniques and decorations. Another example is the St. Lawrence Church, which is one of the three ancient churches. Its roof has adopted Chinese tiles and golden beams. A golden Arhat that is located at the right front the Pou Chai Sim Iun is different from conventions and turns into a European."¹ In other words, the development of Western architecture culture has been further promoted in Oriental Macau, and coincided with Chinese traditions, which has shaped the unique and diverse culture in Macau and become the precious cultural heritages of Macau. The above characteristics of co-existence of culture and spirits are also the specific expressions of the right to freedom and social development of residents in Macau.

C. Charitable Culture – Gracious Dedication by Putting Oneself in Others' Shoes

Nowadays, although Macau has a rich material life, they do not solely enjoy their abundant materials. When they are able to help others, they are willing to selflessly lend a helping hand to the rest of the world where people are in need, regardless of countries. They help each other and share material fruits, showing that residents in Macau have noble sentiments and highly value the right to life and be helped. However, there was a charitable culture in society when the economy of Macau was not developed. In the past, Macau often helped vulnerable groups via charitable organizations, such as Tung Sin Tong Charitable Society, Holy House of Mercy and Kiang Wu Charitable Association etc. One of the most impressive memories to me was that my father worked in Tung Sin Tong Charitable Society

¹ Ibid, P79.



during his lifetime. Macau Tung Sin Tong Charitable Society, which was founded in 1892, is a non-governmental charitable organization with more than 100-year history. Moreover, it has been committed to helping people in need, giving medicines and offering free education and so on. However, during the late 1960s, the social and economic development of Macau experienced depression. Being the chairman of Tung Sin Tong Charitable Society, my father Chui Tak Kei was busy with his duties at the Charitable Society, as well as issues about raising funds. I had heard many times that he wanted to use the bank loans to support the daily charitable services. Now, people may think it is unbelievable; however, my father adhered to maintaining the operation of the Tung Sin Tong Charitable Society and helping those people in need no matter whether he was rich or poor. He always regarded charities as his responsibility and considered others' troubles, which coincide with the insistence and dedication on philanthropy of people in Macau.

The Holy House of Mercy is the oldest charitable organization in Macau. Since its inception in 1569, it has been bearing the charity work, "giving food to the hungry, drinks to the thirsty, clothes to those who have no clothes to wear; sheltering the poor; healing the sick and burying the dead."¹ Moreover, it opened the first Western-style hospital in China, and set up foundling asylum, leprosarium, elderly homes, orphanages and other institutions. The Holy House of Mercy helps various people in need with charitable and caring spirits. In addition, Macau Kiang Wu Hospital Charitable Association, which was founded in the late 19th century, is a social welfare organization among Chinese civil society in Macau with a long-standing history. Macau Kiang Wu Hospital Charitable Association consists of Kiang Wu Hospital, Keang Peng School, Kiang Wu Mortuary House and other institutions to provide charitable works, including "giving medicines, settling disabled people, placing coffins, building roads, providing disaster relief, buying grains at official price, offering coffins, advocating education and cultivating talents"² to the public. Mr. Sun Yat-sen once served as voluntary Western medicine doctor at Kiang Wu Hospital and advocated the spirits of helping others selflessly. Besides the above charitable organizations with the purpose of helping others, other organizations in Macau are also active to offer help, which indicates the moral integrity of Macau. For example, Macau Association of Building Contractors and Developers launched a donation when Macau experienced economic downturn and workers lacked of working opportunities. It gave out the money to those who were in need via Macau Construction Industry General Union so that they could weather the storm. In summary, charitable culture had begun breeding in Macau when Macau opened its port. Such culture was carried on and maintained by means of the noble sentiments of helping each other and selfless dedication of Macau residents.

1 Ibid, P71.

2 Ibid, P554.



On the other hand, for elsewhere besides the small town, Macau residents are also willing to lend a helping hand. For instance, the tsunami occurred in 2004 caused serious damage to human lives and properties, Macau communities gave full play to the spirit of mutual help, and actively raised funds and reserved materials for other countries. According to the statistics of Macau Red Cross, Macau raised 41,000,000 MOP in a short term to help the earthquake and tsunami disaster areas in the South Asia rebuild their homeland and express selfless regards of Macau with blessing and support to affected people. And during the Wenchuan earthquake in China three years ago, Macau has donated over 6 billion MOP according to the statistics of Macau Red Cross. Macau found itself at the top of all provinces and municipalities, according to the regional donation per capita. Moreover, Macau SAR Government has committed to donating about 5.5 billion MOP by stages to Sichuan to aid many fields, including education, health and care, social welfare, sports facilities and residential facilities, and so forth. Such series of charity and relief initiatives have been recognized and supported by Macau residents. Macau residents not only have shown their neighborhood ethics of solidarity and friendship as well as helping one another, but also shown their compassionate feelings toward affected compatriots, as the blood is thicker than the water. Moreover, Macau residents have also shown their highly attention to the right to life and be helped of people around the world.

VI. Conclusion

In summary, the traditional humane spirits of Chinese culture and the concepts of human rights of Western countries have many similarities. In particular, they respect for human beings and praise the nature of human beings, as well as highlight the concepts of human rights guided by self-discipline. Undoubtedly, the respect for human beings and self-discipline in Chinese culture, which is beyond the law, is a new road to implement contemporary human rights treaties. Western concepts of human rights can draw on useful elements in this regard, so that human rights perspectives can be suitable for different national conditions and culture all around the world and seek for true well-being for all mankind.

Macau, being an indispensable part of People's Republic of China, has long-standing Chinese cultural traditions. And due to the historical particularity, Macau was brought into contact with Western concept of civilization. In other words, Macau regards Chinese culture as the main body and applies to Western institutions. Moreover, Macau has organically integrated Chinese culture with Western culture, and created its own unique way to develop human rights. Furthermore, Macau has demonstrated the harmonious coordination among laws, spirits and materials via consultative, inclusive and charitable culture. Nowadays, Macau has taken up its mission as a Special Administrative Region and had an important



modeling effect for “One Nation, Two Systems.” What’s more, Macau is also a window to allow both Oriental and Western countries to learn from each other. The development of human rights cause in Macau has demonstrated that both Oriental and Western culture, which includes human rights culture, have been a successful example for the development of human rights cause at both domestic and international level under the principles of “inclusiveness and respect, cooperation and co-existence, harmony and making progress together.”

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New Cultural Traditions and Human Rights

DONG Zhenghua
China

“Cultural Traditions and Human Rights” makes a good topic. Among the multiple strands and leads in the profound traditional Chinese culture, which are related to human rights? Recent years has witnessed overseas publication of numerous monographs on the positive influence of several thoughts harbored in traditional Confucian culture on modern concepts of human rights. However, the influence on human rights by the new culture formed over the past century, especially since the May Fourth Movement, has been insufficiently dealt with. On contrast, downright derogation or even negation on the new culture campaign has been incessantly heard.¹ Admittedly, this is the backwash of continuous “criticizing Confucius” and “breaking from the tradition” over a long period of time. However, in no way should we overlook the significant influence of new culture campaign on dissemination of human rights concepts in China and formation of Chinese human rights theory and practice. The exploration started over 100 years ago is the very origin of Chinese human rights, and an invaluable heritage left by the pioneers of modernization campaign. It remains a topic wanting further exploration to straighten out the relationship between the new cultural tradition and human rights and to draw lessons from the criticism of old traditions and cultures and introduction of contemporary human rights from the west. The thesis is an attempt.

I

Existent research has pointed out that, despite the early germination of human rights concept, its definitive concept is not ancient; instead, it is the result of gradual development in late Middle Ages in West Europe against the concrete historical and social conditions. Pre-modern Western traditions has many factors contributing to the rise of modern human rights concept, as well as many against it, such as religious intolerance and persecution of heresies, slavery, serfdom, bureaucratic privileges, autocratic monarchy, divine right of kings and so

1 Cf. Gong Shuduo, “Fair Evaluation of May Fourth New Culture Campaign,” *Renmin Daily* [1999-05-06] (9); “Q&A Regarding Erection of a Confucius Statue in Front of Tian’anmen,” *History Monthly*, 2011 (7); Zhao Shichao, “How should Traditional Culture be Inherited for Reconstruction of the Spiritual Homestead of the Nation?” *History Monthly*, 2011 (8). In addition, a lot of discourses negating the New Culture Movement and its pioneers can be found on the Internet.



on. Likewise, there was no human rights concept in the traditional oriental cultures. “Uphold the ways of the heaven and eliminate mortal desires” advocated by the Confucian School, and the political culture and ethics like the three cardinal guides (i.e., ruler guides subject, father guides son and husband guides wife) and the five constant virtues (benevolence, righteousness, propriety, wisdom and fidelity) implemented by rulers of dynasties in social and political life, all made it impossible for human rights concept to germinate in pre-modern China. Instead, infestation of oppressive rights, like the authority of the monarch, the gentry, the clan and the husband. However, this doesn’t mean that the cultural tradition of China is completely against human rights. For instance, the people-privilege thought, the people-orientation thought, the belief of human kindness by nature, “Don’t do unto others what you don’t want others do unto you” and the thought of world community – “all under heaven are one family” and etc. are all in concord with human rights.¹

However, traditional Chinese culture never encouraged human rights. In traditional societies, there were only sorts of despotism and privileges, but never human rights. Human rights are introduced from the West in the modern ages, and in the process, generations of advocates of the New Culture Campaign have been a great boost. In late 19th century, the authoritarian reign that had lasted for 2,000 years became the greatest barrier for China to shake off poverty and integrate into the modern world. In the old cultural and political frame, neither endeavor for self-independence nor system transformation could offer a solution; the frame itself was the problem begging solution. The despotic privilege was then reaching its end, and human rights sprang up accordingly. In 1922, Liang Qichao held that the New Culture Campaign “in the recent couple of years” “requiring awakened full personality” was the third stage of China in evolution in the latest 50 years. Actually, the germination of the new culture campaign dates back to the Revolution of 1911 (Xinhai Revolution) or even earlier. The slogan adopted at that time is “drawing on the Western studies,” while obviously, learning from the West is nothing but a means, and salvage of the nation and the country are the objective. Significant results of learning from the west include the translation by Yan Fu

1 Cf. Xia Yong, *The Origin of Human Rights Concept – Historical Philosophy of Rights*, China Social Sciences Press, 2007; Chen Hongyi, “Cultural Tradition of China and Modern Concept of Human Rights,” *Law Study*, 1999 (5); Zhou Jie, “‘Man’ and Human Rights Spirit in the Horizon of Traditional Chinese Culture (3) – The Human Rights Concept Contained in Traditional Chinese Culture,” www.Chinalawinfo.com; Ye Haibo, “Tentative Study of Traditional Chinese Culture and the Human Rights Concept,” *Journal of Hubei Administration Institute*, 2008 (2); Refer to www.humanrights-China.org for relevant theses under the column of “Academic Trend.” Some scholar believed that “no transgression between the noble and the humble” (i.e., the ranks of the noble and the humble should not be confused.) noted by Confucius corresponds to the universally applied human rights. Apparently this is misinterpretation. On hearing that the State of Jin would cast a tripod caldron to punish noble offenders, Confucius exclaimed not without surprise “degree means that there should be no transgression between the noble and the humble; if there is no hierarchical difference between the noble and the humble, on which basis should the country be founded?” Actually, Confucius meant to safeguard the Patriarchal Clan and Hierarchical System, and oppose universal rights and govern a country with law.

of Huxley's *Evolution and Ethics and Other Essays* and John Stuart Mill's *On Liberty*, and Liang Qichao's book *A New Nation* (1902-06). Yan Fu proclaimed in his translation of *Evolution and Ethics and Other Essays* that "in the process of evolution, the aggregative will survive and non-aggregative demise; those adaptable to aggregation shall survive and those inadaptatable will deacee."

Here aggregation means the society and the masses. Liang Qichao advocated civil rights and establishment of parliament. In *Preface to On Aggregation* (1897), he coined the term "way of the aggregation" in opposition to the "way of the authoritarian" of monarchist despotism, saying that "rule of the masses via the way of the aggregation, the aggregation shall succeed; rule of it via that of the authoritarian, it will fall apart." "Once faced with the way of the aggregation, that of the authoritarian will certainly die." He believed that, "the strength of a country is the result of democracy, with which a country is bound to be strong. The monarch serves the individual interests, while democracy serves the interest of the public." (*Letter to Mr. Yan Youling*, 1896)

There is no "human rights" in Liang's observations. Despite its limitations,¹ the awareness of "Civil Rights" had incurred extreme hatred and enmity from the die-hard and despotic ruling class, who abused "Civil Rights" advocates as "issuing lengthy disrespectful slurs aimed at sedition and usurpation," "disrupting established laws" and "compromising guidelines and constants." Even Zhang Zhidong, the advocate of "Chinese learning for fundamental principles and Western learning for practical application," asserted in *Exhortation on Study-Rectifying Rights* that, "The theory of civil rights does much more harm than good, and would eliminate mankind if everybody hold fast to it."

The central concern of both Yan Fu and Liang Qichao is the survival of the nation and the country, but they have all become aware of the importance of civil rights, democracy and freedom. For instance, Liang Qichao appealed in *A New Nation*: "To make the rights of our country equal to that of the other country, we have to make equal the inalienable rights to the people of our countries first, and award equal rights to our people in the country as done by the other country to theirs." Yan Fu believed that, in China, sages over generations were afraid of freedom and shunned discussion about it. The "Forgiveness" (maybe interpreted as tolerance and benevolence) and "measure one's abilities" (the moral criterion of self-cultivation to convince others, rule a state and bring peace to the world) and freedom "are similar but not identical." (*On the Urgency of Transformation*) He even proposed "taking

1 For instance, Liang Qichao believed that civil rights could not be achieved overnight, and should be preceded by enlightenment people and the gentry, and that "For civil rights to flourish, gentry rights should be encouraged, which should begin from learning institutes." (Liang Qichao, "Letter to Chen Baozhen on Issues to be Accomplished in Hunan," 1897, in *Wu Hsu Reform* (Book 2), p. 553.) By "encouraging gentry rights," Liang Qichao meant giving a chance for property-owning intelligentsia to play their political roles.



freedom as the substantial foundation and democracy the external appearance,” “freedom is to an individual what independence is to a country.” (*The Principle of National Strength*) Liang Qichao insightfully pointed out “Man is awarded with rights at birth, the intelligence to expand them, the power to protect them. Therefore, let the people have their freedom and autonomy, and rule of the aggregation will flourish; those confine or exterminate them will suffocate their vital force at first and twist their nature, thus eliminating humanism.” (*A New Nation*) Some researchers pointed out that the remarks by Liang Qichao and Yan Fu marked the advent of the thought of divinity of human rights and liberalism in China.¹ The judgment is pertinent. The concepts of freedom, autonomy and divinity of human rights express the same connotation.²

After Xinhai Revolution in 1911, the revolutionary results were stolen and state politics under warlord despotism became even darker. From restoration of monarchism by Yuan Shikai to the restorative efforts by Emperor Xuantong of the Qing Dynasty, one wave after another of respecting Confucian thought and restoring the ancient rites surged. Yuan Shikai stigmatized democracy and republic as giving rise to “discarded cardinal guides and abandoned constant virtues, rampant desires, (making it) almost a country of bandits and animals” and ordered the country to “pay homage to the saint Confucius.” Under those circumstances, advanced intellectuals suffering the twinge of “all hopes coming to nothing,” “mustered their courage for the campaign of full liberation.” The New Culture Campaign, noted by Liang Qichao as the new era of evolution for China officially began to unfold. And the great banner of “human rights” introduced from the modern West was held high to oppose the Confucian guides and ethics. For this, the observation by Chen Duxiu is the most clear. He unequivocally proposed in “*Earnest Advice to the Youth*” published in No.1 Volume 1 of *Youth Magazine* that “since the emergence of equal human rights, the name of slave has become intolerant to the virile. Modern history of Europe is universally acknowledged as ‘the history of emancipation’ – destroy regality for political liberation, negate magisterium for religious liberation, counterpoise properties and advocate prosperity for economic emancipation, and encourage woman participation in politics for emancipation from husband authority.” Science and human rights “are like the two wheels of vehicles... To shake off ignorance and obscurantism and the shame of being shallow, it is important to place equal emphasis on science and human rights so as to catch up.” The Article of *the French and Modern Civilization* put human rights at the top of modern civilization: “The modern civilization has three features that are most likely to change

1 Wang Sirui, “Human Rights and Awakening of National Rights – On the Difference and Similarity between the New Culture Campaign and May Fourth Movement,” *Strategy and Management*, 1999 (1).

2 Cf. Xia Yong, *The Origin of Human Rights Concept – Historical Philosophy of Rights*, pp. 169-170 and Note 4 in p. 178. In the sense of substantial law, ‘fundamental freedom’ and ‘human rights’ are the same in meaning and can be used synonymously.

the ways of the ancient time and bring a new face to the people and the society, namely, human rights, evolutionism and socialism.”

In No.4 *Difference in Fundamental Thought between Oriental and Occidental Nations* Volume 1 of *New Youth*, Chen said that “Of all ethics, morality, politics and laws, what is sought after by the society and the country is nothing but advocacy of freedom and wellbeing for individuals. Freedom of thought and speech benefits personality development. Before the laws, all individuals are equal. The right to freedom should be regulated in charters, and be inalienable by laws of the state. This is what we call human rights. After becoming of age, all human beings are naturally not slaves and entitled to these rights without differentiation. This is the domineering essence of pure individualism.” Li Dazhao also published an article on *New Youth* to fight against the move of respecting Confucian school of thought and restoring the old traditions, believing that Confucius is the deified icon of sage by emperors of dynasties, and the soul of despotic politics fettering people’s thought.

Pinning his hope on the youth, he enthusiastically eulogized youth “With chastity the youth should be given the chance to imbue themselves with the beauty and sweetness of youth, bathe in the bliss of youth and perpetuate the youthful life...” (*Youth*) The “virile manly figures” under his pen are masters of life facing the future with head held high, full of youthful vigor and brave enough to burn themselves for development. Wu Yu relentlessly criticized Confucian rites, commenting that the so-called “filial piety as the root of benevolence” and “Respect for Heaven, Earth, Sovereign, Parent and Teacher as the root of rites” are nothing but “attempts of discouraging people from rebelling and turning China into a big factory churning out ‘tamed subjects’.” (*Essays of Wu Yu: On Filial Piety*) Lu Xun wrote a series of novels and essays, like *Diary of a Madman*, *My Views on Chastity* and so on, using them as a weapon to relentlessly expose the “man-eating” nature of feudalist rites under guise of “benevolence and morality” “loyalty, filial piety and chastity.” A lot of treatises were also published by Hu Shih, Qian Xuantong, Liu Bannong, Zhou Zuoren and etc. on individual freedom and emancipation, including marital freedom and women emancipation.

Later (in a lecture in the University of Chicago in 1933) Hu Shih pointed out by way of a summarization that, the New Culture Campaign “is a conscious movement aiming to liberating men and women from the bond of traditional forces, a campaign of rationality against tradition and freedom against authority, and a campaign extolling the value of life and human being so as to overthrow suppression of it.” The realization of universal freedom, equality and independence for all people is the fundamental connotation of human rights. Just as Engels once noted, “Once socio-economic progress has brought on agenda the demands for freedom from feudalist shackles and establishment of equal rights by eliminating feudalist inequities, such demands will certainly acquire larger scales fairly



quickly... Such demands will naturally obtain universal characteristics beyond national borders, and freedom and equality will accordingly be announced as human rights.”¹ In the *Universal Declaration of Human Rights*, the United Nations also recognizes human rights as fundamental rights for every individual to enjoy life, dignity, freedom guaranteed by law, chances of getting employed and receiving education and live under no discrimination. From the numerous publications on *Youth Magazine*, *New Youth* and other periodicals of the New Culture Movement, it can be unequivocally seen that, the call for human rights is prevalent, whether it is in the extolment of youth by Li Dazhao, or the condemnation of old rites by Lu Xun, or the appeal for individual freedom by Hu Shih and others, in spite of their views being basically Western, and what they are struggling for being fundamental natural rights founded on abstract human nature, not human rights reflecting differences in cultural, social and class interests.

II

The new culture campaign has been dedicated to dissemination of western learning, and is a process of “advanced Chinese braving various hardships in pursuit of truth from western countries.” (Mao Zedong) However, look back and we can admittedly find the tendencies of hasty introduction of Western individualism, liberalism and human rights thought without due discretion, and the undue negation of traditional Chinese culture without analysis by “bring in” and “total westernization.” Liang Qichao stressed in the beginning of the 20th Century that individual freedom should obey collective freedom, believing that, “The barbarian age is doomed because individual freedom prevailed over collective freedom. In the civilized era, collective freedom should dominate and individual freedom be reduced,” and opposing endeavor for personal freedom by quibbling over every detail. (*A New Nation*)

Hu Shih called “Struggle for personal freedom is struggle for national freedom. And pursuit for individual personality is pursuit for state personality.”² Observing the different orientations toward war and peace between the Oriental and Occidental cultures, Chen Duxiu pointed out that oriental nations are peace-oriented while occidental nations are warfare-oriented: “Confucian thought discourages striving for victory, not to mention war. The teachings of Lao-Tzu and Confucius do not encourage sages so that the people won’t contend, and believe that employment of force is ominous. Therefore since the Western Han Dynasty, China has taken militarism as the foremost abstinence... while western nations are sanguinary and militant, by nature and by custom. The entire history of Europe is written with blood, as witnessed by religious wars, political wars, and commercial wars.” However, he blindly appreciated the militancy of Western nations as “would rather die fighting,” and

1 Karl Marx and Frederick Engels: Book 3, The People’s Press, 1995, p. 447.

2 Hong Zhigang eds., *Anthology of Hu Shih*, Shanghai University Press, 2004, pp. 290-291.

praised their “down and out individualism,” while criticizing the “poised and refined” oriental nations as inferior, and “having such base and shameless root.” (*Difference in Fundamental Thought between Oriental and Occidental Nations*) Although made from the fact that China suffered one defeat after another because of its poverty and backwardness, seen historically his observations are prejudiced and radical. Condemning traditional Confucian doctrine of filial piety, Chen Duxiu even made the violent observation that, “What parents have on their minds is sex, not giving birth to children,” and therefore “Filial piety is the top and foremost evil.” Even Lu Xun did not hide his view that Western cultures are superior to Chinese culture, proposed that one should refrain from reading old Chinese books, saying that “our intelligence may not be sufficient to create (our own culture), we can still learn (from the West). Even if what we are idolizing is new, it is still better than the old one in China. I would rather idolize Darwin and Ibsen than Confucius and Guan Yu, the general famed for his valor, loyalty and chastity. I would rather pay homage to Apollo than the God of Plague general of the five destinies.”¹ Because of its contradiction of traditions and “excess” and “radicalness” in learning from the west, and the burst of superstitions in modern west after the European war, the New Culture Campaign was judged “reactionary” or “resurgence of oriental culture” after the May Fourth Movement.² However, after the baptism by the May Fourth movement and the new culture campaign, concepts of opposing despotism and advocating personal freedom, like “the spirit of independence and concept of freedom,” (Tschen Yin Koh, *Epitaph of Mr. Wang Guantang*) have already been deeply entrenched in the hearts of the people. Debates over whether “cosmopolitanism, humanism and socialism” are characteristic of ancient Chinese thoughts adequately reflected the profound influence on China of three “-isms” closely related to modern human rights.³

It is once pointed out that the temperaments and speeches of intellectuals in modern China are agitated and obstinate because they have to struggle amidst various crises. Whether it is in learning from the west or criticizing the old rites, agitation and obstinacy can indeed be found. Take the colloquial poem *Confucius* by Hu Shih for example: “taking actions against impossible odds and not knowing the approach of old age – once you get to know the real Confucius, his *Analects* will be worthless.” In addition, he noted that “China will be conquered if Chinese characters are not eliminated.” Such views are unduly simplistic and prejudiced. However, this is not the whole picture. The active advocates and pioneers of the new culture campaign did not blindly accept or completely negate occidental and oriental

1 “The 46th Random Thoughts,” *Complete Works of Lu Xun*: Volume 1. The People’s Literature Publishing House, 1981, p. 333.

2 Cf. Wu Qiyuan, *Survey of the New Culture Campaign in China*, Huang Shan Publishing House, 2008, p. 172.

3 Yang Mingzhai, *On the Chinese and Western Views on Culture*, Huang Shan Publishing House, 2008, “Book 2, Review of History of Pre-Qin Political Thoughts (by Liang Qichao), pp. 90-123.



cultures. Take the *Natural Ethics and Confucius* by Li Dazhao for example: “The Confucius I condemn is not Confucius himself, but Confucius the icon fabricated by generations of emperors. And it’s not Confucius that I am condemning, but the soul of despotic politics.” In *Fierce Battle between Old and New Thought*, he remarked: “Evolution of the universe are dependent on the interplay between the old and new thoughts. I am convinced that both of them should know that their existence and progress are dependent on each other, and that neither should think of completely destroying the other.”

Even Hu Shih, who was dedicated to westernization, proclaimed that “in family affairs I will follow the oriental traditions” and keep them in mind for the whole of his life, so that he earned the reputation of “the role-model of old ethics in the new culture” upon death. As for Chen Duxiu, early when he wrote *the article of The French and Modern Civilization*, he had been aware of the multitude problems besieging the modern civilization of Western Europe, and of the necessity for socialist revolution. Obviously critical of the “competitive human rights” and the status quo of human rights under the private-ownership of capitalism, he remarked, “The old social system in Europe is devastated since the emergence of modern civilization. All that’s left is private ownership, which dates back to ancient times, rises with the thought of competitive human rights, and expands with the application of machines and capital. Its harm has been intensified all along. Political inequity evolves into social inequality. Suppression by regal nobles gives way to capitalist suppression. The defects of such a modern civilization are certain and obvious. To eliminate the inequity and suppression and effect social revolution after political revolution, socialism is the way out.”

This is close to the height of dialectic materialism human rights. Even in today, the observation is still valuable for judging the human rights standards unilaterally promoted by some powers, and for safeguarding the basic rights and resisting the privileges of crony capitalism. Chen Duxiu was also aware of factors in Confucian thought that might give rise to human rights. He summarized that the slogan of “overthrowing Confucian stronghold” is proposed during the May Fourth movement because dynasties has taken Confucius as the idolized sage so as to maintain their rule. “However, academically, the sayings of Confucius and Mencius are worthy of study; for example, the thoughts of ‘people priority over the monarch’ and ‘teaching is possible for all sorts of people’ merit investigation.”¹

III

At the outbreak of the May Fourth Patriotic Movement, youth students and advanced intellectuals turned their attention to vying externally for state rights, in front of national crisis and state of emergency. Internally the focus of struggling turned from individual rights,

¹ Cited from Yu Yingshi, *Reconstruction of Chinese Culture*, Citic Press Corporation, 2011, p. 75.

freedom and liberation to the fundamental right to survive and political rights for the masses. It can be said that by mid-1919, the New Culture Campaign featuring appeals for personal liberation and freedom has come to an end. However, 10 years later, the human rights debate, otherwise known as “the human rights movement” started by Hu Shi, inveighed against Kuo Ming Tang authority for restricting freedom, and requested formulation of constitution to establish rule-of-law and protect human rights. “The human rights movement” ended with the confiscation and prohibition of liberalist magazine *A New Moon* and *Collection of Human Rights Essays* and the arrestment of Luo Longji, prompting Hu Shi to lament helplessly the termination of the “efforts to remedy defects and rectify errors.”¹ Under the authoritarian and despotic rule of Kuo Ming Tang led by Chiang Kai-shek, the kindling of human rights in China seemed to have been suffocated. The astringent reality after the May Fourth revealed that, without national and state independence and freedom, without annihilation of the social system of the few suppressing and exploiting the many, there would be no guarantee for personal freedom, not to mention universal human rights. From then on to the foundation of P. R. China, the human rights issue in China became the issue of endeavoring for national independence and liberation of the oppressed classes, and the demand for human rights turned into a war for national liberation and internal revolution against authoritarian and despotism for realization of new democracy. After the May Fourth Movement, the new culture gradually took root in the hearts of the people, and germinated a movement for learning and spreading a new school of thought from the West, that is, Marxism. A new generation of Chinese held higher the banner of science and democracy, and new thoughts and concepts like equality and freedom gradually became entrenched in the hearts of the people. It accelerated the upcoming Neo-democratic Revolution and made the social, political and economic preparations for universal human rights on the basis of national independence and people liberation.

In short, the New Culture Campaign does not and can not interrupt the cultural tradition of China that has lasted for thousands of years. Nor can we remove it from history or sever it from the historical traditions lasting for thousands of years. The human rights issue dealt with today is actually a continuum of the investigation into human rights in the new culture campaign, and an inheritance and innovation of the new culture of May Fourth. We should respect sages from previous ages and respect history, especially the history of countless predecessors braving hardships and odds indefatigably one after another for the cause of people liberation, national independence and prosperity over the recent 100 years.

The new culture resultant from the New Culture Campaign is part of the excellent traditional culture of the Chinese nation, and the most important part, with the historical

1 Cf. Wu Qiyuan, *Survey of the New Culture Campaign in China*, Huang Shan Publishing House, 2008, pp. 115-118.



significance of carrying forward the old and bringing forth the new. Generations of people since the New Culture Campaign are edified by it and benefit from it. The new culture including colloquialism is the discourse foundation for us to think and write, and critique the New Culture Campaign and reflect on it. Without New Culture Campaign, there would be no basic context for us to talk about human rights today. Therefore, we should not over-criticize or negate the New Culture Campaign because of some extreme discourses of that time. Instead, we should take into consideration of the dangerous international and domestic backgrounds, and the enormous harms brought about by the reactionary forces like Yuan Shikai and the Northern Warlords in their attempts to restore despotic rule under cover of respecting Confucian traditions and restoring old traditions.

Regarding human rights concept, today we can discuss the factors in Confucian culture that are beneficial to human rights with relaxation, and talk about what China has been lacking since ancient times is the spirit of rule of law, but it never lacked spirits intimately related to human rights, such as humanism and the spirit of the world as one family. Criticism of the new culture how shallow and vague is the human rights concept put forth by our peers in the New Culture Campaign. We can also express sympathy and understanding for the “new outer kingliness” or “ideals of political modernization” of the new Confucian thinkers, and their fantasy of putting China’s future in the restoration of Confucian traditions. However, never should we forget the historical fact of Confucian ethics safeguarding despotism of “the four authorities,” authoritarianism centered on regal authority “fettering thoughts and suppressing humanity.”¹ Today, we can and should deepen our investigation into the

1 Since “the Four Authorities” has become a thing of the past, such oblivion seems reasonable. Worse still, some even blatantly propose retrogress from democratic society to hierarchical despotic society, believing that democracy takes as its ultimate value equality, which lead to mediocre politics and economic injustice; equality will also lead to the complete annihilation of virtues and knowledge and lead to the complete elimination of the most outstanding group – the scholar-bureaucrats, and brutal culture despotism will be implemented by the public in the name of majority. “The phenomenon of ‘scholars take no delight in studying and people are unconsciousness of shame...’ will be a miracle to be seen in democratic societies only. The view of equal education should be held blame for such embarrassment.” In addition, democracy and equality have a predilection for the disadvantaged or vice versa “The more disadvantaged people are, the more bitterness they will harbor in their bosom and the greater their request for equality.” People with such views even call on people to “go back to Confucianism,” because Confucius placed an emphasis on “rank difference” and advocated differentiation according to level of intimacy. He even remarked “Only the exceedingly intelligent and the excessively stupid people can not be changed.” The value in contrast is one of love without distinction (philanthropy), “requiring individuals to treat their families and people at large alike, (and this is) against the rule of family happiness.” In addition, they also resorted to Schopenhauer’s “social gathering” theory, believing that people of lofty ideals and virtues in the era of democracy “are destined to perpetual despair in soul.” In short, “Social justice can only be maximized only when the virtuous, the wise, the mediocre and the unenlightened are content with their positions and their lots. This is where the essence of Confucian rank-difference.” (Xu Jinru, “Remedy the Defects of Democracy with Confucianism,” in *Tribune of Social Sciences*, 2011 (6)) Equality is an element of human rights, to go against equality is to deny human rights. The recent Years has witnessed continuous similar voices against democracy and equality, and the phenomenon is worthy of in-depth thinking by those dedicated to research into traditional culture and human rights.

meanings of human rights concept on various levels, and a host of important topics, like the relation between human rights and other rights (like civil rights, state rights and national self-determination rights), the relation between human rights practices and construction of a harmonious society, the universality and particularity of human rights, abstract and concrete human rights, human rights as an objective and as a means. However, we should not be hypercritical of the Chinese path-breakers of human rights thought, who have made strenuous efforts against all odds, or expect them to do all of those.

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Human Rights and Cultural Diversity – Evolving dynamics of universality and relativism

Navid HANIF
UN

Safeguarding the rights of others is the most noble and beautiful end of a human being.

– Khalil Gibran

I. Introduction

Culture is a defining feature of an individual's identity. It embraces everything from traditions, beliefs and values of an individual's family and community. It is also the language one speaks, and place of worship. Culture is all of these elements and the way they connect to make up one's way of life. It is often the source for self-definition, expression, and sense of group belonging.

The debate on cultural relativism and universal human rights has been as old as the efforts to promote, secure and protect universal human rights. This discussion has attained ever growing importance in the wake of a rapidly globalizing world. Market forces and rapid movements of people pose a new set of challenges to both their cultural identities as well as their basic human rights. Both need to be protected and nurtured.

Everyone has a fundamental human right to practice their distinctive way of life, their traditions, and to share in the joys of the cultural life of their community. This is the meaning of Article 27 of the 1948 *Universal Declaration of Human Rights*, as well as other articles that affirm everyone's right to freedom of expression and opinion, association, and choice of education for one's children.

Yet, cultural distinction itself is sometimes used as grounds for denying human rights of all kinds and cultural diversity for challenging the very concept of universal human rights. This should not be presented as an alternative. It is a dynamic and evolving concept.

The reality is that universal human rights do not impose one cultural standard, rather one legal standard of minimum protection necessary for human dignity. This paper attempts to address four aspects of this dynamic relationship between universal human rights and cultural relativism or diversity. First, universality and indivisibility of human rights as legally established in the *Universal Declaration of Human Rights*. Second, are these universal human rights sensitive to cultural traditions? Third, how the treaty bodies promote

reconciliation between cultural diversity and universality of human rights? Fourth, a special focus on the right to development and how these aspirations are shared across all cultures. More specifically, the tenets of sustainable development that are shared among all are preserving natural resource base and yet let people live prosperous and healthy lives.

II. Universality and Indivisibility

Largely through the ongoing work of the United Nations, the universality of human rights has been clearly established and recognized in international law. Human rights are emphasized among the purposes of the United Nations as proclaimed in its Charter, which states that human rights are “for all without distinction.”

The non-discrimination principle is a fundamental rule of international law. This means that human rights are for all human beings, regardless of “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”¹ Human rights are for every human being, in every culture. They are not privileges.²

The Charter further commits the United Nations and all Member States to action promoting “universal respect for, and observance of, human rights and fundamental freedoms.” As the cornerstone of *the International Bill of Rights*, the 1948 *Universal Declaration of Human Rights* (UDHR) affirms consensus on a universal standard of human rights. Its Preamble proclaims the Declaration as a “common standard of achievement for all peoples and all nations.” Virtually, all States accept the authenticity of this Declaration.

Universal human rights are further established by two key international covenants – *the International Covenant on Economic, Social and Cultural Rights*, and *the International Covenant on Civil and Political Rights* – and other international standard-setting instruments which address numerous concerns, including discrimination against women, rights of the child, genocide, slavery, torture, racial discrimination, minorities and religious tolerance. These achievements in human rights standard-setting span nearly five decades of work by the United Nations General Assembly and other parts of the United Nations system.

The Vienna Declaration and Programme of Action, adopted in June 1993 by the United Nations World Conference on Human Rights, reaffirms the status of the Universal Declaration as a “common standard” for everyone³. The Vienna Declaration further states that “the universal nature” of all human rights and fundamental freedoms is “beyond question.” And it asserts universal human rights protection and promotion as the “first

1 Universal Declaration of Human Rights (1948), Article 2.

2 Dani Wadada Nabudere, “*Human rights and cultural diversity in Africa*,” Paper written for the Association of Law Reform Agencies of Eastern and Southern Africa (ALRAESA) Conference on the Fusion of Legal Systems and Concepts in Africa, September 4-8th, 2005, at the Imperial Resort Beach Hotel, Entebbe.

3 Vienna Declaration and Programme of Action, adopted by the UN World Conference on human rights, June 25, 1993.



responsibility” of all Governments. All Member States of the United Nations have a legal obligation to promote and protect human rights, regardless of their cultural systems.

Moreover, the Vienna Declaration proclaims that, “All human rights are universal, indivisible and interdependent and interrelated.” This means that political, civil, cultural, economic and social human rights are to be seen in their entirety. One cannot pick and choose which rights to promote and protect. They are all of equal value and apply to everyone. The Declaration reiterates that all human rights – civil and political, as well as economic, social, and cultural – should be implemented simultaneously, and that neither set of rights should take precedence over the other.

The question then becomes: Do their universality and indivisibility imply that human rights lack an inherent flexibility or sensitivity to cultural nuances and traditions?

III. Flexibility and Sensitivity

Universal human rights *do have* sufficient flexibility to respect and protect cultural diversity and integrity. The flexibility of human rights to be relevant to diverse cultures is facilitated by the establishment of minimum standards and the incorporation of cultural rights. In fact, international law refrains from sharp and tight definitions that may limit the flexibility of applying instruments to different circumstances¹.

The Vienna Declaration, like the Charter of the United Nations, recognizes the fundamental principle of equal rights and self-determination of peoples; “By virtue of that right, they freely determine their political status, and freely pursue their economic, social and cultural development.”

The Vienna Conference and the processes leading up to it showed considerable sensitivity to cultural as well as other forms of diversity and difference. Three regional, preparatory meetings were held: in Africa, in the Latin American and Caribbean region, and in Asia. At the end of each of these meetings, a “Final Declaration” was adopted which referred to the particular concerns of each region². The preambles to Latin American and Asian regional declarations referred explicitly to the regions’ cultures.

In the preamble to the San Jose Declaration, the Latin American states: [re]affirm[ed] that “our countries represent a broad grouping of nations sharing common roots within a rich cultural heritage based on a combination of various peoples, religions and races, and that our roots unite us in the search for collective solutions to present problems through friendly dialogue, peaceful, coexistence and respect for pluralism and the principles of national

1 Patrick Thornberry, *Indigenous Peoples and Human Rights* 51 (2002), cited by Alexandra Xanthaki, “Multiculturalism and International Law: Discussing Universal Standards,” *Human Rights Quarterly*, Vol. 2, No. 1, Feb. 2010.

2 Christina M. Cerna, “Universality of Human Rights and Cultural Diversity: Implementation of Human Rights in Different Socio-Cultural Contexts,” *Human Rights Quarterly*, Vol. 16, No. 4 (Nov. 1994).

sovereignty, non-interference in the internal affairs of States and self-determination of peoples.”

Likewise, *the Bangkok Declaration* included a statement that the Asian states “recognize that while human rights are universal in nature, they must be considered in the context of a dynamic and evolving process of international norm-setting, bearing in mind the significance of national and regional particularities and various historical, cultural and religious backgrounds.”

During the course of the regional meetings, some challenged the concept of the universality of human rights, particularly in light of “private” rights, which relate to the private sphere or personal life of the individual. These rights have traditionally been covered by religious law; they still are in many countries. This private sphere deals with issues such as religion, culture, the status of women, the right to marry and to divorce and to remarry, the protection of children, the question of choice as regards family planning.

These debates influenced *the Vienna Declaration*, which explicitly recognizes the significance of cultural considerations in promoting and protecting human rights. The Declaration makes unambiguously clear, however, that this recognition in no way diminishes human rights obligations. It remains the duty of States/Governments to promote and protect human rights regardless of their cultural systems, as stated in paragraph 5:

All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.

At the same time, human rights facilitate respect for and protection of cultural diversity and integrity, through the establishment of cultural rights embodied in instruments of human rights law. Human rights which relate to cultural diversity and integrity encompass a wide range of protections, including: the right to cultural participation; the right to enjoy the arts; conservation, development and diffusion of culture; protection of cultural heritage; freedom for creative activity; protection of persons belonging to ethnic, religious or linguistic minorities; freedom of assembly and association; the right to education; freedom of thought, conscience or religion; freedom of opinion and expression; and the principle of non-discrimination.

These cultural rights are embodied in *the International Bill of Rights; the Convention on the Rights of the Child; the International Convention on the Elimination of All Forms of Racial Discrimination; the Declaration on Race and Racial Prejudice; the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief; the Declaration on the Principles of International Cultural Cooperation; the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and*



Linguistic Minorities; the Declaration on the Right to Development; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; and the ILO Convention No. 169 on the Rights of Indigenous and Tribal Peoples.

UNESCO instruments have also been very explicit in protecting cultural diversity. *The UNESCO Declaration on Cultural Diversity* “affirms that respect for the diversity of cultures is necessary for international peace.”¹ Furthermore, *the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions* maintains that “cultural diversity can be protected only through human rights, including the right to choose cultural expressions.”² *The Universal Declaration on Cultural Diversity* states, “The defence of cultural diversity is an ethical imperative inseparable from respect of human dignity. It implies a commitment to human rights and fundamental freedoms.”

The UN General Assembly resolution³ on *Human Rights and Cultural Diversity* emphasized “that the promotion of cultural pluralism and tolerance at the national, regional and international levels is important for enhancing respect for cultural diversity.” It urged Member States to reflect the cultural diversity within their political and legal systems.

Thus the UN instruments on human rights establish that every human being has the right to culture, including the right to enjoy and develop cultural life and identity. There are however, legitimate, substantive limitations on cultural practices, even on long-established traditions, such as customary practices that entail or precipitate violence against women. Gender-based violence – defined to include domestic (spousal or other) violence, sexual harassment, trafficking and exploitation, compulsory sterilization, incest, and rape – inhibits the ability of women to enjoy rights and freedoms on a basis of equality with men⁴.

Similarly, cultural rights do not justify discrimination based on gender, race, language or religion, cannot justify torture, murder, genocide, race, or violation of any of the other universal human rights and fundamental freedoms established in international law. Any attempts to justify such violations on the basis of culture have no validity under international law. However, achieving universal acceptance of human rights norms is a process and must come from within a State/Government/Country. It cannot be imposed from outside⁵. Cultures and traditions evolve. So will the universal acceptance of human rights.

1 Universal Declaration on Cultural Diversity, adopted 2 Nov. 2001, UNESCO Gen. Conf., 31st Sess., UNESCO Doc. CLT.2002/WS/9 (2002).

2 Convention on the Protection and Promotion of the Diversity of Cultural Expressions, adopted 20 Oct. 2005, 33rd Sess., UNESCO Doc. CLT/CEI/DCE/2007/PI/32 (2005)

3 A/RES/62/155.

4 See General Recommendation No. 19: Violence against Women, U.N. General Assembly Official Records (GAOR), Committee on the Elimination of Discrimination against Women, 11th Session, at 1, U.N. Doc. A/47/38 (1993). Gender-based violence is a term to cover instances of violence for which women are the predominant victims.

5 Christina M. Cerna, “Universality of Human Rights and Cultural Diversity: Implementation of Human Rights in Different Socio-Cultural Contexts,” *Human Rights Quarterly*, Vol. 16, No. 4 (Nov. 1994).

It is also important to ensure that culture should not be conceptualized as a static, homogenous and bounded entity.¹ Instead, it is a more dynamic approach to culture that captures the various ways in which human rights give meaning to the ongoing life experiences.² This is particularly true in the fast integrating world where cultural fusion is taking place at a rapid pace. Over the last two to three decades, societies have embraced the cyber culture and many changes have been set in motion. This dynamic world view of culture may contribute to the process of reconciling the apparent conflicts between universalism and relativism.

IV. Flexibility in Practice

There is a widely shared view that in “a legal paradigm,” universal human rights law and cultural diversity are not incompatible. This understanding also underpins the work of UN treaty bodies, which are quasi-judicial.³ “They provide sufficient flexibility coupled with legal certainty by which to define a credible standard for the reconciliation of tensions between the diversity of cultural practices on the one hand and the universal respect for human rights on the other.”⁴ These bodies have three unique characteristics regarding composition, procedures and overall approach. First, their members are required to act as independent experts. Second, the treaty bodies are expected to employ quasi-legal procedures in their working methods by reviewing national periodic reports in an open dialogue. Third, the dialogue is concluded with the adoption of the Committee’s observations and recommendations, which the reporting State is expected to incorporate with its national practice. The treaty bodies in the *International Convention on the Elimination of All Forms of Racial Discrimination* (CERD) and the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW) have functioned in this fashion.

This legalized formation of human rights is compatible with cultural diversity because, in practice, it founds itself on the values and ideals of cultural diversity while at the same time objecting to harmful cultural practices, especially those practices that undermine instead of enhancing human rights. The supervisory bodies have developed complex strategies for isolating and redressing such harmful practices. It is a continuing process that still leaves unresolved gaps and often shows awkward contradictions. Nevertheless, this approach has proven workable and a helpful guide to national authorities in the development of policy standards.⁵

1 Ann-Belinda S. Preis, “Human Rights as Cultural Practice: An Anthropological Critique,” *Human Rights Quarterly*, Vol. 18 (1996).

2 Ibid.

3 Michael K. Addo, “Practice of United Nations Human Rights Treaty Bodies in the Reconciliation of Cultural Diversity with Universal Respect for Human Rights,” *Human Rights Quarterly*, Volume 32, No. 3, August 2010.

4 Ibid.

5 Ibid.



V. Cultural Diversity and the Right to Development

“We are writing a bill of rights for the world, and... one of the most important rights is the opportunity for development.”

– Eleanor Roosevelt

The history of the right to development illustrates how human rights, while universal and indivisible, provide sufficient flexibility in the face of cultural diversity and allow for sensitivity to cultural practices and traditions.

To recall, *the Universal Declaration of Human Rights* articulated both civil and political rights (Articles 1 to 21) and economic, social and cultural rights (Articles 22 to 28). It was based on President Roosevelt’s “four freedoms” – including the freedom from want, which he wanted to be incorporated in an International Bill of Rights¹. At the time of its adoption, there was no dispute about political and economic rights being integral and indispensable components of human rights. However, the consensus over the unity of civil and political rights and economic, social, and cultural rights was broken in the 1950s, during the Cold War, hence the production of two separate covenants – *the International Covenant on Civil and Political Rights* (ICCPR) and *the International Covenant on Economic, Social and Cultural Rights* (ICESCR) – which were established as international treaties in 1966 and came into force in the late 1970s.

The first covenant (ICCPR) covers classic civil liberties, typically referred to as the human rights of the first generation, and mainly invokes the duty – to protect citizens from violations by the state and by private actors of the right to life, freedom of thought, freedom of association and assembly, among others. The second covenant (ICESCR) covers the so-called “second generation” rights, including the rights to work, education, social security, an adequate standard of living and the highest attainable standard of health. It invokes the duty to protect and to fulfill to ensure that these rights are upheld.

The right to development (RtD) was proposed as a bridge between these two sets of rights in the 1970s, particularly by emphasizing the participatory nature of development, which would presume and promote enjoyment of civil and political rights. Development as a right was established in 1986, when *the Declaration on the Right to Development* was adopted (although still with some opposition). While rooted in *the International Bill of Rights* (UDHR, ICCPR, and ICESCR), the Declaration is not a legally binding instrument and

1 Arjun Sengupta, *The Right to Development as a Human Right*, 2000.

issues have been raised about its legal foundation, justiciability and coherence¹.

The Right to Development associates development with equity and justice². Moreover, it does not want to leave development at the mercy of spontaneous and at times brutal market forces. Every society aspires to protect the weak and provide a social order based on equity. The Right to Development provides us the foundation for establishing a bill of rights both at the national and global levels. This pursuit of equity and equality is consistent with the cultural values of all societies. No culture can deny this right and yet claim to be a part of the comity of nations that aspires for global equity and prosperity.

Even so, there has been notable progress in the debate about RtD, which shows reinforcement of the universality of human rights and their flexibility to accommodate a wide range of cultural perspectives. *The 1993 Vienna Declaration on Human Rights* reaffirmed “the right to development, as established in *the Declaration on the Right to Development*, as a universal and inalienable right and an integral part of fundamental human rights.” This declaration was thus a strong endorsement of the universality of human rights, integrating economic, social and cultural rights with civil and political rights as was envisaged at the beginning of the post World War II period.

In the meantime, the link between the right to development and sustainable development had emerged. The ability to sustain basic standards of living in a healthy environment is not shared equally by all, as some people bear a disproportionate amount of the burden and do not always have their interests represented in the decision-making process. This crucial point gained prominence at the historic UN Stockholm Conference on Environment and Development in 1972 and the interconnections between environmental concerns and economic and social development were finally brought together under one concept: sustainable development. While the World Commission on Environment and Development held hearings and finalized the Brundtland Report, the right to development was asserted and reaffirmed as an inalienable human right in the 1986 Declaration on RtD.

In 1992, the Rio Earth Summit brought the international community together to address global sustainable development challenges, including issues such as climate change, health and the environment, biodiversity protection, and poverty alleviation. In 1997, the UN Secretary-General directed all UN agencies to mainstream human rights in their development work, with a view to ensuring sustainable development. Later, at the Millennium Summit and the 2005 World Summit, world leaders explicitly recognized the close linkages between

1 Disagreements remain among countries on the interpretation of the concept itself. A North-South divide exists, where the North remain anxious that RtD could mean a “right to everything.” See also Felix Kirchmeier, “*The Right to Development-where do we stand?*” State of the debate on the Right to Development, Friedrich Ebert Stiftung, Occasional Papers No. 23, July 2006.

2 Arjun Sengupta, *The Right to Development as a Human Right*, 2000.



sustainable development, human rights, and peace and security – the three “pillars” of the United Nations’ work.¹

The Millennium Declaration, unanimously adopted at the 2000 Summit by 147 heads of State and Government, commits the international community to achieving some basic rights of all human beings. These include eradicating poverty, rooting out illiteracy, disease and ensuring a clean and sustainable environment for future generations. With the eight Millennium Development Goals (MDGs), Member States agreed to fight together against poverty, hunger, gender inequality, environmental degradation, and killer diseases such as malaria and HIV, while improving access to education, health care and clean water, and strengthening the global partnership for development, all by 2015.

Ultimately, the MDGs and human rights have common objectives – to preserve and protect human dignity – and no culture or country would deny these basic rights to their citizens. While, no doubt, there is more to development than the MDGs, the MDGs have provided the international community with “a crucial benchmark for measuring progress towards the creation of a new, more just, less impoverished and less insecure world order”². In this way, by committing to make the right to development a reality, by setting some minimum standards (even though critics find that these standards are not sufficiently ambitious), and by quantifying goals and identifying targets, the international community has come a long way in the area of development.

Sustainable development should provide for adequate shelter, food, clothing, water and sanitation³, and education along with a healthy environment. Most cultures and traditions also emphasize the right to land and natural resources, which is critical for development, as integral to sustainable livelihood as well as a decent standard of living. Cultures and traditions have held these beliefs and, on the whole, customary law provided adequately for them. Yet, the quest for rapid growth and development has eroded some of these basic tenets in some countries. Human rights instruments have been put in place to rectify issues. Nevertheless, the question remains: are States/Countries adequately equipped to do so? With every human right comes a responsibility to ensure that the right is protected and it is up to the Government to ensure that the right is upheld. No country or culture denies these basic needs, however in providing for those needs, countries have to bear in mind the consequences

1 The Johannesburg Plan of Action from the 2002 World Summit on Sustainable Development proclaimed “Peace, security, stability and respect for human rights and fundamental freedoms, including the right to development, as well as respect for cultural diversity, are essential for achieving sustainable development and ensuring that sustainable development benefits all.”

2 Human Development Report, 2005.

3 In July 2010, the General Assembly adopted a resolution that recognized the right to drinking water and sanitation as a human right. The Human Rights Council affirmed the decision in September 2010, noting that the right to water and sanitation was derived from the right to an adequate standard of living, which is contained in several existing human rights treaties, including the ICESCR and *the Convention on the Rights of the Child*.



of injustice, discrimination, social exclusion, among others. While the causes of poverty are diverse, injustice, discrimination and social exclusion always constitute a denial of human rights and exacerbate poverty.

Finding practical ways to promote human rights (including the right to development) with sensitivity to cultural practices and traditions is critical to achieve development priorities, as reflected in the MDGs and wider set of internationally agreed development goals. Consider, for example, the matter of women's rights and women's empowerment and its impact on development. UN instruments that directly have an impact on the lives of women are all the more critical here as they have a direct impact on many of the development goals, including education, health, hunger, child mortality, not to mention maternal mortality. Similarly, the complex and intricate relationship between cultural traditions and the rights of indigenous people have an important effect on environment.

In the same vein, the convergence of the human rights and sustainable development agendas can be seen in the concern for social equity that cuts across the development goals.

Social equity is reflected by a fair and just distribution of economic and environmental benefits and costs, especially in access to natural resources and land, community services like education and health care, and the ability to participate in decision-making processes. Applying the concept of social equity means paying equal attention to often marginalized groups in society, including women, youth and children, older persons, indigenous groups, and ethnic minorities. In short, it is a people-centred approach which demands the participation and empowerment of all people, especially those who are the main beneficiaries of development policies, decisions and programmes, and which supports action that is mindful of cultures and traditional beliefs. This is also enshrined in the Rio Principles, particularly Principle I that states, "Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature."

The most recent resolution on the right to development (A/65/219), clearly asserts that it remains the primary responsibility of States to create national and international conditions favourable to the realization of the right to development, as well as their commitment to cooperate with each other to that end. The resolution also explicitly reaffirms the need for an international environment that is conducive to the realization of the right to development. In doing so it, stresses the need to strive for greater acceptance, operationalization and realization of the right to development at the international and national levels, and calls upon States to institute the measures required for the implementation of the right to development as an integral part of fundamental human rights. It also emphasizes the critical importance of identifying and analysing obstacles to the full realization of the right to development at both the national and the international levels.



VI. Conclusion

Human rights are based on the inherent dignity and equal worth of all human beings and possess the critical characteristics of universality and indivisibility. This means that human rights are for all people without distinction and that human rights themselves are equal and indivisible. They are interdependent and rely on each other for realization. There is no hierarchy of rights.

Culture is pivotal to the recognition of human dignity and identity. It is also a dynamic and evolving process with a complex relationship with the universality of human rights. Both culture and rights are essential for development, for the eradication of poverty, for building social cohesion, mutual respect and understanding between individuals and groups, and for peace.

The international agreements and legal instruments forged through the United Nations clearly establish that promoting and protecting human rights is the responsibility of all States/Governments, regardless of their cultural systems. One may not invoke cultural diversity to infringe upon human rights guaranteed by international law, nor to limit their scope.

However, universal human rights do have inherent flexibility and have been formulated and pursued in a way that affords sensitivity to cultural nuances and traditions, particularly by establishing minimum standards and by directly facilitating respect for and protection of cultural diversity and integrity, through the establishment of cultural rights. This flexibility is also provided in implementation by the “quasi-judicial” nature of the treaty bodies.

In some cases, inherent contradictions may exist between specific cultural practices and international human rights. Universal human rights must be promoted in various cultural contexts by not only adopting relevant policies but also encouraging new thinking and cultural practices, for example, by “cultural negotiation” within communities. Such changes come about most effectively when led from within, and not imposed from the outside.

The history of the right to the development illustrates this relationship between universal human rights and cultural diversity. No culture would deny the human aspiration of living a decent life, as embodied in a good standard of living, good health, education and the like. Indeed, traditional rules and customs reflected this aspiration, which is embodied in a range of human rights. The participatory approach to development that has emerged within the United Nations framework shows a convergence of the agendas on human rights and on sustainable development, with its economic, social and environmental dimensions. This approach, which also reflects a shared concern for social equity, supports action that is mindful of people and of their cultures.

It is the duty of States/Governments both at the national and international level, to ensure that obstacles to achieving development priorities are addressed, in their various



forms, from scarcity of resources or even particular cultural practices. In doing so, the international community must work together, being sensitive to cultures, traditions and the unique circumstances of each country.

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Brief Discuss on the Influence of Cultural Traditions towards the Development of Human Rights

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No matter we consider it from the perspective of historical development or specific conditions of reality, the formation of the concept of human rights, especially the process of playing the realistic role via the concrete realization, has a direct and extremely close relationship with specific cultural values and historical heritages. Therefore, studies of human rights should not just remain at the abstract level of “from concept to concept.” On the contrary, we should further promote the sound development of the cause of human rights via concretizing this kind of studies. Consequently, revealing the influence of cultural traditions towards the development of human rights by exploring and studying the relationship between the concepts of human rights and cultural traditions has great practical significance and valuable intellectual merits.

By these lights, this paper will generally explore and discuss the influence of cultural traditions towards the development of human rights in the following three aspects respectively, including historical origins, the roots of realistic roles and main effects.

I. Discuss the Relationship between Cultural Traditions and the Development of Human Rights from the Perspective of Historical Origins

Fundamentally, culture is “humanization,” that is, we treat and cultivate individuals of the real world as human beings via the enlightenment of rationality, the cultivation of moralities and emotions as well as the training and nurture of social practices. Moreover, nation-states of all ages have developed their own unique culture and traditions. However, in fact, the concept of human rights of treating individuals “as human beings,” which is the ethical bottom line of reality and the basic standard of evaluation, was not a common trait among the cultural traditions of each nation-state, but emerged and gradually developed in Western nation-states since modern times. Needless to say, the reason why this concept did not emerge and develop in many nation-states was not because these nation-states did not have all kinds of related and serious (or even worse) real problems or their people did not have the strong desire to fight for equal rights to subsistence and development. But it was because the cultural values and cultural traditions, which should gradually form in certain

natural environment, social atmosphere and historical traditions, as well as reflect the basic structure of specific societies in a refractive way, did not provide the prerequisite conceptual basis and theoretical premise for the emergence and development of the concept of human rights.

Therefore, in the development process of these nation-states, a variety of conflicts fought for the rights to subsistence and development, with the specific embodiment of peasant uprisings or armed riots. These conflicts paid too much attention on the substantive rationality of actual results of “the Emperor takes turn, and it’s up to my house next year,” but ignored the “formal rationality” aiming at prosecuting the institutional innovations; thus the final performance (or only under the conditions of a little improvement) was just the “repeated” situation which had copied the original system for many times. Obviously, under the influence of such cultural traditions, the emergence and development of the concept of human rights was almost inconceivable.

The following two points should be noted: First of all, we fully emphasize that the specific cultural values and cultural traditions are the “conceptual basis and theoretical premise” for the emergence and development of the concept of human rights, but it will not overlook or ignore the ultimate decisive role of social and real factors and become “the idealist conception of history,” as we fully ensure that such cultural values and cultural traditions originate from “certain natural environment, social atmosphere and historical traditions” and are a “refraction” of the latter. Like the concept of human rights, such cultural values and cultural traditions are finally determined by “certain natural environment, social atmosphere and historical traditions.”

Secondly, as the cultural traditions in nation-states did not promote the emergence and constant development of the concept of human rights, researchers can not simply “transplant” the concept of human rights in a mechanical way in order to gradually establish the concept of human rights and promote the constant development of the cause of human rights in such a real situation. However, researchers must attach great importance to the specific issues of researches on human rights, as well as explore and study the relationship between human rights and economy, politics and society of certain nation-states in a systematic and comprehensive way, especially the relationship between human rights and cultural traditions, so that these studies can really root in the society and blossom and bear fruits.

II. Discuss the Relationship between Cultural Traditions and the Development of Human Rights from the Perspective of the Roots of Realistic Roles

Establishing the concept of human rights and developing the cause of human rights is inseparable from the economic, political and social development of certain nation-states, which are the realistic foundation and fundamental premise of human rights. However,



in order to avoid the cause of human rights not remaining on the level of setting up and maintaining some relevant institutions and systems, but let the concept of human rights be deeply rooted among the people and truly play its roles, researchers must resort the cultural values and cultural traditions of people's subjective emotional world into their research vision in a subtle way. In general, when discussing the influence of cultural traditions towards the development of human rights, most researchers will point out the following two basic cases, i.e., the Western cultural traditions since modern times are conducive to the emergence of the concept of human rights, and actually constantly promote the development of the cause of human rights; while although Oriental culture, Chinese traditional culture included, has the positive aspects of emphasizing people's livelihood, it is not conducive to the emergence and development of the concept of human rights in general.

Although this point of view is not a big mistake, fundamentally it does not exert much practical significance on the current cause of human rights. This is because it only remains at the level of superficially describing the facts that already exist, but does not reveal the underlying and more profound roots that caused such facts. Therefore, though it is much needed for us to promote our cause of human rights via exploring and studying the influence of cultural traditions towards the development of human rights, we still do not know why certain cultural traditions would promote or hinder the development of human rights. Obviously, this state will not be conducive to the concretization of studies of human rights and the healthy development of human rights.

So what are the causes that are conducive to the emergence and development of the concept of human rights but hidden behind the cultural traditions?

This issue seems to be abstruse, in fact it is not so. This is because the root causes can be revealed by the academic contrast and careful inquiry between Chinese and Western culture. Moreover, the process of updating ideas and the concrete outcomes over 30 years of reform and opening up have clearly demonstrated and will keep demonstrating the root causes, that is, whether the formalization, contractization, standardization and legalization of individual rights based on the notion of equality exists or not. Needless to say, from the perspective of academic researches, it is unique in the Western cultural traditions of rationality that the formalization, contractization, standardization and legalization of individual rights are based on the notion of equality, which is absent in the Oriental patriarchal cultural traditions, including Chinese traditional culture. Furthermore, the gradual implementation of clarity on property rights has fully proved this point from a particular point of view – the gradual establishment of legal body of enterprises in the market economy.

So how the formalization, contractization, standardization and legalization of individual rights based on the notion of equality will be conducive to the emergence of the concept of human rights and the development of the cause of human rights?

Roughly speaking, although there is no lack of notions of human rights, such as “respect people” and “value people’s livelihood” in Oriental cultural traditions, these notions tended to be the “charity” from rulers on a whim, or “expediency” implemented by rulers to maintain their regime. Therefore, these notions actually can not be institutionalized and play roles for a long period; thus they can not eventually promote the emergence of the concept of human rights, as well as establish and promote the development of the cause of human rights. And the root cause lies in the absence of formalization, contractization, standardization and legalization of individual rights based on the notion of equality. As long as the notion of equality has not been firmly established and deeply rooted among the people via gradually strengthening institutionalization, all kinds of individual rights, including human rights, will lack of necessary ideological foundation and institutional guarantee. Conversely, if the formalization, contractization, standardization and legalization of individual rights based on the notion of equality can exist and constantly develop, the concept of human rights will emerge when the time is ripe and gradually play its role. Conspicuously, these two diametrically opposite practical processes and results will obtain subjective reflections from people; meanwhile, they will gradually accumulate in the certain cultural values and cultural traditions and penetrate into the very deep of people. Therefore, they will demonstrate themselves whenever and wherever possible in the form of daily life and emotional symbols (i.e. in the form of “culture”), and constantly promote or hinder the development of the cause of human rights.

The following two points should also be emphasized:

First of all, only when we truly grasp the fundamental reasons that particular cultural traditions exert on the concept of human rights, we might not “speak generally” when we talk about the relationship between cultural traditions and the concept of human rights, but be able to profoundly grasp the vital points so as to further carry out systematic, profound and comprehensive discussions and studies, lay a solid foundation and prepare a reliable premise.

Secondly, cultural values and the corresponding cultural traditions do not play a decisive role in the concept and cause of human rights as economy, politics and social system of particular nation-states do. However, as the concept of culture and human rights is at the same level, they can exert a direct impact on the latter. Moreover, cultural traditions constituted by cultural values have created the conceptual background and ideological foundation for the emergence, existence and development of the concept and cause of human rights. In particular, for the rapidly changing realities, cultural values and cultural traditions have relatively backward characteristics due to their own inertia. All these three aspects have clearly shown that if researchers want to further realize the concretization of studies of human rights, they must take cultural values and cultural traditions into their own visions and carry out more detailed, profound and comprehensive discussions and researches on



the relationship between cultural traditions and human rights, and the influence of cultural traditions towards the cause of human rights.

III. Discuss the Relationship between Cultural Traditions and the Development of Human Rights from the Perspective of Main Effects

On terms of the relationship between cultural traditions and the development of human rights, as cultural phenomena carried by symbols have pervaded all aspects of our daily life, and cultural values and cultural traditions have penetrated into all levels and aspects of social reality, illustrating those areas, levels and aspects affected by cultural values will go far beyond the purpose and domain of this paper. Furthermore, on terms of the confronting situation and task of further developing the cause of human rights via deeply rooting the concept of human rights among the people, carrying out this kind of enumeration and comprehensive studies is not our priority. Therefore, this paper has just explored two main effects that our cultural traditions have exerted on the development of human rights so as to specify the influence of cultural traditions toward the development of human rights and prepare necessary materials for further discussion and researches.

First of all, from the perspective of history, Chinese cultural traditions have exerted the greatest negative impact on the introduction and development of the concept of human rights. It seems that the sentence “the invariable Heaven and the invariable Tao” can reflect the fact. In general, the so called difference of humble and noble of “Emperors, Ministers, Fathers and Sons” can never be changed. Obviously, under the influence of feudal cultural traditions, the formalization, contractization, standardization and legalization of individual rights based on the notion of equality is completely inconceivable. And it will not exert any beneficial impacts on the establishment of the concept of human rights. In addition, it is worth emphasizing that even in today’s society and traditional values, such feudal cultural traditions are not completely extinct. Consequently, we should attach great attention and careful studies to such traditions when we discuss the concretization of the studies of human rights.

Secondly, from the perspective of reality, it is most people’s common sense that they respect the longstanding cultural traditions and brilliant civilizations, so many cultural researchers often encounter such problems: whether we should actively promote the reform of the bygone cultural traditions so that they can keep up the pace and be revitalized, or we should maintain such “original” cultural traditions without the slightest touch in the name of preserving the heritage of civilization and maintaining cultural traditions. General cultural researchers may encounter such problem, so do those researchers who devote themselves to promoting the study of human rights. Compared to cultural traditions, the concept and cause of human rights are “exotic.” Therefore, researchers may encounter the following major issues: how to use this kind of “exotic,” how to balance the application of “exotic” and

the existing cultural values and cultural traditions, and how to promote the existing cultural values and cultural traditions to transform so as to be in line with the orientation of human society and the fundamental interests of the broadest masses.

In summary, as cultural values and cultural traditions, which are directly linked with the concept of human rights, have unparalleled penetration, extremely extensive universality and the “inertia” lagging behind the social development, we need to fully emphasize, carefully study and properly resolve the following important issues: how to firmly establish the concept of human rights and vigorously promote the cause of human rights in our society, as well as how cultural traditions influence the cause of human rights and what impacts cultural traditions will exert on the cause of human rights.

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Legal Characteristics of China's Protection of Ethnic Intangible Cultural Heritage

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The UNESCO stresses the “importance of the intangible cultural heritage as a mainspring of cultural diversity and a guarantee of sustainable development” in *the Convention for the Safeguarding of the Intangible Cultural Heritage* (effective 2006)¹ and clarifies in the preamble of *the Convention on the Protection and Promotion of the Diversity of Cultural Expressions* (effective 2007) that “cultural diversity, flourishing within a framework of democracy, tolerance, social justice and mutual respect between peoples and cultures, is indispensable for peace and security at the local, national and international levels.”²

China is a unified country made up of 56 ethnic groups with time-honored history. Its cultural diversity is manifested by a variety of ethnic intangible cultural heritage. “Good preservation of ethnic intangible cultural heritage is our historic task for the safeguarding of the Chinese nation’s spiritual home – cultural diversity.”³

Meanwhile, *the Convention for the Safeguarding of the Intangible Cultural Heritage* has openly declared its essence as a human rights protection convention. “The General Conference of the United Nations Educational, Scientific and Cultural Organization hereinafter referred to as UNESCO, meeting in Paris, from 29 September to 17 October 2003, at its 32nd session, referring to existing international human rights instruments, in particular to *the Universal Declaration on Human Rights of 1948*, *the International Covenant on Economic, Social and Cultural Rights of 1966*, and *the International Covenant on Civil and Political Rights of 1966*... adopts this Convention on this seventeenth day of October 2003.”⁴ Thus, we can see that ethnic intangible cultural heritage protection is to

1 See the Convention for the Safeguarding of the Intangible Cultural Heritage, from *A Selection of UNESCO's Conventions for the Safeguarding of World Cultures*, published by Law Press in 2006, page 20.

2 See the Convention on the Protection and Promotion of the Diversity of Cultural Expressions, from *A Selection of UNESCO's Conventions for the Safeguarding of World Cultures*, published by Law Press in 2006, page 5.

3 Jin Xinghua, Zhang Xiaoming and Lan Zhiqi, *Report on the Cultural Development of China's Ethnic Minorities* (2008), published by Minzu Press in 2008, page 114.

4 See the Convention for the Safeguarding of the Intangible Cultural Heritage, from *A Selection of UNESCO's Conventions for the Safeguarding of World Cultures*, published by Law Press in 2006, page 20.

safeguard the human rights of ethnic groups.

This article, on a perspective of current Chinese laws, has summarized four features of the protection of ethnic intangible cultural heritage at the legislative, administrative and jurisdiction levels.

I. Granting Ethnic Intangible Cultural Heritage a Relatively Independent Legitimate Status

The term “ethnic intangible cultural heritage” refers to the intangible cultural heritage that belongs to the 55 ethnic groups except the Han in the Chinese territory. I personally define it as “practices, representations, expressions, knowledge, skills as well as the instruments, objects, artifacts and cultural spaces associated therewith recognized by China’s ethnic communities, groups and individuals. The value of an ethnic group’s cultural heritage essentially reflects historical and cultural information in the interest of that ethnic group.”¹ The ethnic intangible cultural heritage is manifested by oral traditions and expressions, including language as a vehicle of the intangible cultural heritage, performing arts, social practices, rituals and festive events, knowledge and practices concerning nature and the universe, traditional craftsmanship, cultural spaces, etc.

In contrast to the Han group, the other 55 ethnic groups have more diverse forms of their intangible cultural heritage. Many of the ethnic groups have only verbal language, which puts their intangible cultural heritage on the verge of extinction. The ethnic intangible cultural heritage is endangered more in a world of modernization and economic globalization when vulnerably subject to the influence of other cultures, domestically or internationally. “In the long course of development, many ethnic groups are left in a dilemma: craving for rapid modernization while wishing to preserve their ethnic traditional cultures for fear of extinction. This has become serious particularly for an ethnic group with a small population.”² Thus, it is urgent that we should take proper and due measures to rescue and safeguard ethnic intangible cultural heritage, for example, drafting and corresponding special laws that can easily be carried out.

To suit this objective needs, we have a lower-level concept “ethnic intangible cultural heritage” under “intangible cultural heritage.” This has given rise to an independent status for ethnic intangible cultural heritage protection in China’s laws and regulations.

On December 22, 2005, the concept of “ethnic intangible cultural heritage” was first included in the administrative regulation document – *the State Council’s Notice for*

1 Han Xiaobing, “Definition of Ethnic Intangible Cultural Heritage and Its Legal Meaning,” *Journal of Beijing College of Politics and Law*, Issue No. 4, 2010.

2 Jin Xinghua, Zhang Xiaoming and Lan Zhiqi, *Report on the Cultural Development of China’s Ethnic Minorities* (2008), published by Minzu Press in 2008, page 114.



Strengthening Cultural Heritage Protection, which requires that we should “intensify our efforts on the protection of ethnic cultural heritage and cultural ecological zones, with a priority given to the safeguarding of the intangible cultural heritage in ethnic areas.”

China has used “ethnic intangible cultural heritage” as an independent legal term in *the State Council’s Recommendations on Further Developing Ethnic Cultural Cause* issued on July 5, 2009 (Document No. 29, issued by the State Council [Year 2009]). This document puts forward “stepping up the excavation and protection of ethnic intangible cultural heritage” in Part 3 “Developing Ethnic Cultural Cause” under Paragraph 12 “Stepping up the excavation and protection of ethnic cultural heritage.”

The Law on Intangible Cultural Heritage of the People’s Republic of China, implemented on June 1, 2011, states in Article 6 under Paragraph 2 that “the country supports ethnic, remote, and poor areas in the protection and preservation of intangible cultural heritage.” This stipulation in high-level legal form has recognized ethnic intangible cultural heritage as an independent lower-level concept.

The legal recognition of ethnic intangible cultural heritage has the following significances.

First, this recognition, consistent with the spirit of human rights in international documents, helps a signatory country bound by international human rights documents realign with domestic laws on ethnic intangible cultural heritage protection. Both *the Convention for the Safeguarding of the Intangible Cultural Heritage* adopted by the UNESCO in 2003 and *the Convention on the Protection and Promotion of the Diversity of Cultural Expressions* in 2005 acknowledge the importance of ethnic intangible cultural heritage and its protection and promotion, and stipulate signatories’ international obligations for such protection. *The Declaration on the Rights of Indigenous Peoples* was adopted by the United Nations General Assembly on September 13, 2007. It stipulates that “indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.”¹ The Committee on Economic, Social and Cultural Rights (a monitoring body on the implementation of the International Covenant on Economic, Social and Cultural Rights) points out in its general comment No. 17 that each signatory should highlight the “right of everyone to benefit from the protection of the moral and material

¹ For Declaration on the Rights of Indigenous Peoples, see UN portal website <http://www.un.org>. Access time: September 12, 2009, with a downloaded copy.



interests resulting from any scientific, literary or artistic production of which he or she is the author.”¹ In China, the concept of ethnic groups differs from that of indigenous peoples but overlaps to some extent. The above-mentioned rights belonging to indigenous peoples also apply to Chinese ethnic groups.

Second, this acknowledgement has laid a legal foundation for special protection of ethnic intangible cultural heritage in China. It first helps to establish a status for related laws. The lower-level concept “ethnic intangible cultural heritage” has made possible the certainty and legitimacy for ethnic intangible cultural heritage in laws and regulations at various levels within the confinement of Legislation Law. This system of special laws will certainly become a basis and prerequisite for China’s rule of law, making ethnic intangible cultural heritage protection have a law to abide by. This also gives ethnic groups a principal position for private rights in related substantive and procedure laws. Acknowledgement of the concept “ethnic intangible cultural heritage” means the entitlement of ethnic groups to such heritage in terms of private rights. This would grant them various civil rights in the domestic fields of law, as well as a role of plaintiff and litigation rights in Civil Procedure Law, providing a guarantee for the interests of intangible cultural heritage enjoyed by ethnic groups.

II. Establishing Local Laws First Regarding Ethnic Intangible Cultural Heritage

Given the urgency of the protection for ethnic intangible cultural heritage, in accordance with *the Legislation Law of the People’s Republic of China*, a number of local laws for such protection have already been formulated in ethnic-populated provinces or regions long before the promulgation of the *Intangible Cultural Heritage Law of the People’s Republic of China* (February 2011).

The first local law of this kind was established in Yunnan Province, which is home to 26 ethnic groups, of which 15 are unique in the country. The province is rich in ethnic intangible cultural heritage, and has a number of such heritage items on the verge of extinction. In May 2000, *the Regulations for Traditional Folk Cultural Protection in Yunnan Province* was promulgated (effective as of September 1, 2000), ten years earlier than *the Intangible Cultural Heritage Law*. Afterwards, other similar regulations have been promulgated. They are *the Regulations for Ethnic Folk Cultural Protection in Yunnan Province* (effective January 1, 2003), *Regulations for Ethnic Folk Cultural Protection in Fujian Province* (effective January 1, 2005), *Regulations for Ethnic Folk Cultural Protection in Guangxi Zhuang Autonomous Region* (effective January 1, 2006), *Regulations for Ethnic Folk Cultural Protection in Tujia Autonomous County in Changyang, Hubei Province* (effective June 10, 2006), and *Regulations for Ethnic Folk Cultural Protection in Lisu Autonomous*

¹ Peter K. Yu, “Cultural Relics, Intellectual Property, and Intangible Heritage,” *Temple Law Review*, Summer 2008.



County in Weixi, Yunnan Province (effective July 1, 2008).

Before the promulgation of *the Intangible Cultural Heritage Law of the People's Republic of China*, local regulations and rules aimed at ethnic intangible cultural heritage protection and named after such heritage in autonomous areas or ethnic populated provinces were issued. These regulations and rules include: *the Project for Implementation Plans for Intangible Cultural Heritage Protection in Ningxia* (effective September 15, 2005), *Rules for Management of Intangible Cultural Heritage Protection in Xinjiang Uyghur Autonomous Region* (effective September 20, 2005), *Regulations for Intangible Cultural Heritage Protection in Jiangsu Province* (effective November 1, 2006), *Regulations for Intangible Cultural Heritage Protection in Ningxia Hui Autonomous Region* (effective September 1, 2006), *Regulations for Intangible Cultural Heritage Protection in Zhejiang Province* (effective June 1, 2007), *Regulations for Intangible Cultural Heritage Protection in Xinjiang Uyghur Autonomous Region* (effective April 1, 2008), *Regulations for Intangible Cultural Heritage Protection in Qiang Autonomous County in Beichuan, Sichuan Province* (effective September 1, 2008), *Regulations for Intangible Cultural Heritage Protection in Li and Miao Autonomous County in Baoting, Hainan Province* (effective October 1, 2008), *Regulations for Intangible Cultural Heritage Protection in Yi Autonomous Prefecture in Liangshan, Sichuan Province* (effective July 1, 2010), and *Regulations for Intangible Cultural Heritage Protection in Dong Autonomous Prefecture in Yuping, Guizhou Province* (effective August 1, 2010).

The above legislative information can attest that local laws for ethnic intangible cultural heritage protection precede the laws for the Han people's intangible cultural heritage protection. The number of laws in ethnic autonomous areas is more than that in other areas, a result of positive measures taken by ethnic autonomous authorities for intangible cultural heritage protection. These laws have provided a timely guarantee for ethnic intangible cultural heritage protection.

III. Enacting Special Policies for Ethnic Intangible Cultural Heritage Protection

The State Council's Recommendations on Further Developing Ethnic Cultural Cause states that we should "step up the excavation and protection of ethnic intangible cultural heritage, give priority to the protection of intangible cultural heritage for ethnic groups or in ethnic populated areas, press ahead with ethnic peoples' applications for UNESCO's Representative List of the Intangible Cultural Heritage of Humanity and for the List of State-level Intangible Cultural Heritage, intensify the efforts to protect those heritage elements in the lists, actively carry out a comprehensive dynamic protection for ethnic cultural ecology in a planned way, and strengthen the protection of ethnic buildings and villages that have traditional cultural features."

The National Human Rights Action Plan (2009-2010) puts forward in its Part 3 “The rights of ethnic minorities” under the paragraph “Promoting the development of the cultures of ethnic minorities” that the country should “continue to introduce to China and the rest of the world the famous cultural and artistic accomplishments of ethnic minorities in the fields of literature, opera, music, dance, fine arts, handicrafts, architecture, customs, costume and food,” and “protect, develop and foster performing arts with characteristics of ethnic minorities.”

The above policies are being implemented.

1. Central and local financial capital allotted specially for ethnic intangible cultural heritage protection

Take central finance as an example. Between 2002 and 2009, funds from the central coffers for preserving intangible cultural heritage items have totaled 386 million yuan, a quarter of which has been used in minority areas.¹

In recent five years, over 24 million yuan from the state and the government of the Tibet autonomous region, and an additional close to 20 million yuan from other areas have been input to protect and pass on Tibet’s intangible cultural heritage at the state and regional levels. These funds have provided important material conditions for cultivation of heirs to the heritage and construction of the heritage protection areas.²

Inner Mongolia has drawn up *Temporary Methods for Management of the Funding of Intangible Cultural Heritage Protection*, and “since 2009, an annual allotment of one million yuan has been used for a general survey of intangible cultural heritage and for the work on relevant tiered lists.”³

2. Promoting more ethnic intangible cultural heritage elements to be enlisted into the world or national intangible cultural heritage

As of 2009, a total of ten elements have been included in UNESCO’s Representative List of the Intangible Cultural Heritage of Humanity or in the Masterpieces of the Oral and Intangible Heritage of Humanity. UNESCO has announced the List of Intangible Cultural Heritage in Need of Urgent Safeguarding for 2009 and 2010, including six Chinese elements, three of them being Chinese ethnic intangible cultural heritage.

In May 2006, the first tranche of elements in the National List of Intangible Cultural Heritage approved by the State Council totaled 518,⁴ among which 165 are for ethnic groups,

1 White paper *China’s Ethnic Policy and Common Prosperity and Development of All Ethnic Groups*, published in September 2009 by People’s Publishing House, page 46.

2 Gamaduoji, “Full Protection of Tibet’s Intangible Cultural Heritage,” <http://www.chinatibetnews.com>, access time: December 12, 2010.

3 Ming Rui, “Speech on the Work of Inner Mongolia’s Intangible Cultural Heritage,” (March 17, 2009) Inner Mongolia’s Department of Culture, <http://www.nmgwh.gov.cn>, access time: July 5, 2011.

4 The Notice of the First Tranche of Elements in the National List of Intangible Cultural Heritage Approved by the State Council (National Document No. 18 [Year 2006]), www.gov.cn, access time: June 27, 2011.



accounting for 31.9 percent, while in June 2008, the second tranche was 510,¹ of which ethnic ones are 248, making up 48.6 percent. By then, all our 55 ethnic minority groups had their own heritage elements included in the protection list of the national intangible cultural heritage. *The Notice of Related Matters on the Third Tranche of Elements of the National Intangible Cultural Heritage Eligibility Request by the Ministry of Culture* (Ministry issued document No. 24 [Year 2009] on intangible culture heritage) dated on July 17, 2009 clarifies its work focus that has been shifted to the cultural heritage protection in ethnic-populated border areas.² In June 2011, the State Council announced the third tranche of elements in the list of the national intangible cultural heritage, totaling 191, of which 79 are for ethnic groups, accounting for 41.2 percent.

The Tibet Autonomous Region has two elements (Gesar epic tradition and Tibetan opera) inscribed in UNESCO's Representative List of the Intangible Cultural Heritage of Humanity, 60 in the national list of the intangible cultural heritage, 222 in the regional list, while having 53 representative heirs to the national intangible cultural heritage, and 134 representative heirs to the regional heritage.³

Xinjiang's Uyghur Twelve Muqam, a large-scale music ensemble, Kirgiz Manas Epic and the Uyghur Maxrap are included in UNESCO's Representative List of the Intangible Cultural Heritage of Humanity, or in the List of Intangible Cultural Heritage in Need of Urgent Safeguarding. To date, Xinjiang has 109 elements included in the regional list of the intangible cultural heritage, 55 of them enlisted into the national intangible cultural heritage, and 47 folk practitioners appointed as representative heirs to the national intangible cultural heritage.⁴

3. Making full efforts to rescue ethnic intangible cultural heritage in times of natural disasters

Having no written but verbal language, the Qiang ethnic group has a culture called the cultural heritage preserved verbally. The Qiang culture was almost destroyed during the Wenchuan earthquake in Beichuan on May 12, 2008. Just as saving a life is urgent in the earthquake, it is the case with rescuing the Qiang cultural heritage which has achieved good results after positive actions.

1 The Notice of the Second Tranche of Elements in the National List of Intangible Cultural Heritage and Added Elements for the First Tranche of Elements in the National List of Intangible Cultural Heritage Approved by the State Council (National Document No. 19 [Year 2008]), www.gov.cn, access time: June 27, 2011.

2 The Notice of Related Matters on the Third Tranche of Elements of National Intangible Cultural Heritage Eligibility Request by the Ministry of Culture (Ministry document No. 24 [Year 2009] on intangible culture heritage), www.gov.cn, access time: June 27, 2011.

3 Gama Duoqi, "Full Protection of Tibet's Intangible Cultural Heritage," <http://www.chinatibetnews.com>, access time: December 12, 2010.

4 Wen Lina, "Proposed National Intangible Cultural Heritage Applications for Xinjiang's over 90 Elements," *Xinjiang Urban Newspaper*, dated October 3, 2010.

During an interview in post quake Beichuan, Premier Wen Jiabao, on behalf of the Chinese government, said, “Since Beichuan is the country’s only Qiang autonomous prefecture, we should protect the Qiang’s unique culture well. We should rebuild a new Beichuan.”¹

Afterwards, the Ministry of Culture worked along with the State Administration of Cultural Heritage and the State Ethnic Affairs Commission to establish a coordination group for the protection of the Qiang cultural heritage. The coordination group consists of a committee of experts, a team for cultural relic protection, a working team for the intangible cultural heritage protection, and a working team of the experimental zone for the Qiang cultural ecological protection.

After that, Sichuan Provincial Department of Culture has released its restorative protection plan for the Qiang cultural ecological zones. In these zones, the original Qiang architecture, traditions, customs, sacrificial rites, as well as the geological features and original ecological environment unique to the Qiang culture will be preserved. The preservation will center on Maoxian County, but cover other counties of Beichuan, Wenchuan, Lixian, Pingwu, and Songpan.²

Beichuan County has formulated its outline for a pilot zone for the Qiang cultural ecological protection. In this outline, Beichuan will try to display Qiang buildings and layouts from the new town to Qingpian village. Beichuan also plans to build nine institutes for passing on the Qiang intangible cultural heritage, with a planned investment of more than 40 million yuan, as well as a 2,000-sq-m museum of the intangible cultural heritage, with an estimated investment totalling over 10 million yuan.³

The five counties of Wenchuan, Maoxian, Lixian, Songpan and Heishui have approved an initiative for collaboratively rescuing and protecting the Qiang cultural heritage. According to the initiative, the five counties will act in turn to preside over the work in the pilot zone,⁴ an innovation in the sharing of resources, the making of an overall plan and the concerted efforts concerning the protection of the Qiang culture.

In addition, other cities have also made contributions to such postquake Qiang cultural heritage protection. For example, Guangdong Province supported the establishment of China’s Wenchuan Qiang Culture Protection and Development Institute in May 2009.⁵

1 Li Fang, “Restorative Protection for the Qiang Culture Under Way, with Difficulty in Rural Areas,” *People’s Daily*, dated June 17, 2008.

2 Li Fang, “Restorative Protection for the Qiang Culture Under Way, with Difficulty in Rural Areas,” *People’s Daily*, dated June 17, 2008.

3 Xiao Sisi and Hou Dawei, “To Rescue cultural heritage only existing on the tongues: sidelights on postquake Qiang culture protection,” *Law Daily*, dated September 7, 2009.

4 Lai Rui, “Soft Reconstruction of Postquake Ethnic Culture,” *Overseas edition of People’s Daily*, dated May 14, 2009.

5 Department of Culture of Aha Prefecture, “Inauguration of China’s Wenchuan Qiang Culture Protection and Development Institute,” Aha Prefecture government portal, <http://www.abazhou.gov.cn>, access time: July 8, 2011.



Through a joint training program, Guangzhou city sent for the last *shibi* (shaman) from Longxi village of Wenchuan to educate preschool children and adults from Buwa village.

Homes made of yellow earth in Luobo mountain village collapsed during the 2008 earthquake. The city of Jiangmen, Guangdong Province maintained the style of former home features – being made of yellow earth – in the construction of government-supported housing for the Qiang group. Beijing, Hunan, Suzhou and other cities or provinces donated the rebuilding of Wenchuan's cultural industry.¹

4. Local governments taking the lead to explore many modes for comprehensive and original ethnic intangible cultural heritage protection

To date, local governments have established a number of programs for ethnic cultural heritage protection, such as ethnic traditional culture protection zones, ethnic folk art villages, ethnic ecological museums, and areas for folk customs practice and inheritance.

After many years of surveys, applications and reviews, the Yunnan provincial government has named 27 ethnic populated villages the zones for ethnic traditional culture protection, and enlisted them in the provincial list of the cultural heritage protection. These zones are for the Wa group in Wengding village, the Yi group in Nuohei village, the Naxi group in Wenquan village, Yongning township, the Achang group in Xinzhai village, Husa township and in Hejie village, the Dai group in Dadenghan village, the De'ang group in Santaishan village, the Dulong group in Dulongjiang village, the Pumi group in Qinghua village, Hexi township, and the Nu group in Bingzhongluo village. The principles of establishing an ethnic traditional culture protection zone are to ensure such protection in the original form, highlight villagers' voluntary protection, stress on the traditional cultural protection and the absorption of modern civilization, prioritize economic development and eradication of poverty, and strive to achieve harmonious and sustainable development in economy, society and culture.²

A total of 64 unique ethnic folk culture villages have been named since 1994 by Guizhou Province, which is home to 17 ethnic groups that have lived there for generations, with an ethnic population accounting for 38.9 percent of the province's population and an ethnic regional area making up 55.5 percent of the province's area. For example, the Miao Lusheng (a reed-pipe wind instrument) village, the Dong Opera village, the Buyi Bayin (eight sounds) village, and the Yi song and dance village.³

China took the idea of eco-museum from a special form of protection initiated in Europe in the 1970s, a museum that combines eco-resources and ethnic traditional culture,

1 Lai Rui, "Soft Reconstruction of Postquake Ethnic Culture," *Overseas edition of People's Daily*, dated May 14, 2009.

2 Fang Min, "Human and eco-environment-oriented ethnic culture protection zones determined by our province," <http://www.yunnan.cn>, posted on April 15, 2011.

3 *China's ethnic culture protection and development*, <http://www.sina.com.cn>, access time: July 5, 2011.



and established its first eco-museum, Suojia Eco-museum, in Guizhou in 1997, targeting at the Miao group with a population of just over 4,000.

In 2003, the Guangxi Zhuang Autonomous Region took the lead in exploring a collaborative protection mode, initiating a *1 Plus 10 Project* for the province's eco-museums. In other words, it means one common Guangxi Museum of Nationalities, plus newly built 10 eco-museums. Following the idea of culture preservation at the original places, and of the participation joining the government, experts and residents, we strive to protect ethnic culture in the dynamic development. Specifically, for the Yao group, we built the country's first Yao eco-museum in Baiku Yao-inhabited area in northwestern Guizhou, preserving its original village form and displaying colorful Yao culture. Through eight years of efforts, 10 ethnic eco-museums have been opened successively for the Baiku Yao group of Nandanli Lake, the Dong group of Sanjiang city, the Zhuang group of Jiuzhou prefecture, the Kejia group of Hezhou city, the Heiyi Zhuang of Napo county, Changgangling Shangdaogu village of Lingchuan county, the Jing group of Dongxing, the Miao group of Antai village of Rongshui county, the Zhuang group of Longji village of Longsheng county, and the Aoyao group of Jinxiu county.¹

"The Ningxia Hui Autonomous Region has established bases in eight such villages as Haiyuan, Tongxin and Jingyuan for passing on mountain hua'er, a large-scale folk song singing tradition, and named villages after this tradition, guiding and supporting non-governmental inheritance."²

5. Promoting domestic and international publicity about ethnic intangible cultural heritage

Co-sponsored by the Ministry of Culture and the State Ethnic Affairs Commission, and co-organized by the Chinese National Academy of Arts and the China Intangible Cultural Heritage Protection Center, performances of part of elements of China's ethnic intangible cultural heritage were held in Beijing between February 27 and March 30, 2010. Having gathered nearly 2,000 artists and 20 state-level representative heirs of over 20 ethnic groups from 20 provinces (autonomous regions or municipalities), these performances are meant to present artistic features of the ethnic intangible cultural heritage, carrying forward traditional cultures and spirit of China's ethnic groups and displaying their fine intangible cultural heritage.³

The Festival of the Intangible Cultural Heritage of China held in UNESCO headquarters

1 Zeng Dejun, Xie Zhongguo, "Inauguration of Guangxi's 11 ethnic eco-museums," www.chinanews.com, access time: May 27 and July 6, 2011.

2 Ningxia Research Center of Intangible Cultural Heritage Protection, *Work Report of Ningxia Research Center of Intangible Cultural Heritage Protection* (November 5, 2007), <http://www.nxfwz.com>, access time: July 6, 2010.

3 Information from People's Daily Online, "Performances of part of elements of China's ethnic intangible cultural heritage in Beijing," <http://culture.people.com.cn>, access time: July 6, 2011.



in April 2007 and the Special Gala for the Chinese Intangible Cultural Heritage in Japan in May the same year have presented Muqam of Xinjiang, Mongolian long-tune folk songs, the Grand song of the Dong group, and the Haicai Qiang (Haicai Tune) of the Yi group with a view to exchanging with the rest of the world.

Four world-renown elements of China's intangible cultural heritage, including Uyghur Muqam of Xinjiang and Mongolian Long-tune Folk Songs, were presented on June 10, 2007, at the music hall of the National Library of China, with a unique show of the ethnic intangible cultural heritage.

6. Actively launching international cooperation to protect the ethnic intangible cultural heritage

UN and China initiated Chinese Culture and Development Partnership program, on March 27, 2009, a program for the protection of ethnic cultures. The UN coordinator Ma Heli said this program with a three-year period of implementation totals 7 million U.S. dollars in budget, of which UN-Spain Millennium Development Goals Fund will provide 6 million U.S. dollars and the Chinese government will provide a support sum of 1 million U.S. dollars in kind. This program will be launched in four pilot areas, namely, Tibet, Yunnan, Qinghai and Guizhou, with two goals: helping local governments to develop and implement relevant policies on the one hand; helping ethnic groups to better manage their cultural resources and develop cultural economy on the other hand. Yang Jing, director of the State Ethnic Affairs Commission, said, "China's ethnic cultures are an important part of diversified world cultures, and this program will be a positive attempt to explore a new protection model for ethnic cultures."

In July 2010, the State Archives Administration worked with its Singapore counterpart to launch a program aimed at rescuing and protecting historical records of Yunnan's ethnic groups. This program will conduct a pilot rescue operation for oral histories of the four ethnic groups – Achang, Bulang, Dulong and Lahu groups. Through interviews with ethnic cultural heirs, this program will keep a record of ethnic oral histories via audio-video techniques, transforming dynamic, personal, private narrations into static, public and collective social memories.

IV. Initiating Judicial Assistance for Ethnic Intangible Cultural Heritage Protection

In 2002, Beijing's Second Intermediate People's Court heard a case involving Hezhe township people's government accusing Guo Song et al. of violating intellectual property rights for folk music. The case focused on two points: First, as for Procedure Law, whether the township government is qualified for a plaintiff. Second, as for Substantive Law, whether the melody of *Boating Song on the Ussuri River* was adapted by Guo Song et al. from that of Hezhe folk songs.



The court at first trial affirmed the qualification of the plaintiff while recognizing the melody of *Boating Song on the Ussuri River* as an adaption from that of *Missing Beau*, a folk music of the Hezhe group. The court decision ruled that Guo Song et al. should make an announcement in *Law Daily* no later than 30 days after the effective date that they had adapted for the melody of *Boating Song on the Ussuri River*, and that Guo Song et al should make a reference to “adaption from Hezhe folk songs” if they use the music in any means. Defying the first trial decision, Guo Song et al. appealed to the Beijing Higher People’s Court. On December 17, 2003, their appeal was dismissed and first-trial judgment affirmed.

This was the first case that the ethnic group concerned protected its intangible cultural heritage rights in accordance with law and obtained a judgment in its favor. This was also the first case with judgment involving the ethnic intangible cultural heritage. It shows to the world that China’s ethnic intangible cultural heritage rights have turned from deserved, legitimate rights into those enjoyed in reality.

Specifically, the court decision acknowledged the fact of adaptation and signaled other special meanings in law theory and practice under the then imperfect law framework concerning intangible cultural heritage at the national level.

1. Legal procedures recognize the meaning of Substantive Law in terms of the ownership of the ethnic intangible cultural heritage

The first-trial court believes that ownership of the rights of non-governmental artwork is special in two aspects: First, it enters into the public domain. Second, it has inseparable historical and psychological associations with communities in some regions. The folk melodies that the Hezhe people has passed down for generations is an integral part of the people’s folk literary art, and common spiritual wealth collectively created by the people and enjoyed by its member. Thus, the collective ownership of the ethnic intangible cultural heritage was confirmed.

2. Determining a unique role for ethnic village or regional autonomous authorities in the intangible cultural heritage protection

A judicial decision in the case involving the *Boating Song on the Ussuri River* clarified the Sipai Township people’s government of the Hezhe group is the legitimate representative of the rights of the people’s intangible cultural heritage. The court believes that in this case each community or its member of the Hezhe people is entitled to preventing the people’s folk literary art from rights infringement. The plaintiff in this case, a township administrative organ in ethnic populated area according to the Constitution and laws, is both the political representative of the Hezhe group and the representative of the people’s interests. In a possible case of rights infringement involving the Hezhe folk literary art, given the special status of the subject of rights, the plaintiff can file a lawsuit in its own name, which complies with the laws of regional ethnic autonomy prescribed under the Constitution and laws,



without violation of any prohibitive rules.

Ethnic villages, a supplementary form of regional ethnic autonomy, are administrative establishments for those ethnic groups that live in a scattered or mixed manner, and their people's governments are the lowest-level grassroots administrative units.

From this case, we can conclude that ethnic autonomous governments at the village or county level are legal representatives of the ethnic intangible culture heritage rights. An autonomous county government, the lowest level autonomous administration, can act in ethnic populated areas as a legal representative of the ethnic intangible culture heritage rights.

It facilitates the protection of the ethnic intangible cultural heritage when the attributes of ethnic autonomous governments are aligned with those of the ethnic intangible cultural heritage in terms of ethnicity or region. In addition, ethnic autonomous governments at the regional or county level are representatives of rights for ethnic groups, and the bodies exercising public rights. These bodies are more authoritative and advantageous than non-governmental ones, especially when encountering rights infringements from ethnic minority groups or from the outside.

Certainly, there are still spaces for improvement for the protection of the ethnic intangible cultural heritage, particularly the legislation at the national level. For example, it is highly necessary to formulate regulations for the ethnic intangible cultural heritage at the administrative level. In addition to the improvement of legislative forms, we also need to further define the scope of private laws regarding such protection, as well as of rights implementation and legal relief, therefore, improving our legislation substantially.

Conclusion:

In summary, the characteristics of China's protection of the ethnic intangible cultural heritage are: having given such protection an independent status in contrast to the protection of the Han intangible cultural heritage; at the legislative level, having established a series of local laws for such protection in ethnic populated areas; at the level of law enforcement, having enacted special policies and measures for more effective protection from the top authority down to the local; and at the judicial field, having provided a guarantee for spiritual rights protection of the ethnic intangible cultural heritage. The above mentioned are what a signatory's obligations under international agreements are fulfilled domestically. There are still spaces for improvement at the micro level, especially institutional designs of state-level laws that have clear targets and are easy to implement.

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Cooperative Culture and Human Rights

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Cooperative and Its Culture

The key elements that enable cooperatives to be flourishing during the more than 160 years after being established are the cooperative concepts and values inside them, and the unique cultural connotation from the concepts and values.

I

Cooperative is a voluntary autonomous organization where people can meet their common economic and social needs through a company with combined ownership and democratic control. Cooperative is the result of people's thinking about and exploring ideal social modes and the result of the developments and progresses of a series of cultures and concepts of the human society. Some great works of western utopian socialists in the 16th Century such as *Utopia* and the *Sun City* also contains a large number of ideas on cooperatives. After the Industrial Revolution in the 19th Century, utopian socialists tried to make cooperatives the brand new cells for human society and made it a way to reform the capitalism private ownership. In 1844, the first cooperative with modern sense emerged in Rochdale, the United Kingdom. Its charter also embodied relatively complete organization, operation and management principles.

II

Culture is unique only to human race. It is the strong impetus pushing social development and progress, providing vitality to the cooperatives. Renowned militarist Clausewitz pointed out that history can prove the value of spiritual factors and their surprising roles. German renowned socialist Max Weber put forward and tested a famous socialism hypothesis: Through the surface of any undertaking, people can find some certain internal origin relations between the invisible and supportive spiritual force of the era and the cultural background of particular society; under certain conditions, this spiritual force is a decisive element for the undertaking. He attributed the development of capitalism in the west in the 19th Century as the capitalism spirit represented by the Protestantism ethics.

Cooperative culture is the core concept of cooperative organizations and the comprehensive summary of the elements that can embody the core concepts such as awareness, ethics and spirits. Culture is the matrix of cooperatives since cooperatives are actually born from a series of advanced cultural concepts. Cooperative is an economic



organization differing from modern joint stock enterprise. It is a very unique cultural phenomenon, as well as a special economic organization established by organically combining economic elements and cultural elements.

According to Zhou Lianyun, Secretary General of National Experts Salon of Cooperatives and Deputy Researcher Fellow of Beijing Business Management College, cooperative is the important organizational resource, institutional resource and cultural resource for China to launch new countryside construction and harmonious society construction, realize modernization and create new situations of socialism cause with Chinese characteristics at the current stage.

Viewing from the realm of ideology, cooperative culture consists of specific contents in four major aspects of democracy awareness, human rights awareness, cooperation awareness and collectivism awareness. The first is the democracy awareness. The democratic nature of cooperatives reflects the basic characteristics of cooperative system, serving as the core principle of cooperatives. It is derived from the basic values of cooperatives and permeates ever since the beginning of cooperative movement. It is regarded as the ideological source of cooperative movement, as well as its life and vitality. The second is human rights awareness (please refer to the latter part of the article). The third is the cooperative awareness. Conflict, competition and cooperation are three different activities of human race. The common ground for the three activities is that one person's act will simulate another's act and passion to a higher level. Motive and act of Parties in conflict is opposite, while in competition can be opposite or parallel, in cooperation is parallel and interdependent. Cooperative is such a kind of aggregative organization. The fourth is collective. Cooperative is a group composed of people with common demand (economic demand and social demand) who help each other in a collective form. It requires that cooperative act should not be limited to personal interest and each person should have the responsibility to assure everyone equally treated and the concept of common interest. Cooperative advocates such collective moralities as solidarity, mutualism, honesty, openness, social responsibility and caring for others.

III

In China, cooperative culture is an important ingredient of the socialism core value system, permeating into the whole process of economic management and activity of cooperatives. Cooperative culture is the soul of cooperatives and excellent cooperative culture can create harmonious and progressive cooperative atmosphere and generate continuous impetus which can greatly promote reforms and development of cooperatives. Cooperative culture includes not only the ideological contents of important theories such as Marxism, Leninism, Mao Zedong Thought and Deng Xiaoping Theory and Scientific Outlook on Development, but also the values system of cooperatives, operation and management measures, all-dimension incentive measures, cooperative inner cohesion, and comity



construction of cooperatives and images of cooperatives. In China, “loving cooperation, serving farmers, rural areas and agriculture, cooperation for win-win goals and innovation for development” are the cultural attribute of cooperative economy in the new stage.

Currently, China’s cooperative culture represented by supply and marketing cooperatives is accelerating its development pace. Cooperative culture is the important connotation of socialism market-oriented economy and culture. Since cooperative culture has profound connotation and extension in its formation and development, cooperative culture is the important connotation of socialism market-oriented economy and culture. Supply and marketing cooperative is China’s largest cooperative economic organization. The outcome of combining cooperative theory with China’s reality, China’s supply and marketing cooperative has accumulated abundant cooperative culture in its long-term reform and development.

The democracy awareness, human rights awareness, cooperation awareness and collectivism awareness of cooperative culture are shining the glory of the era. The ideology of cooperatives and the particular systematic and organizational values constitute the value system and the core value of cooperative culture. Internal logistic relations exist in various layers of the value system of cooperative culture. The unique ideology of cooperatives is the core and the soul of cooperative culture; the cooperative system and organization influence, compensate and connect each other, jointly embodying, penetrating and strengthening the unique ideology of cooperative culture. They evolve according to the changes of cooperative culture.

Human Rights Nature of Cooperative Culture

Cooperative culture is human rights culture. Human rights culture is the culture universally recognized, respected and protected worldwide; it is the higher level of human culture development.

I

At the conference marking the 100th anniversary of establishment, International Co-operative Alliance summarized that “co-operatives are based on the values of self-help, democracy, equality, equity and solidarity. In the tradition of their founders, co-operative members believe in the ethical values of honesty, openness, social responsibility and caring for others.” Hence, cooperative culture is an advanced, civilized, excellent and harmonious human culture. Meanwhile, cooperative culture is also human rights culture. In addition, cooperative culture is based on humanitarianism, which insists personality emancipation and liberty and encourages personality development. It is the world outlook that encourages respecting people, caring about people and putting people first. Cooperative is the organization and institution form gradually formed and developed based on this cultural and spiritual basis. Thus, cooperative organization has natural human rights awareness.



II

In China, cooperatives are universally operated under the principle of “voluntarily entry, freely exit, independently shouldering risks and sharing services.” This principle maximizes the protection of human rights of cooperative members, as well as best embodies the human rights awareness of cooperative culture. For instance, a dairy cooperative in Laizhou City of Shandong Province absorbs cow raisers as members under the principle of “voluntarily entry, freely exit, independently shouldering risks and sharing services,” and established a board of directors and supervision council. This cooperative supplies high-quality and sufficient milk for Huafeng Dairy Co. and provides technical services for cow raisers. At the preliminary stage after Huafeng came into operation, many cow raisers had little knowledge on technologies such as feedstuff formula, sanitation of cowshed and milk transportation and 20 percent of their milk was unqualified; the company rejected milk from more than 60 cow raisers every day, directly influencing the company’s production. The cooperative timely invited renowned experts of animal husbandry in China to provide on-site lectures and technical guidance and solve cow raisers’ problems directly; more than 10 technicians conduct tour inspection every day to provide technical service. Now, almost all the milk is qualified. This greatly protects the interests of cooperative members and reflects the natural human rights awareness of cooperative organizations.

III

In general, the internal regulations of cooperatives such as the tenet, basic principle, arrangement of property system and value generation theories fully reflect its congenital human rights nature. Hence, no matter on the layer of cultural value or from the cultural era, cooperative culture is the advanced, civilized, excellent, harmonious and human rights cultures, which is conducive to fostering soil for harmonious human rights practices and creating harmonious environment for human rights practices. Cooperative culture and the human rights practices under the cooperative culture can benefit and promote each other.

Human Rights Practices under the Cooperative Culture

At the report on international organization cooperation¹, the International Co-operative Alliance pointed out that cooperatives have made contributions to promoting and improving human rights for people of various ethnic groups in various places, countries, regions and worldwide. Cooperative is the economic organization that shoulders social responsibilities. It is thus the most proper and effective organizational form to realize human development and economic and social rights.

¹ “Cooperation of International Organizations,” website of All China Federation of Supply and Marketing Cooperatives, November 22, 2007.

I

During the process of promoting human rights practices of cooperatives, the International Co-operative Alliance launched the program of “Human Rights and Cooperatives in Central America and the Caribbean,” aiming to increase the human rights awareness of the people in cooperatives in the region. Through giving symposiums and lectures in local dialects in rural areas, the alliance explained international human rights laws and regulations such as *Universal Declaration of Human Rights*, *International Covenant on Economic, Social and Cultural Rights* and *Declaration on the Right of Development* to cooperative members. Local office of International Co-operative Alliance has held a series of symposiums for indigenous cooperative members, organized grass-roots cooperative members to discuss the roles of cooperatives in indigenous communities and the roles of cooperatives in improving human rights of indigenous communities. Results show that cooperatives help greatly in improving human rights in communities of indigenous ethnic groups and cooperative is the best form to improve economic and social conditions of indigenous communities.

Through launching activities of human rights practices, cooperatives gather people from different countries with different ethnic background together. For instance, cooperatives in Europe are committed to the problem of social integration of immigration and cooperatives in India make people with different social status together.

Through launching activities of human rights practices, cooperatives have enriched social and cultural activities of cooperative members and their communities. Especially in Europe, many cooperatives earmarks some incomes to hold concerts, drama performances, movies and language and cooking training classes, greatly promoting mutual understanding and respect among different cultures.

Through launching activities of human rights practices, cooperatives promote social and human race harmony. The international community highly affirmed the roles of cooperatives worldwide in promoting human race harmony. The theme of the International Day of Cooperatives in 2004 was “Cooperatives for Fair Globalization: Creating Opportunities for All” while that of 2006 was “Peace-Building through Cooperatives.”

II

In human rights practices¹, cooperatives stress on putting people first and alliance of people. The aim of organizing cooperative is to help its members meet their economic and social demands. The cooperative system is essentially the system of alliance and cooperation of working people. Hence, the spirit of cooperatives conforms to the basic spirit of sustainable development of human race and is in line with the Scientific Outlook on

1 “Cultural Diversity and Human Rights Development in Asia,” China Thesis Download Center, June 7, 2009.



Development stressed by the Chinese Government in the current stage.

In the human rights practices, cooperative plays a very important role in implementing social responsibility. To large extent, cooperative movement is the pioneer of developing and implementing corporation social responsibility. The theme of 2002 International Day of Cooperatives was “Society and Cooperatives: Concern for Community,” and that of this year was “Cooperative Values and Principles for Corporate Social Responsibility.” It praised the contributions that have been made and will be made by people of cooperatives worldwide in making cooperatives into responsible corporate citizenship. Cooperatives have become important suppliers of local community services.

III

In the example of the diary cooperative of Laizhou City of Shandong Province, cow raisers and dairy company usually had disputes in frequent transactions. In the preliminary stage, some foreign business people purchase milk in large scale. They used large weight bridges and the minimum purchasing amount was 50 kg. But cow raisers did not have so many cow and can only produce several dozens *jin* (one *jin* equals to 0.5 kg) of milk every day. Thus, a reasonable error of 10-15 kg for foreign business people was a great loss to cow raisers; hence, disputes occurred. The cooperative mediated immediately and explained the reality. The foreign business people now use small electronic scale to limit errors into reasonable scope. The contradiction was solved. Meanwhile, the cooperative also invite its members to the company's lab to visit equipments and have face-to-face exchanges so as to establish sound cooperation and bilateral relations of mutual trust and mutual understanding and protect legal rights and interests of cooperative members.

IV

Today, in China's cooperative human rights practices, the state pays more attentions to the leading role of supply and marketing cooperatives in cooperative economic and cultural development and human rights protection. As China's largest cooperative economic organization, supply and marketing cooperative is the important force of serving agriculture and promoting economic development in rural areas and social progress. Accelerating reform and development of supply and marketing cooperatives is of great significance in terms of activating circulation in rural areas, improving commodity circulation system, construction modern agriculture, stimulating rural demands, promoting socialism new countryside construction and promoting integration of urban-rural economic and social development. After many years of reform and development, supply and marketing cooperatives are changing from traditional operation mode to modern circulation industry, from pure supply and marketing business to comprehensive operational services and from pure supply and marketing cooperation to multi-fields and comprehensive cooperation. Supply and marketing cooperatives have turned losses into profits successfully with development vitality prominently

increased, economic strength prominently improved and service capacity greatly enhanced, making important contributions to agricultural development, increasing farmers' incomes and rural prosperity. In 2009, the State Council specially issued *Several Opinions of the State Council on Accelerating Reform and Development of Supply and Marketing Cooperatives* (Guofa [2009] No.40), further clarifying the direction of reform and development of supply and marketing cooperatives in the new era, unifying ideology, accelerating development paces and making greater contribution to promoting agricultural and rural prosperity and development.

In China, experts and scholars believe that "as China's largest cooperative economic organization of farmers, supply and marketing cooperative has the goal and tasks that conform to the requirements of socialism new countryside construction." Thus, "supply and marketing cooperative has unique and irreplaceable reality advantages and values in socialism new countryside construction." The reality advantages and values include: As a cooperative organization, supply and marketing cooperative has the same functions and roles as general cooperatives such as economic function, social function and cultural function; supply and marketing cooperative has unique advantages and values in rural areas such as political and organizational advantage, asset, brand and network advantages, advantages in human resources, education and culture resources and experience and lessons in reform; supply and marketing cooperatives have made outstanding contributions in solving problems related to agriculture, farmers and rural areas.

Meanwhile, the state pays more attention to the promotive role of farmers' professional cooperative in cooperative economic and cultural development and human rights protection. Farmers' professional cooperative is the result of active exploration and great invention of the vast farmers and the masses, the effective way to stabilize and improve the basic operation system in rural areas, important bearer of promoting innovation of agricultural operation system and mechanisms, improving agricultural production and the organizational level for farmers to enter the market and the basic force to construct new socialized service system for agriculture. In order to give full play to the promotion role of farmers' professional cooperative in cooperative economic and cultural development and human rights protection, on July 1, 2007, China issued *Law of the People's Republic of China on Farmers' Professional Cooperatives* to protect farmers' status as the market major player. This law highlights farmers' subjective status and their rights of democratic management in cooperatives. It stipulates that the number of farmers in a cooperative should be no less than 80 percent; all the members are equal and every member has the same voting power. These stipulations fully protect farmer members' asset rights and their democratic rights in the cooperatives.

V

In recent years, China's human rights construction has made historical achievements



in combining theories and practices. Respecting and protecting human rights has been included into the Constitution and the 11th Five-Year Development Plan, and has become the important concept of the Communist Party of China in ruling and rejuvenating the country. It is also an important ingredient of human-based Scientific Outlook on Development and the important strategic thought of constructing socialism harmonious society. For instance, in some important activities such as disaster relief in earthquake, cooperatives made full use of their advantages and timely provided large amount of disaster-relief materials to disaster-hit regions under the unified leadership of the CPC and the government, reflecting the attitude of attaching great importance to and being responsible for people's life and fully embodying the humanitarianism spirit of putting people first and respecting and protecting human rights. It is a vivid practice of China in respecting and protecting human rights.

In the process of new countryside construction in China currently, the organization form of cooperative should be energetically promoted to make it the mainstream organizational measure of improving the economic and social status of disadvantageous groups and realizing urban-rural integration and development. Cooperative culture and its human rights practices should be stressed. Especially, as China's cooperative economic organization with the largest size, the most complete system and the longest development history, supply and marketing cooperative has unique advantages such as complete network of marketing, smooth information channels and abundant talent resources. Its culture and human rights practices should be highly appreciated and carried forward. Its roles should be brought into full play.

(The author is Director of the Council of Henan Supply and Marketing Cooperative.)

Cultural Traditional and Human Rights: the Aotearoa New Zealand Experience

Karen JOHANSEN
New Zealand

E nga mana, e nga reo, e nga maunga, e nga awaawa, e nga pataka o nga taonga tuku iho, tena koutou katoa. [Translation : To all expert colleagues, all voices, the mountains, the rivers, the treasure houses, greetings to you all.]

Introduction

“Culture represents the soul, the moral edifice, the self-definition and self esteem of a person or a community without which life loses context and meaning.”

– Stamatopoulos, 2004

Culture and its expression is the primary source of identity, the source of self definition and sense of group belonging. As cultures interact and mingle, cultural identities change. This is a process which can be enriching and disorienting. It is universally agreed that every human being has the right to culture, including the right to enjoy and develop cultural life and identity. Equally, the State has an obligation to nurture and protect the cultural lives and identities of its people, in all of its diversity.

I was born in New Zealand at the end of the Second World War and I was three years old when the United Nations *Universal Declaration of Human Rights* was proclaimed. I am the eldest daughter of a Māori mother and a European father of Norwegian descent. I grew up in the region called Tairāwhiti – the place where the sun first rises. I am proud of my father’s origins but it is my mother’s gift of 17 generations of known *tangata whenua whakapapa* [the genealogy of my indigenous family] which gives me my identity and my cultural dilemma and which profoundly influences my world view.

I am Māori, an educator and a New Zealand Human Rights Commissioner. It is in this context that this paper considers Maori cultural tradition in Aotearoa New Zealand today and the critical role of domestic and international human rights principles and values in its revitalization and protection.

As my colleague, Commissioner Jeremy Pope noted in his address to this forum in 2010, New Zealand society today is the product of a series of migrations – first from Polynesia,



then from Europe and currently, from Asia. As history testifies, when diverse peoples come together, differences in cultural values and expression have rarely been resolved without conflict. All too often, the minority cultures have been alienated, dislocated and marginalized.

This is true of my own country and of Māori, the indigenous people. This is also true of the Chinese who came to New Zealand in the late 19th century and who were particular victims of the “White New Zealand” policy developed by the British settlers¹.

Today, New Zealand has a population of 4.3 million. Of this, 600,000 or nearly 15% are Maori, the *tangata whenua* or people of the land.

Who are Maori?

Māori arrived in Aotearoa, from eastern Polynesia during a period of widespread ocean voyaging sometime during the thirteenth century AD. They were not only outstanding navigators but an enterprising, competitive and culturally sophisticated people.

For Māori, their place in the world was defined by matauranga Māori or Maori knowledge. This includes language, science and technology, laws, history, systems of property and value exchange, and rituals and ceremonies. It also includes forms of expression like weaving, carving, *ta moko* (tattoo), *haka* (ritual dance)² and oratory.

More fundamentally matauranga Maori is about core Maori cultural values. Of these, the defining principle is *whanaungatanga* or kinship – the philosophy that explains the intimate relationships between *iwi*, *hapu* and *whanau* (kinship groups) and the natural world. Another core value is that of *kaitiakitanga* or cultural guardianship – the system of law through which *iwi* and *hapu* are obliged to nurture and care for *taonga* [cultural treasures]. Identity is not based on individual qualities or achievements but on these kinship relationships. The connecting genealogical chain is *whakapapa* which extends in a continual relationship from this world to the spiritual realm. It is also linked to place and confers a kaitiaki set of obligations and rights which endure, at great odds, to the present day.

Two cultures collide

Toi tu te kupu, toi tu te mana, toi tu te whenua. [Hold fast to our culture for without language, without mana (prestige) and without land, the essence of being Māori no longer exists.]

1 In 2002, Prime Minister Helen Clark formally acknowledged and apologised to the descendants of those first Chinese settlers, for the poll tax and other discriminatory practices imposed by legislation.

2 The haka *Ka Mate Ka Mate* made famous by the New Zealand rugby team, the All Blacks, has been used internationally in derogatory ways. It is an example of a *taonga* which has not been protected by laws recognizing guardianship responsibilities.

In 1642, our islands were discovered for the European world by a Dutch East India Company navigator, Abel Tasman. He did not set foot on the land but named it, Nieuw Zeeland. Over a century later, a British Royal Navy lieutenant, James Cook, re-ignited European interest in New Zealand during his months of exploration and his many encounters with Maori.

With Cook's arrival the Europeanization of New Zealand began. My own *iwi* (tribe), Rongowhakaata was the first to encounter the Europeans when Lieutenant Cook and his ships company anchored in our bay on October 7, 1769. Lieutenant Cook had hoped for a friendly encounter but when a Maori warrior party approached and ceremonially challenged the crew, this was misinterpreted as hostility. A sailor fired his musket and killed one of my ancestors. Over the next days, nine more were shot dead. The British expedition sailed away without provisions or fresh water and Cook renamed Te Moana o Turanganui-a-Kiwa, Poverty Bay.

Cook's voyages paved the way for waves of European settlers to New Zealand. Accommodating the Europeans became an imperative for Māori who fought them, traded with them and absorbed new technologies. While the balance of power was with Māori in terms of numbers, it was not long before migration, warfare, and new diseases changed this. New notions of resource ownership, of relationships with the environment, of social relationships and of spirituality began to gnaw at the fabric of Maori society.

Meanwhile, the British need to protect the lives and interests of settlers grew as did a relatively benevolent intention to protect Māori from European exploitation. These concerns and others resulted in the British government formalizing New Zealand as a colony. In 1840, the Treaty of Waitangi was signed by British government representatives with *rangatira* [leaders] of many but not all, of the tribes of New Zealand.

The British representatives had been instructed that assumption of sovereignty should not go ahead without "the free intelligent consent of the natives." All transactions were to be carried out in good faith and without disadvantage to Māori. It was a time when humanitarian ideals were driving British government policies.

This declaration of good intentions was essentially a guideline for human rights practice. The guarantees were expressed in three articles: Article One gave the British Crown an authority to govern and carried with it rights and responsibilities, Article Two guaranteed the Māori authority or self determination over their lands, communities and *taonga* and the Crown guaranteed protection of this right, Article Three gave Māori the same citizenship rights as British subjects.

In spite of the Treaty however, after a short period of flourishing Maori collective enterprise, increasing numbers of European settlers created demand for Māori owned land. This resulted in land wars and massive confiscation of land from Māori. The fabric of



Maori society began to rapidly unravel – cultural traditions were destabilized, Christianity began to replace or influence the traditional spiritual beliefs, land alienation proceeded rapidly through a combination of confiscation and unscrupulous transactions, promises were broken and peaceful protest was militarily crushed. European diseases were met with little resistance and traditional authority structures began to loosen. By the end of the 19th century Maori numbers had reduce from fifty to ten per cent and only 17% of the country's land resources were in Māori ownership (mostly useless or marginal). Many communities were malnourished and debilitated by the new diseases and the effects of alcohol.

Māori were generally regarded as a dying race. Thankfully the prediction of extinction was replaced by a different set of statistics. During the first fifty years of the twentieth century as resistance to the new diseases grew so did the Māori population, even if the people continued to be marginalized and vulnerable.

In the years after World War II, China was part of the group that developed the text of the *Universal Declaration of Human Rights* and in 1948 China and New Zealand supported its adoption. At home in New Zealand, at this time, the impact of a century of human rights violations on Māori was starkly evident. By the 1950s the cultural traditions of *tangata whenua* had unraveled to such a point that *te reo* Māori [the Maori language], was believed to be dying, Māori had been alienated from their lands and an urban drift had begun. Māori were losing touch with their *turangawaewae* or where they belonged and with their *whanau*. The practice of *tikanga Maori* or cultural traditions began to falter. It was difficult for *Te Ao Maori* (the Māori world view) to flourish in a determinedly mono-cultural New Zealand.

There was little space provided for fundamental Māori cultural values such as *whanaungatanga* and *kaitiakitanga*.

***Whaia e koe ki te Iti Kahurangi* – Seek the treasure you value most dearly**

Indigenous peoples are responsible for a great deal of the world's linguistic and cultural diversity and their traditional knowledge has been and continues to be an invaluable resource that benefits all of mankind. Yet, indigenous peoples continue to suffer discrimination, marginalization, extreme poverty and conflict.... their belief systems, cultures, languages and ways of life continue to be threatened sometimes even by extinction.

– Sha Zukang, Under-Secretary-General for Economic and Social Affairs, “State of the World's Indigenous Peoples,” 2009.

This decline was most distressingly expressed in the indigenous language, *te reo* Māori. During the 19th and early 20th centuries, Māori language was the main language of communication amongst Māori. However, the establishment of government schools saw

Māori children being taught mainly in English. An English language-only policy was strictly reinforced through physical punishment. Slowly the use of te reo was dying out. By 1979 fewer than five per cent of Māori children were able to speak their own language.

Many Māori parents had stopped speaking te reo Māori to their children. English language was seen as the key to the “golden city,” the key to wealth and social standing. English had become the language of exchange in home, in school, socially, economically and politically.

Why was this such a problem?

A culture’s visual and verbal language is its most profound and vital means of expression. It embodies the history, values and traditions of a people. Language binds people together and with their environment. It enables the transfer of the culture from one generation to the next; it is the expression of individual and collective identity. It is a means of survival.

This is powerfully expressed in the proverb “*Ko te reo te mauri o te mana Māori.*” [the Māori language is the life force of the Māori people]

I have my own story about that time. As a seven year old, I was in town with my grandfather when he stopped to talk to some *kuia* (elderly women). I was surprised that I was unable to understand the words he was exchanging with these women. My grandfather was speaking te reo Māori but I didn’t know that. I tugged on his hand and said “Gramp, why can’t I understand what you are saying?” He paused and looked down at me and said “Don’t you worry, darling, that’s the old language. You don’t need to know it now.” Speaking Māori imperfectly now, I lament that loss of my heritage, of my *tikanga*, my cultural tradition.

Revitalisation? Yes and No

By the 1970s, the lack of a place for Māori culture in contemporary law and policy compounded a wider picture of social disparity. This was reflected in the endangered language, poor educational attainment, unskilled and lower income jobs or unemployment, poor standards of housing, poor physical and mental health, lower life expectancy and increasing rates of crime.

The human rights record of New Zealand at that time with respect to Māori was grim. It was from this setting that increasingly vocal Māori protest, demanded attention and demanded change. This was a protest echoed around the world by indigenous communities dissatisfied with the lack of recognition for indigenous rights. This protest was from those who were turning to the international human rights framework to support their claims for recognition of their indigenous rights.

Māori have been particularly active in this respect. Since the 19th century, Māori have appealed to international authorities for redress of grievances – to the British sovereign, to



the League of Nations, and in more recent times, to the UN Human Rights Committee. In 1993 Maori took a complaint to the UN using Article 27 of the *International Convention of Civil and Political Rights* which declares the right of minorities “to enjoy their own culture, to profess and practice their own religion and to use their own language.”

In New Zealand, governments began to respond to these demands for change.

In 1974 the New Zealand government acknowledged the special significance that land and other taonga held for Māori.

In 1975, the Waitangi Tribunal was established to investigate breaches of the Treaty of Waitangi. In 1985, the powers of the Tribunal were extended retrospectively to 1840 and the work on tribal resource claims began. This was a profoundly important development for Māori and has resulted in major settlements between the government and iwi which continue to this day.

In 1985, a claim was lodged with the Waitangi Tribunal which sought recognition of te reo Māori as an official language of New Zealand. In 1986, a tribunal report acknowledged te reo Māori as a taonga under Article 2 of the Treaty of Waitangi, and found that the Crown had a responsibility for its preservation.

In 1987, the New Zealand Parliament passed the te reo Māori Language Act into law. It declared te reo Māori to be an official language of New Zealand and established the Māori Language Commission to promote the growth of the language.

In the mid 1980s, te reo Māori immersion teaching began with the establishment of full immersion educational institutions at all levels from preschool to university.

Today, a vigorous Māori radio network and Māori Television channels trace their origins back to the Waitangi Tribunal claim in 1986 concerning the allocation of radio frequencies. For the first time, New Zealand society was being asked to take seriously the world view of its indigenous people and other minority communities. It is no accident that an evolving New Zealand form of English has as one of its characteristics, many words in te reo Māori. Thanks to this and to newly conscious public policy makers, it is a delight to wake up to mainstream radio station announcers greeting the new day in Māori.

The resurgence of Māori cultural identity and pride has seen the revival of traditional tattooing, called *ta moko*. These beautiful body designs are specific cultural markers representing whakapapa and whanaungatanga. It is a record of the wearer's life journey and a statement of identity.

Maori performing and visual arts flourish also and are a particularly powerful means in schools to instill pride in being Maori. For mainstream schools it is an opportunity to extend its definition of success in Maori cultural terms. As a former principal of a secondary school with a large Maori population, I can testify that the regional and national secondary school annual performing arts competitions are as fiercely fought and intensely partisan as any

major international sporting competition.

Contemporary Responses to Human Rights Breaches and Maori Cultural Tradition

In the years since 1948, the rights set out in *the Universal Declaration of Human Rights* (UNDHR) have been codified in United Nations covenants and conventions. Together with the eight International Labour Organisation (ILO) conventions on human rights, they form a basis for an international human rights legal framework. Successive New Zealand governments have ratified these treaties, formally committing to respect these rights. Two covenants emerged from the UNDHR, *the International Covenant on Civil and Political Rights* (ICCPR) and *the International Covenant on Economic, Social and Cultural Rights* (ICESCR) both of 1966. A number of successive conventions have been ratified by both of our countries. Most recently China supported *the UN Declaration on the Rights of Indigenous Peoples*, well before it was supported by New Zealand.

Side by side with the development of these instruments has been the evolution of international monitoring mechanisms. These now enable those countries that are parties to the conventions to satisfy themselves that others are complying with their undertakings. Member states of the UN are now regularly examined by their peers on their national human rights performance. The fact that this has been agreed to by the international community is recognition that the manner in which States treat people within their own borders is of legitimate interest to the rest of the world. The process is designed to be helpful rather than alienating, based on a shared wish to see the conventions functioning as intended. Of course, there is much work for every country to undertake before it can be said that any country is compliant.

The New Zealand Human Rights Commission has a mandate to monitor how well New Zealand meets human rights standards and where we need to do better. In 2004 and 2010, the Commission reviewed how well human rights are promoted, protected and implemented assessed against international human rights standards.

In considering New Zealand's human rights record today, we see a very different landscape from that of the 1950s. The review confirmed that New Zealand meets and often surpasses international standards of civil, political, economic, social and cultural rights. However, the review also acknowledged that the status of human rights and the Treaty of Waitangi are mixed.

While there has been significant progress in hearing and settling Treaty claims, in the revitalisation of the Māori language and in establishing whanau-centred initiatives particularly in health and education, the report identifies areas of concern for Māori.

It highlights evidence that shows that either deliberately or through neglect, European



culture has largely been supported at the expense of that of Māori.¹

While there is much to be done, there is still a great deal of goodwill between Māori and non-Māori New Zealanders and a great many programmes to address the issues.

This paper highlights two initiatives that exemplify efforts to ensure Māori fully enjoy the rights set out in the Treaty of Waitangi and in international human rights treaties.

Both initiatives are based on the belief that improved physical, emotional, mental and spiritual wellbeing for Māori must be based on *whanau* (extended family) which is the fundamental cultural construct of Maori society. The hope is that changes in the wellbeing of individual Maori can be brought about by focusing on the collective of whanau. These initiatives use strategies that involve Māori in decision making, have Māori leading and developing their own solutions and have effective outcomes for Māori. This is consistent with the human rights approach captured in the expression “Nothing about us without us.” It is consistent with Articles 2 and 3 of the Treaty of Waitangi and with Articles...

Whanau Ora²

The first example is *Whanau Ora*, an inclusive and integrated approach to providing health, education, social and economic services. It works with individuals through the needs of whanau as a whole. Whanau Ora is funded by government and government agencies in partnership with non government agencies aiming at outcomes for whanau that involve:

- self-management,
- living healthy lifestyles,
- participating fully in society,
- confidently participating in te ao Maori [the Maori world],
- being economically secure, and
- cohesiveness, resilience and nurturing.

Whanau Ora is currently in the implementation and infrastructural building stage of its development.

Te Kahui Mana Ririki

The abuse and neglect of children continues to be a major issue of concern, despite wide recognition of the problem. In OECD rankings, New Zealand rates poorly in terms of child health and safety, particularly child abuse within the family. Many of the children abused are Māori.

An initiative called *Te Kahui Mana Ririki*³ is working with communities to break this destructive cycle of abuse. The approach aims to reset the values and cultural traditions about raising children in today's world, to follow the child rearing values of the ancestors – to go

¹ Waitangi Tribunal Report on Claim 262 (WAI 262)

² www.msd.govt.nz

³ Literally meaning, a group which celebrates the value of children.

back to the past to move forward.

Waitangi Report (WAI 262¹) Published

During the writing of this paper, the Waitangi Tribunal published a long awaited report of critical importance. This was in response to a 20 year old claim made by members of six iwi seeking rights to native flora and fauna and intellectual property rights over indigenous knowledge.

The report describes the claim as being about the place of Māori culture and identity in New Zealand's laws, government practices and policies. The tribunal has asserted that government laws should reflect the rights of Māori to practice *kaitiaki* or guardianship obligations guaranteed in Article Two of the Treaty of Waitangi. Relationships with flora and fauna and intellectual traditional knowledge and culture are entitled to "a reasonable degree of protection."

The report invites New Zealand to become a global leader in indigenous rights and challenges this country to no longer consider Maori as "other" but as a true partner.

While the recommendations of the Waitangi Tribunal are non-binding on the government, they have powerful moral force backed by a large body of international human rights law and standards such as *the International Covenant on Economic, Social and Cultural Rights*. As a New Zealand commentator has noted that "The government would shelve this report at its peril."

This is an important time in New Zealand history.

Te Kahui Tika Tangata – The New Zealand Human Rights Commission

The New Zealand Human Rights Commission plays a central role in New Zealand's efforts to build a responsible human rights framework for all New Zealanders. With respect to Maori this presents a particular challenge.

The Commission was established in 1977 as an independent Crown agency. One of its functions is "to promote by research, education, and discussion a better understanding of the human rights dimensions of the Treaty of Waitangi and their relationship with domestic and international human rights law."

The Commission's mandate to work towards a better understanding of the human rights dimensions of the Treaty of Waitangi begins inside the Commission organization and is reflected in its name, *Te Kahui Tika Tangata*, and its logo.

The Commission's logo represents the *korowai* [cloak] of the New Zealand Human Rights Commission. This design derives from the traditional art of *taniko*, the weaving used to make korowai and a uniquely New Zealand art form. This logo symbolizes the muka [strands] that are woven together, representing both the uniqueness of individuals and our

¹ www.waitangitribunal.govt.nz



collective identity. The *muka* emphasizes our interconnectedness and interdependence. The *pona* [knots] secure the threads. Together they make up the korowai of our human rights and responsibilities.

It is the practice of the Human Rights Commission to draw on tikanga Māori in the relationship protocols used for respectful daily interactions including use of te reo Maori, to welcome and farewell people and in presenting itself publicly.

Respect for all people is a value that is fundamental to the work and practices of the Commission, and accordingly, the concept of *manaaki*¹ has a particular significance in all aspects of the Commission's work and operations.

The Commission has many Māori staff across the organization and it has a dedicated team of Māori who provide specialist advice and lead engagement on indigenous rights issues.

The Human Rights Commission supports and promotes in partnership with the Māori Language Commission what is called Māori Language Week. This is an annual event which encourages and celebrates the use of te reo Māori in our families and communities.

Tuhonohono is a bi-lingual human rights community development programme which is delivered according to Māori values and principles. The aim is to develop understanding of human rights and responsibilities strongly focused on the Treaty of Waitangi and with international standards such as the Declaration on the Rights of indigenous Peoples.

The Commission has been championing the Declaration on the Rights of Indigenous peoples since it was adopted by the United Nations General Assembly on 13 September 2007. UNDRIP can be regarded as the international expression of the Treaty of Waitangi and its implementation will help realize the human rights dimensions of the treaty.

Amongst other activities, the Commission engages with parliamentary committees to promote legislative alignment with the Declaration, it has an ongoing programme of workshops to educate and promote discussion about the Treaty and the Declaration and it publishes in both te reo Māori and English and distributes research and guidance on indigenous rights including the traditions associated with cultural rights.

Conclusion

In its widest sense, culture may now be said to be the whole complex of distinctive spiritual, material, intellectual and emotional features that characterize a society or group. It includes not only the arts and letters, but also modes of life, the fundamental rights of the human beings, value systems, traditions and beliefs.

– Mexico City Declaration on Cultural Policies, 1982

¹ Manaaki is to support, take care of or provide hospitality to people. It is about giving, caring and sharing.

The Treaty of Waitangi is New Zealand's own unique statement of human rights. It includes both universal human rights and indigenous rights. It belongs to, and is a source of rights for all New Zealanders. The Treaty also affirms particular rights for Māori as Māori to protect and preserve their lands, forests, waters and other cultural treasures for future generations.

Internationally, the most significant event regarding human rights and the Treaty since 2004 was the adoption of *the Declaration on the Rights of Indigenous Peoples* by the United Nations in 2007. The Declaration provides a clear set of standards that apply existing human rights treaties to the specific situation of indigenous peoples. It affirms treaties between State and indigenous peoples, such as the Treaty of Waitangi, and reiterates the full range of civil, political, economic, social and cultural rights. In doing so, it provides guidance to New Zealand on ways in which the Treaty partnership can be interpreted in the 21st century. On the day in 2009 that New Zealand announced its support for *the Declaration of the Rights of Indigenous Peoples*, an eminent Maori leader declared that event to be as important as the signing of the Treaty of Waitangi.

As then State councilor Tang Jiaxuan stated in 2005 when he opened a human rights workshop in Beijing that was partly organized by the Office of the UN High Commissioner for Human Rights,

Given the vastly different cultural heritages and conditions of dozens of Asia Pacific countries, the ancient Chinese philosopher Confucius' advice that 'Gentlemen should live in harmony without uniformity' could serve as a guide in our regional cooperation. On the one hand, we should uphold the purposes and principles enshrined in the UN Charter and international human rights instruments and unswervingly promote and protect human rights to meet the fundamental interests of the people. On the other hand, every country should choose its own way to promote and protect human rights in line with its national conditions.

Choosing our way, in the words of the Waitangi Tribunal Report on the claim Wai 262, is "an opportunity that New Zealand cannot afford to miss. The partnership framework [for the Crown-Māori relationship] will endure. It is evolving as New Zealand evolves. There are signs that it is changing... into a twenty-first century relationship of mutual advantage in which through joint and agreed action both sides end up better off than they were before they started."

As an indigenous woman, I expect this. No less.

(The author is Human Rights Commissioner of New Zealand.)



Cultural Transformations in China and Progresses in Human Rights Cause

LI Junru
China

Human rights refer to the rights that should be enjoyed by anyone as human beings. However, human beings have not only the natural attributes, but also social attributes, including such high-level social attributes as thinking capability and culture. The role of culture on human beings can be seen in people's understandings on human rights connotation and human rights value. In fact, the different views on human rights issue of various countries worldwide are linked with their different cultures. We cannot change the differences of various countries in cultures, but we can learn about and understand the differences through cultural exchanges so as to enhance recognition on human rights issue. On the issue of human rights, we always insist on dialogue, not confrontation. Practices in the past years prove that in order to make such dialogues more effective, we must enhance cultural exchanges and mutual understandings among various countries. Here, I would like to introduce how the Chinese people deepen their understandings on human rights in the process of cultural transformation.

I. National Crisis in Modern Times and Introduction of Human Rights Concept

Friends who know Chinese modern history know that "human rights" is not an indigenous concept of China, but imported from foreign countries. To be exact, it was introduced from the West during the New Culture Movement started from 1915.

In September that year, Chen Duxiu initiated *the Youth Magazine*, which was renamed as *the New Youth* the next year. On the first issue of the first volume of the magazine, Chen Duxiu published his famous article *Notice to the Youth*, calling that "To get rid of the ignorant era and avoid being benighted, our countrymen should work harder and lay equal emphasis on science and human rights." Led by the article, a powerful and dynamic New Cultural Movement took place on the ancient soil of China. The concepts of "science" and "human rights" were later changed into "democracy" and "science," namely, "Mr. Democracy" and "Mr. Science." These were the two basic slogans for the New Culture Movement.

The reason why the Chinese people put forward the slogans of "human rights," "democracy" and "science" is that China was facing a profound national crisis at that time.



Being defeated by the Britain in the Opium War in 1840, China gradually became a semi-colonial and semi-feudal society. In order to save the nation from extinction and maintain development, people with high ideals in China first believed that China's crisis was the crisis of material civilization and began to learn advanced sciences and technology from the West to develop modern industry. Finally, China was defeated in a war against Japan in 1894-1895; after that, Chinese people believed that China's crisis was the crisis of political system, and turned to the West to learn parliamentary system and adopted constitutional monarchy. But the effort was cracked down by feudal forces; in 1900 when China bid farewell to the old century and ushered in the new century, the coalition forces of eight powers such as Britain, France, Germany and the United States conquered the capital Beijing. With the deepening of the national crisis, people were becoming more confused. In particular, the Revolution of 1911 led by Mr. Sun Yat-sen overthrew the Qing Dynasty, put an end to the several thousand of years of feudal absolute monarchy and established the Republic of China featuring multi-party ruling, cabinet government and republic. But when the countrymen were about to be excited at the historical change, the state power fell in the hands of Northern Warlords represented by Yuan Shikai, leading China into years of civil war and chaos again. When all the measures people had previously thought useful to save the nation and develop the country proved to be useless, people became more confused. It was against the background that advanced intellectuals such as Chen Duxiu and Li Dazhao realized that the national crisis in modern China was the crisis of science and technology, crisis of political system and, more profoundly, the crisis of culture. It was not enough to save the nation and maintain development only by learning advanced science and technology and political system. China still needed awakening of culture and enlightenment of ideology. The concepts originated from the West such as "human rights," "democracy" and "science" was introduced to China to cope with such cultural crisis.

Introducing the concepts such as "human rights," "democracy" and "science" was to eliminate the ideological and cultural basis of feudal absolute monarchy that ruled China for several thousand years, down with the Confucianism that supported the old ethical codes and promote individuality liberation, personality independence and democracy and freedom. This process was very similar to the Renaissance in Europe when people fought against medieval theocracy. This period of history shows that we have common basis while conducting international dialogues on human rights.

II. Deepening of National Crisis in Modern China and Expansion of Human Rights Concepts

The Chinese people accepted the modern civilized concept in the process of learning from the Western human rights ideology. However, the history also played a joke on the



Chinese people. China regarded the Western countries as teachers, but the teachers bullied and humiliated their student and did not respect or protect the human rights of their students. Thus, the history, in light of its own logic, combined the human rights ideology the Chinese people learned from the West with China's practices to form the human rights ideology with China's experience.

The real historical process is like this: When the Chinese people introduced and studied various ideologies and cultures from the West with great eagerness, a more profound national crisis took place. In the World War I, Germany was defeated and Japan took the opportunity and seized Germany's interests in Shandong of China, and put forward the "21-Clause Treaty" to the Northern Warlord Government, trying to extinguish China. In January 1919, victorious nations of the World War I gathered in Paris for a peace conference. At the conference, the Chinese Government proposed to nullify the "21-Clause Treaty" and returned all the privileges of Germany in Shandong back to China unconditionally. However, the reasonable demand was rejected. The decision at the Paris Peace Conference annoyed the Chinese people, especially the young intellectuals who had just received the concepts of human rights, democracy and science. At the "May 4th Movement" in 1919, students in universities such as Peking University walked on the street and shouted out the slogans of "defending national sovereignty and punishing the traitors."

The mass patriotic movement initiated by young students and participated by workers and businesspeople had exerted profound influence on China's modern history. All the important personages in modern China, no matter leaders of the Kuomintang or leaders of the Communist Party of China, or famous scholars of various disciplines had participated in the "May 4th Movement" or influenced by the movement. Even the revolutionists of the older generation who became famous before the movement such as Sun Yat-sen also saw new hopes from the movement.

The influence can also be seen on human rights issue. The Chinese people realized in the "May 4th Movement" that there is no human rights in a country without sovereignty that allows itself to be trampled upon. In other words, to enable the Chinese people to enjoy human rights, China should first of all have sovereignty, namely, collective human rights.

The national crisis of China enabled the Chinese people to accept the human rights concept during the process of criticizing their own political culture of feudal absolutism; the deepening of the national crisis also enabled the Chinese people to deepen their recognition on human rights during the process of criticizing power politics of imperialism. This is historical dialectic.

Though the recognition was originated from the practices of the Chinese people saving the nation from extinction, it reflected the characteristics of the global human rights in an age when power politics prevailed. While signing *the Universal Declaration of Human Rights* 60



years ago, the United Nations noted that the declaration was issued for the “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.” In other words, respecting and protecting the combination of collective human rights and individual human rights of a country is not the human rights concept established by China beyond the international consensus.

III. Coping with National Crisis in China and Deepening of Human Rights Concept

The greatest result of the “May 4th Movement” in 1919 was the emergence of the Marxism in China’s ideological circle and was accepted by more and more young and advanced intellectuals. This is the greatest historical event in the ideological and cultural transformation in modern China.

The new culture of Marxism was accepted by the Chinese intellectuals because, first of all, the World War I revealed the contradictions of the capitalism system that cannot be solved and proved the scientific and profound natures of the Marxism; second, after the news that the October Revolution in Russia triumphed and that Lenin announced to nullify the unequal treaties signed by Tsar Russia and China reached China, the Chinese intellectuals witnessed the new hopes brought by the Marxism to China; third, practices showed that if we did not embark on the road of proletariat revolution pointed out by the Marxism, there were no hope of solving the national crisis in China. Here, Mao Zedong was the most typical one. At the beginning of the “May 4th Movement,” he did not recognize the Marxism. But, after a series of frustrations, he decided to use the Marxism to reform China and the world.

The Marxism believes that the ideal society is the community of free individuals. Though the capitalism society in reality talks a lot about human rights, it is a society that dissimilates individuals where the proletariats work very hard but have no human rights. Thus, Marx and Engels put forward the slogan of “mankind emancipation,” putting forward to realize freedom of every individuals and comprehensive development through the class struggles of proletariats. For the claim of realizing human rights through class struggles of proletariats, especially proletariat revolution and proletariat dictatorship, Mao Zedong, in light of his own experience, said, “There is no better measure we can use,” “it is an option when all the other measures failed.”

The Communist Party of China was established during the process of the Marxism and Leninism combining with workers’ movements in China. During the long-term revolutionary practices, we further realized that simply copying the Marxism could not solve issues in China, including human rights issues. Hence, Mr. Mao Zedong put forward to fight against doctrinarism and later suggested to localize the Marxism in China. During the process, the Communists of China, represented by Mao Zedong put forward a series of important



opinions on human rights.

For instance, while leading farmers' movements, they pointed out that the political power, ethnic power, religious power and husband power represented all the ideologies and systems of feudal regulations; they were the four extremely great nooses for the Chinese people, especially farmers and should be toppled.

For instance, in the battle fields, they required not to kill those who laid down their arms and not to abuse captives.

For instance, the injured and patients of both parties on the battle fields were required to be cured according to the revolutionary humanitarianism.

For instance, in the revolutionary bases, they required to solve the problems of the people related to their clothes, food, housing, cooking, disease and marriage, etc.

For instance, after the founding of the People's Republic of China, they put forward that the people in the People's Republic of China should have the rights of election and being elected; people should enjoy freedom of ideology, of speech, of the press, of assembly, of association, of communications, of person, of living, of migration, of religion, and of demonstration. People also had equality rights such as gender equality and ethnic equality.

For instance, in the in-Party struggle, for people who made mistakes, no one was allowed to be killed and most of them were not allowed to be arrested.

For instance, in the process of land reform, they pointed out that the landlords should be eliminated as a class, but should be protected as individuals. Our task was to eliminate landlord class, not landlords themselves.

For instance, in making industry and commerce policies, they put forward the idea of considering both public and private companies and benefiting both employers and employees. In the process of socialism reform of capitalism industry and commerce, they did not adopt the measure of Soviet Union of expropriation without compensation, but in the form of peaceful purchase. Meanwhile, they could also enjoy various civil rights of election and being elected.

For instance, for criminal suspects, they implemented the policy of leniency to those who confessed their crimes and severity to those who refused to. Extorting confessions by torture was strictly forbidden. For the criminals who were sentenced to death but could be remedied, they had the innovative practice of suspending the death penalty.

There were many such claims. Especially, Mao Zedong, while in Yan'an, required us to consider various issues on the "stance of human"; The CPC also issued the human rights declaration of the Communist Party of China.

Such guidelines, policies, laws and regulations reflect that the Communist Party of China worked hard to combine the human rights principles with the practices of class struggles in the process of leading people's great revolution so as to form the human rights



theories and practices of localized Marxism. This also reflected that the Communist Party of China deepened its understanding on human rights in the process of coping with national crisis. It was under the guidance of this human rights theory that the Communist Party of China united the vast people in the revolution struggles, including establishing the solid alliance of workers and peasants and the united front of national bourgeoisie. It finally solved the national crisis of the Chinese nation which lasted for more than 100 years, enabling the Chinese people to stand high in the world.

IV. The Great Practice of Rejuvenating China and the Formation of Human Rights Theory with Chinese Characteristics

After China's reform and opening up to the outside world, the Chinese people greatly emancipated their minds, and again, formed the upsurge of learning from and drawing on experience of human civilizations, including the preferential achievements of the capitalism under the slogan of "rejuvenating China." China's human rights ideology and cause maintains rapid development in the great changes of ideology and culture.

After the founding of the People's Republic of China, human rights of the Chinese people gradually changed from the requirements in the guiding principles into everyday life in reality. This is the historical reality. However, in the process of developing human rights, we also experienced zigzags and made mistakes, specially the mistake of infringing human rights on large scale during the "Cultural Revolution" period. Starting 1978, led by Deng Xiaoping, the Communist Party of China rehabilitated all the wrong cases and restored the human rights that were trampled during the extreme leftism period. Meanwhile, it decided to pool all strengths to develop economy and establish systems in various aspects of economy, politics, culture and society such as protecting and improving people's livelihood and maintaining people's dignity, starting the great march toward the goal of modernization. It was in this process of all-round development that the Chinese people solved their problems in food and clothing and started to develop themselves on the basis of obtaining the right to exist. They walk toward the basic human rights endowed by the Constitution step by step and promoted the process of democratic and legal construction. All these reforms and development has greatly promoted the development of China's human rights cause and human rights theory with Chinese characteristics.

First, in the process of bringing order out of chaos, we realized that human rights are not unique to bourgeois, but the rights pursued by all people, including the Chinese people.

Second, we realized while summing up the historical experience that the universality principle of human rights should be combined with the national conditions of various countries. We should not only consider the levels of economic and social development of various countries, but also respect their historical and cultural traditions.



Third, we also realized in our practices that people's realization of human rights in various countries is not immutable and frozen, but constantly rising with economic and cultural development. We must promote the development of our human rights cause according to de facto demands of the most majority of people.

Fourth, we realized in the process of promoting the development of human rights cause that human rights are a right system and the organic combination of various rights under legal protection. In other words, human rights include not only civil rights and political rights, but also economic, social and cultural rights. All the rights must be protected by law.

Fifth, we realized in the process of protecting and improving the Chinese people's human rights that the right to subsistence and right to development are the basic human rights we are committed to give priority to. It is a big issue for China, a developing country with a population of more than 1 billion, to ensure all its people to enjoy the basic conditions and rights for their normal life; it is a even bigger issue in terms of how to enable every individual to develop himself/herself during the economic, political, cultural and social development. Hence, we must give priority to protecting and improving people's right to live and right to develop as the basic human rights. Only by doing this can we ensure that our human rights cause can benefit every Chinese people.

Sixth, we realized in the long-term human rights development that human rights cannot be realized without social harmony and stability, continuous development and legal protection. China experienced years of wars, as well as chaos such as the "Cultural Revolution." Practices show that in an unstable society, the common people suffered the most. Hence, we often say: stability is the premise of realizing human rights; development is the key to realize human rights; law-based governance is the guarantee of realizing human rights.

Finally, we realized in our practices that in the international exchanges, human rights dialogue is better than human rights confrontation. Human rights confrontation cannot protect or improve people's human rights of a country; more over, it can harm the existing human rights because of social unrest. Only through human rights dialogue can we genuinely and effectively promote human rights cause of various countries.

All these understandings are from the Chinese people's human rights practices, including not only the universal consensus of the international community on human rights, but also China's own experience. Such human rights theory with Chinese characteristics is, first of all, formed in the process of China's ideological and cultural transformations. It is as well the fruits of collision and combination of the Eastern and Western cultures, and is becoming a brand new component of the culture of socialism with Chinese characteristics.

(The author is Vice President of China Society for Human Right Studies.)



Confucian Culture and Human Rights Development

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China

I

Confucianism has long been the mainstream of traditional Chinese culture, as well as the major component of the Eastern and the world culture. Counting from the time when the Confucian School was founded by Confucius in the late 6th and early 5th centuries BC, we can see Confucianism has been circulated for 2,500 years. In such a long period of time, Confucianism has been playing a dominant role in Chinese culture. It directs a basic orientation of the country's socioeconomic system, influencing the formation and development of China's political system, and establishing Chinese society's ethic standards and values. Lurking in the deepest layers of the Chinese consciousness, Confucianism manifests the main features of Chinese people and culture. It has played an indelible role in the progress of the Chinese nation and human civilization. Transcending the limits of the times and borders, the cream of Confucianism is still shining today, becoming an important heritage of the world's historical and cultural treasure.

Confucian thoughts are inclusive. Being tolerant and absorbing fine elements from other thoughts are a prominent feature of Confucian culture. Confucian thoughts were formed on the basis of the cultures of the past dynasties (22nd century BC-256 BC), namely the Xia, Shang and Zhou. Confucius, the founder of the Confucian school, followed the principle of "to relate and not to invent," spreading and interpreting predecessors' thoughts while expressing his own views. The Confucian way of pursuing studies made itself not reject other cultures. In a period when Jewish culture was excluded or isolated by other dominant cultures, China was the only nation that friendly accepted ancient Jewish people. In China, where Confucianism took a dominant role, Christianity, Islam and Buddhism developed alongside. It was rare in a world of religious wars, sectarian killings and religious hostility. Buddhism, a religion from abroad, has exerted much greater influence than other Chinese schools of thoughts. Taking Confucianism, an inclusive school of thoughts, as its dominant thinking, China is a country that has the largest number of Buddhist believers. Confucianism and the world's four largest religions, all originating from Asia, have to cope with the fundamental problems people faced in their daily lives – birth, old age, sickness and death, and point out their own means to purge evils and gain happiness. In ethics and morality, they all advocate



love, tolerance and benevolence, and regard helping others as a basic moral principle. Confucian culture has absorbed fine cultural elements from the world and the past.

Confucianism is developing. How it has endured for 2,000 years is that it advances with the times. Because of its openness, Confucianism has been added with new contents and expressions in the long history. The early Confucian humanist ideas that regard people as the most important, the spirits of the land and grain next, and the ruler the least, have grown into lines of keeping in touch with the people and safeguarding their fundamental interests. Socialism has advanced Confucianism. Confucius maintained that “benevolence means love for others,” while we today advocate serving the people and making selfless contribution. Although it did not contain any scientific statements, Confucianism accommodates modern science rather than repels science. Meanwhile, although it does not mention such modern words as democracy, freedom and humanitarianism, Confucianism contains these ideas. Chairman Mao, founder of the People’s Republic of China, advanced and enriched Confucianism by proposing such concepts as “democratic centralism” and “human beings being the most precious.”

II

Confucianism is a rich system, embracing many progressive contents, some of which unexpectedly match modern human rights ideas. The core concept of Confucianism is benevolence “仁,” whose form consists of two parts meaning person and two, respectively. More than two persons constitute society. Benevolence is the principle of governing interpersonal relationship. People should exist harmoniously and develop together according to this principle, as contained in “Do as you would be done by,” “The benevolent man establishes for others stands he wishes for himself and brings others to reach where he wishes to reach himself,” and “To discipline self and love others.” Mencius also held similar ideas in “caring the old as they are your parents and feeding the young as they are your children.” Fundamentally speaking, Confucian “benevolence” is consistent with modern emphasis on basic human rights and the respect for human value and dignity.

The Confucian school emphasizes a person’s loyalty, filial piety, friendliness and respect for elders in handling his or her relationship to other individuals, groups, society, and the country. People should love their friends and brothers, and be filial to parents and loyal to lords. Confucianism requires a person to make selfless contributions to family, other persons, society and the country, namely, “to devote all strength to serving parents and to be willing to die in serving lords” or “be it to serve fathers on one hand; be it to serve your lords on the other hand.” Ancient China is a patriarchal society in which families symbolize collectiveness, and lords the country. Loyalty, filial piety, friendliness and the respect for elders demand that people should love the nation and the collective groups. Thanks to the



spreading of Confucianism, patriotism and collectiveness take a dominant role in traditional Chinese culture.

Confucian culture contains strong humanist elements. It advocates that people are more valuable than things, believing that humans have many merits incomparable by other things. It also believes that people are the foundation of the country. A country's security and development cannot be separated if people as the political foundation are not solidly laid. Confucian culture maintains that people are more important than lords, prioritizing a significant role of people, whose support decides whether to take or lose a country. These ideas are similar to modern democratic ones.

Confucian culture stresses that "food is the paramount necessity of people." It maintains that expanding cultivated areas and curbing business and handicrafts activities can resolve people's basic living problems. Confucian thoughts require that each one should be provided with proper conditions to survive and develop. The ideal of Confucianism is to achieve a society of great unity that is for all. In this society, there are caring and protection for the aged until their last day; and there are nourishment and education for the children and youth. There is kindness and compassion for the widows and widowers, for the orphans, for the childless and for all who find themselves alone in the world, as well as for the disabled and sick. These ideas can be considered the beginning of modern rights to survive and develop.

Harmony being most precious requires a harmonious existence between individuals, between individuals and society, and between nations. It promotes stability and balance, maintains that harmonious interpersonal relationship can avoid and overcome antagonism and conflicts between persons, between people and society and between nations. In contemporary world, a country, a nation or even the entire human world cannot develop without harmony and peace. These traditional ideas help us cope with relationships between countries and between cultures. Different countries and different cultures cannot resolve their problems with force if they want to co-exist. They should understand each other by absorbing each other's merits. Only in this way can different cultures interact with and enrich each other.

III

Confucian culture has undergone tribulations for more than a century under the impacts of western culture and the national crises. Since 1978, China's traditions have come into an era of revival as the country's economy and society have advanced. It is of significance that we inherit fine elements of Confucian culture and get rid of bad elements that are against the times.

China's socialist construction needs to absorb nourishments from traditional culture. The cream of Confucianism is its progressiveness and works for the people. The process



of building China's socialist new culture is also one that we strive to preserve and carry forward the essence of Confucian thoughts, give them new contents and resume their vigor and vitality. For example, building "a society of great unity that is for all," a political ideal advocated by the Confucian school, has almost the same orientation in constructing socialism with Chinese characteristics. Re-excavating and re-sorting the value of this ideal benefits China's social development. For another instance, "self cultivation, home management, country ruling and the world pacification" link personal morality with individual life and national matters, emphasizing close relationships between individuals and society. This plays a great role in promoting China's socialist cultural and ethical progress. That "A man thinks of righteousness where he sees profits" requires a person to obey basic social norms and moral principles while pursuing material interests partially and by fair means or foul. It is significant in guiding China's socialist market economic construction. The unity between man and nature indicates that man is part of nature, a being in the order of nature while nature itself is a big organism in which everything depends on each other to form a unity. Confucian culture puts human society into a larger picture – an ecological environment, stressing harmony between man and nature. This matches environmentalism, and has a more wide-ranging and profound philosophical significance. That "Benevolence means love for others" expects a person to treat others with a broad mind and offer help. "Unity without uniformity" shows every individual and country, though existing in harmony, is an independent body. This idea can still be acknowledged as a principle guiding relationships between persons and between countries.

Confucianism plays a positive role in promoting international human rights and human civilization. Traditional Confucian thoughts that stress social responsibility can make up for what modern civilization lacks. Modern culture, arising from modern industrial civilization, emphasizes individual rights, neglects social responsibility, and leads to extreme individualism and low social cohesion. *The Declaration of Human Duties and Responsibilities* (DHDR) has highly appraised the significance of Confucianism on human future, believing that the principle "Do as you would be done by" is a golden one coping with interpersonal relationships. This also accords with the DHDR principle that strives to maintain a balance between rights and obligations.

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On Taiwan's Guarantee for Its Indigenous Peoples' Lands from the Point of View of Law

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1. Preface

The Taiwan "Legislative Yuan" passed both the *International Covenant on Civil and Political Rights* and the *International Covenants on Economic, Social and Cultural Rights* ("Two Conventions" for short hereafter) through three readings on March 31, 2009, and passed the *Law on the Implementation of the Two Conventions* at the same time. It proclaimed the *Law on the Implementation of the Two Conventions* on April 22, and approved the *Two Conventions* on May 14. These have enabled Taiwan to be geared with the international standards of human rights¹, taking a critical step towards the fulfillment of human rights. As for the substantial aspect of guarantee on human rights, Taiwan has thus entered a new era.

Early before the UN General Assembly passed the *Declaration on the Rights of Indigenous Peoples*, the Taiwan "Legislative Yuan" had passed its *Indigenous Peoples' Basic Law* through three readings on January 21, 2005, and promulgated it on February 5 the same year. That has not only indicated Taiwan's high regard to the protection of the "group rights" of its indigenous peoples, but also has been a trans-epoch milestone in the course in which all circles of indigenous peoples launched one social movement after another to strive for the collective human rights and the guarantee on the basic rights of the indigenous peoples as a whole over 20 years in the past. More than six years have passed since the implementation of the *Indigenous Peoples' Basic Law*. Has the existing legal system in Taiwan exercised sufficient guarantee for the indigenous peoples' lands on earth? This essay tries to discuss it from the point of view of law.

2. The Guarantee on the Lands of Indigenous Peoples Provided by the United Nations Declaration on the Rights of Indigenous Peoples

The UN began to draw the *United Nations Draft Declaration on the Rights of Indigenous Peoples*² in 1985; after 8 years research and preparation participated by

1 See Taiwan "Ministry of Justice," teaching materials for the pandect of Seeds Training Camp of the project that "*Human Rights Stride – the Implementation of the Two Conventions*."

2 Chen Longzhi, chief compiler, *Selected Documents and Commentaries of International Human Right Law*, Taiwan



governments of all countries and hundreds of indigenous peoples' non-governmental organizations, this draft was passed by the 11th General Assembly in 1993, and was ratified by the "Sub-Commission on Prevention of Discrimination and Protection of Minorities" under the Commission on Human Rights in 1994. The above-mentioned draft was submitted to the UN Commission on Human Rights for examination, but was not submitted to the Economic and Social Council for examination or approval, and thus could not be filed to the UN General Assembly for further discussion and approval, and the very reason was that the indigenous peoples' right to self-determination and "land ownership" claimed by the content of some items were very controversial¹. Not until September 13 did the UN General Assembly finally passed the *United Nations Declaration on the Rights of Indigenous Peoples* with a vote of overwhelming majority, and it thus became the new standard of collective human rights of global indigenous peoples with the effectiveness of international law.

According to the preface of the *United Nations Declaration on the Rights of Indigenous Peoples*, "Affirming that indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such,

Affirming also that all peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind,

Affirming further that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust,

Reaffirming that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind,

Concerned that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests,

Recognizing the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources,

...

Convinced that control by indigenous peoples over developments affecting them and

New Century Foundation, 1st edition, 1st print run, April 2006, p. 115.

1 See Liu Weizhe, Monthly Newsletters of the Council of Indigenous Peoples of Taiwan "Executive Yuan," <http://www.apc.gov.tw/upload/publish/monthly/33/33-02.htm>.

their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs...”¹

This quotation indicates that the key point of this *Declaration* is also about what the *Indigenous Peoples' Basic Law* in Taiwan has disclosed. The *Indigenous Peoples' Basic Law* defines the three general legislative purposes to “guarantee indigenous peoples’ basic rights, improve indigenous peoples’ development of survival, and establish the inter-peoples relations of co-existence and shared prosperity,” and clearly points out the fact that the indigenous peoples have been deprived of their human rights and basic freedom, that the rights of “lands, territories and resources” are the most fundamental among all the rights damaged, and the loss of such rights has frustrated the indigenous peoples who attempt to exercise the rights of development to satisfy their own needs and interests. Likewise, the *United Nations Declaration on the Rights of Indigenous Peoples* also makes concrete provisions as follows:

1) Indigenous peoples shall not be forcibly removed from their lands or territories:

The 10th item of the *United Nations Declaration on the Rights of Indigenous Peoples* provides, “Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.”

2) Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories and other resources:

The 25th article of the *Declaration on the Rights of Indigenous Peoples* provides, “Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.”

3) States shall give legal recognition and protection to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired:

The 26th article of the *Declaration on the Rights of Indigenous Peoples* provides, “1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. 2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which

¹ Council of Indigenous Peoples of Taiwan “Executive Yuan,” *Declaration on the Rights of Indigenous Peoples*, bound edition, <http://www.apc.gov.tw/portal/docDetail.html?CID=5ACAA5BA58B3BC0C&DID=3E651750B400646777CA893EF9062D71>.



they have otherwise acquired. 3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.”

4) States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process which gives due recognition to indigenous peoples’ laws, traditions, customs and land tenure systems:

The 27th article of the *Declaration on the Rights of Indigenous Peoples* provides, “States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples’ laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.”

5) Indigenous peoples have the right to redress for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent:

The 28th article of the *Declaration on the Rights of Indigenous Peoples* provides, “1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent. 2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.”

6) Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources:

The first item of the 29th article in the *Declaration on the Rights of Indigenous Peoples* provides, “Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.”

7) States shall not perform military activities in the lands or territories of indigenous peoples in principle:

The 1st item of the 30th article in the *Declaration on the Rights of Indigenous Peoples* provides, “Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.”



8) Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources:

The 1st and 2nd items of the 32nd article in the *Declaration on the Rights of Indigenous Peoples* provide, “1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources. 2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.”

As shown above, while making people realize the “collective human rights” of indigenous peoples, the *United States Declaration on the Rights of Indigenous Peoples* is more of an effort to concretely guarantee the rights of indigenous peoples to the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and like the *Universal Declaration of Human Rights* which has implemented for nearly 60 years, it will follow the same pattern in the future to improve the living standards of indigenous peoples all over the globe, urge all countries in the world to further formulate international standards and national legislation for protecting and improving the collective human rights of indigenous peoples. In this case, a state shall not casually deprive indigenous peoples within its territories of their rights, and the legislation of guarantee on Taiwan indigenous peoples’ rights has been geared with the tide in which the international community is active in guaranteeing indigenous peoples’ rights.

3. The Guarantee on Indigenous Peoples’ Land Provided by the Legal Systems in the USA and Canada

3.1 Canada

At present, there are about 800 bands of indigenous peoples in Canada. The so-called “band” is a “body of Indians” using and benefiting “in common, lands, the legal title to which is vested in Her Majesty.” Among these “bands,” most had lived in hardship in which they had lost the channel to employ natural resources and their land areas were insufficient to support growing population. Not until the recent fifty years did the indigenous peoples obtain their correct political and economic status and their rights to lands and resources¹. In the history, the relationships between the indigenous peoples and colonists in Canada went through several stages: From 1760 to 1850 was a period in which colonists and indigenous

¹ See Guan Dawei, *Indigenous Land Rights in Canada*, included in the *Land Tenure of Indigenous Peoples in Canada*, compiled by Shi Zhengfeng, College of Indigenous Studies, National Dong Hwa University, 1st edition in December 2010, pp. 234-235.



peoples signed peace treaties; from 1850 to 1876 was a period which experienced various forms of assimilation policies; in 1876, Canada passed the *Indian Act*, so from 1876 to 1970, the indigenous peoples' rights to lands in Canada were basically regulated by the *Indian Act*; from the 1970s, the indigenous peoples in Canada have entered a new stage for the claims of land rights¹. Now, each stage is introduced as follows:

1) From 1760 to 1850

Before the *Royal Proclamation* in 1763, white people's governments had signed more than 40 treaties with indigenous peoples; from 1781, the colonist governments signed 482 treaties in total with the indigenous peoples in Canada. The treaties in this period have been important means for white people to deal with their relations to indigenous peoples in terms of land². In particular, what deserves attention is that Britain promulgated the *Royal Proclamation* in 1763, intending to organize the establishment of the British Empire in North America, regulate the relations to the indigenous peoples in North America, and maintain friendly peace relationships with indigenous peoples by means of the publicity of this *Proclamation*. The *Royal Proclamation* delineated boundaries between British colonies and indigenous peoples' land, and formulated related regulations about trade, reclamation and land tenure. For example, this *Proclamation* forbade white colonists from crossing the Appalachian Mountains to reclaim lands, proclaimed that no individuals were entitled to privately acquire the lands of indigenous peoples, and that only the Royal had the rights and power to acquire the lands of indigenous peoples through purchase after negotiation with the latter. After the publicity of the *Proclamation*, however, the essence and content of indigenous people's land tenure were not clearly defined at all. For indigenous peoples, their land rights were not based on the conferment or recognition by any exterior regimes; instead, they were the inherent rights that the Creator had inferred on the basis of the special tie between indigenous peoples and the lands inhabited by them. For the Canadian Government, however, neither the general law nor the provision in the 35 article of the *Constitution Act* of Canada had made particular explanation on the nature of the afore-mentioned rights. Therefore, it affirmed that all the lands of the whole country of Canada had been owned by the "Federal Government," and the indigenous peoples' rights could be limited at any time by the legislation of the Federal Government³.

1 Ibid, p. 233.

2 Yapasuyongu Poiconu, *Mechanism for Resolving Indigenous Territorial Disputes in Canada*, included in the *Practice of Land Rights of Indigenous People in Canada*, compiled by Shi Zhengfeng & Xie Ruolan, College of Indigenous Studies, National Dong Hwa University, October 2008, pp. 129-131.

3 Shi Zhongshan, *Sparrow v. the Queen*, 1990, included in the *Guarantee on the Rights of Indigenous People in Canada*, College of Indigenous Studies, National Dong Hwa University, 1st edition in December 2010, p. 85; Guan Dawei, *Indigenous Land Rights in Canada*, included in the *Land Tenure of Indigenous Peoples in Canada*, compiled by Shi Zhengfeng, College of Indigenous Studies, National Dong Hwa University, 1st edition in December 2010, p. 236.



2) From 1850 to 1876

Many treaties declared that the lands of white people's governments belonged to the Royal, and indigenous peoples had their rights to treaty lands formulated by related treaties, but the guarantee provided by these treaties was neither clear nor permanent, so the Federal Government employed various forms of assimilation policies to seize lands. For the "lands reserved for the Indians" proposed in the *Constitution Act* in 1867, for example, there came to be a concrete conception in two treaties signed in 1871, which were respectively numbered as Treaty One and Treaty Two. These two treaties stipulated to grant each household of five family members 160 acres "reserved lands," each person three Canadian dollars annuity, each person three Canadian dollars retirement pension, and each reserved land a school. The treaties about reserved lands thereafter had the same structure by and large, but the area of granted reserved lands varied, for example, Treaty Three increased the reserved lands for a household of five family members up to 640 acres¹.

3) From 1876 to 1970

The *Indian Act* drawn and promulgated by the Canadian Government in 1876 has been the most important one concerning indigenous peoples' rights since the publicity of the *Royal Proclamation*. The formulation of this act has been designed, by the constitutional entrustment of the 24th item of the 91st article of the *Constitution Act* of Canada in 1867, for granting the Federal Government of Canada with power to legislate on the affairs of Indian indigenous people and their reserved lands. As for land policies, the *Indian Act* provided that the ownership of reserved lands were commonly possessed by a "band," but particular individuals might also acquire the ownership of particular lands, and that non-members of indigenous peoples might acquire the lands "abandoned" by indigenous people. The latter point opened a convenient door for non-indigenous individuals to acquire the reserved lands of indigenous people². This act clearly stipulated the rights that indigenous peoples had, and it was constantly amended in terms of content due to subsequent national development and social changes, but the indigenous peoples had never been satisfied with the Canadian Government's efforts in guaranteeing their rights. Only since 1970, when the Supreme Court made several successive important judgments to validate the nature and content of indigenous peoples' rights, has the guarantee for indigenous peoples' rights in Canada been gradually improved³.

1 Yapasuyongu Poiconu, *Mechanism for Resolving Indigenous Territorial Disputes in Canada*, included in the *Practice of Land Rights of Indigenous People in Canada*, compiled by Shi Zhengfeng & Xie Ruolan, College of Indigenous Studies, National Dong Hwa University, October 2008, pp. 131-132.

2 See Guan Dawei, *Indigenous Land Rights in Canada*, included in the *Land Tenure of Indigenous Peoples in Canada*, compiled by Shi Zhengfeng, College of Indigenous Studies, National Dong Hwa University, 1st edition in December 2010, p. 236.

3 Shi Zhongshan, *Sparrow v. the Queen, 1990*, included in the *Guarantee on the Rights of Indigenous People in Canada*, College of Indigenous Studies, National Dong Hwa University, 1st edition in December 2010, p. 86.



4) After the 1970s

During this period, the Supreme Court of Canada made several significant judgments about the indigenous peoples' rights, among which the most typical one was that for the case of *Calder v. Attorney General of British Columbia* (34 D. L. R. (d) 45 (C. C.)). In the case of *Calder*, the Nishga indigenous people, who had lived in an area as vast as one thousand square miles in the northwest Province of British Columbia, Canada from time immemorial to the present, appealed to the Supreme Court to claim that, because this minority group did not sign any treaty or covenant with the British Royal, and did not express any agreement about the Canadian Government's action to establish Indian reserved lands within this territory, this minority group's land rights to the territory in question should continue to exist and were not withdrawn, and thus the British Columbia provincial government should not arbitrarily infringe such rights of the lands mentioned above¹. The federal supreme court procedurally overruled the Nishga minority group's appeal at the end by reason that the appeal was illegal, but in the ruling of this case, the supreme court pointed out that the indigenous people's land right was a right that had existed even before European colonists arrived, and did not belong to the type of rights sourcing from any statutory law². The following is an excerpt of the significant opinions of the Chief Justice in the case of *Calder*:

"The fact is that when the settlers came, the Indians were there, organized in societies and occupying the land as their forefathers had done for centuries. This is what Indian title means and it does not help one in the solution of this problem to call it a 'personal or usufructuary right'. What they are asserting in this action is that they had a right to continue to live on their lands as their forefathers had lived and that this right has never been lawfully extinguished."³

The meaning represented in the case of *Calder* rests in its modern treatment of indigenous peoples' historical rights on the basis of law. The case of *Calder* has not only been the first judgment that admitted the inherent existence of indigenous peoples' land rights in the Anglo American common law system, but also has affected the amendment of *Constitution Act* in 1982 to include the legal interest guarantee on indigenous people's land rights into its Article 35; more importantly, it urged New Zealand, Australia and other international community members followed its example in succession, initiating

1 Huang Juzheng, *From St. Catherine's Case of Milling Co. to the Case of R. v. Sparrow*, included in the *Guarantee on the Rights of Indigenous People in Canada*, compiled by Shi Zhengfeng, College of Indigenous Studies, National Dong Hwa University, 1st edition in December 2010, p. 52.

2 See Note 2, Shi Zhongshan, p. 87.

3 Cai Zhiwei, *Indigenous Peoples' Title to Lands in the Legal System of Canada*, included in the *Practice of Land Rights of Indigenous People in Canada*, compiled by Shi Zhengfeng & Xie Ruolan, College of Indigenous Studies, National Dong Hwa University, October 2008, pp. 108-109.



the international speculation about indigenous peoples' land rights¹. Now, the guarantee provisions for indigenous peoples in Article 35 of the *Constitution Act* of Canada in 1982 are enumerated as following:

1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit, and Metis peoples of Canada.

3) For greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired.²

3.2 The USA

The development of indigenous people's land right in the USA can be largely divided into three stages; in the early 1900s, the federal supreme court of the USA made several judgments, affirming that indigenous Indian peoples had certain land rights, but these judgments did not bring permanent guarantee for the indigenous people. At the end of the 1900s, the USA government limited the Indians' rights of lands through the "*General Allotment Act*," causing disaster to the indigenous peoples' land rights. This situation was not improved until the *Meriam Report*, the *Indian Reorganization Act* and land-returning policies were proposed in the 20th century. Now, the whole course was respectively narrated as follows:

1) The Marshall Trilogy in the Early 19th Century

In the early 19th century, John Marshall, a chief justice of the federal supreme court of the USA, made three epoch-making judgments, which are called "Marshall Trilogy." These rulings formed a cornerstone for the USA Indian tribes' claims on their original Indian title of land, and are still most frequently invoked by contemporary judicial institutions in a trial related to Indian tribes' rights. These three rulings are the case of *Johnson v. McIntosh*, 21 U. S. 543 (1823), the case of *Cherokee Nation v. Georgia*, 30 U. S. 1 (1831) and the case of *Worcester v. Georgia*, 31 U. S. 515 (1832).

In the case of *Johnson v. McIntosh*, the plaintiff had obtained land through purchase from the chieftain of the Piankeshaw tribe respectively in 1773 and 1775, and because that was still a time of colonies, and there was no acts regulating the trade and exchanges with Indian tribes, the purchases were not prohibited. Only for the land in question that the defendants acquired through purchase from the USA Government in 1818, the court held that the key point of this case rested in whether the dealing that the chieftain of Indian tribes relinquished the lands occupied by the tribe to a non-Indian was valid or not. At the end, the court ruled that this transference was invalid because the right that an Indian tribe

¹ Ibid, p. 109.

² Ibid, p. 115.



possessed was the right of occupancy, and the USA Government was the only owner of lands within its territory, for its European ancestry “discovered” the North American continent and “conquered” indigenous residents¹. This case laid the relationship between Indian tribes and the USA on the basis of “principle of discovery” and “principle of conquest,” but Marshall himself expressed that Indians, as independent peoples, were legal occupants of lands, only that they could not transact their land rights on their own, and that such rights could be traded with European countries with sovereignty or the countries established in the American colonies².

In the case of *Cherokee Nation v. Georgia*, Georgia State divided the territory of the Cherokee tribe within the state into four township districts when the former was established, and meantime enforced the law of the state within these districts, and terminated all the law and regulations of the Cherokee tribe itself. In addition, Georgia State distributed the lands to residents of this state, and took over all the mines on the territory in question. The Cherokee tribe claimed that it itself was an autonomous country with independent sovereignty, that the land did not belong to any state, and that the deed of Georgia State violated the supreme sovereignty of the Federal, therefore, it appealed to the Federal Supreme Court. The Supreme Court ruled that unless Indians voluntarily transfer their lands to the USA Government, doubtlessly they had the ownership of the lands that they occupied; but Marshall also held that Indians were somewhat like “dominated domestic dependent nations,” that is, their relations to the USA were like those between a ward and a guardian³.

In the case of *Worcester v. Georgia*, Georgia State tried to disregard the existence of the Cherokee Nation, annexing the lands of the Cherokee Nation in the manner of occupancy and expulsion, and establishing many decrees to forbid any individuals’ behavior of inhabiting the lands of the Cherokee Nation on their own without the permission by the state law. In 1831, a missionary resided in the lands of the Cherokee Nation without the permission by the state, hence the Georgia State Government decided to sentence him a four years penal servitude. After the missionary appealed to the Federal Supreme Court, the latter held that the deed of Georgia State violated the Constitution. Marshall stressed in his judgment that Indians did not lose their sovereignty because of their status as a dependent nation, and that

1 Dong Mengzhong, *On the Legal Guarantee for Indigenous People’s Statuses*, a MA thesis at the Department of Law, National Chengchi University, 2008, pp. 67-68.

2 Lin Shuya, *De-/Reconstructing the Land Policies for Indigenous Peoples in Taiwan*, a doctoral thesis at the Institute of Law, National Taiwan University, 2007, p. 211; Shi Zhengfeng, *An International View on the Land Tenure of Indigenous Peoples*, Indigenous Peoples and National Land Planning Conference, 2005, <http://mail.tku.edu.tw/cfshih/seminar/20050721/20050721.htm>.

3 Liu Tianfu, *The Ideal and Reality of Indigenous People’s Autonomy: An Analysis of Policies for Indian Indigenous People in America from the 1970s to the 1980s*, a MA graduate thesis at the Institute of Americas, Tamkang University, 1998, pp. 67-68; Shi Zhengfeng, *An International View on the Land Tenure of Indigenous Peoples*, Indigenous Peoples and National Land Planning Conference, 2005, <http://mail.tku.edu.tw/cfshih/seminar/20050721/20050721.htm>.



in accordance to the common law of Britain, Indians acquired the ownership of lands thanks to their preoccupancy, and the government was obliged through entrustment to protect indigenous peoples' land rights¹.

2) The “*General Allotment Act*” at the late 19th century caused the loss of Indian land rights

Although the afore-mentioned rulings affirmed Indians' land rights, the Congress of the USA still constantly weakened Indians' land rights through legislation. The most serious case was the *General Allotment Act (Dawes Act)* in 1887. In the late 19th century, the USA Government used the improving of Indians' life as an excuse, enforcing the *General Allotment Act* to forcibly divide the lands in Indian reservations and allot them to tribal members, and sell “surplus lands” to the white. Consequently, it not only caused the substantial loss of Indian lands, but also the collapse of community social structures of Indians. Now, it is narrated in detail as follows.

The “reservations” were the territories affirmed by the Federal Government and owned by Indian indigenous nations which had self-determination. With the growth of population of white immigrants, however, the relation between the development of colonies and the rights of Indians became increasingly tense, and the Congress faced considerable pressure from white immigrants, railway companies, lumbering companies and other mining enterprises. The latter demanded to lift the restriction upon “Indian reservations” so that the lands are more productive and the use of lands is more sufficient. Therefore, they urged the enactment of the *General Allotment Act*. The primary intention of the *Dawes Act* was to improve the life of Indians, and lead them into the mainstay society of the America so as to relieve the tension between them and the white, and the best way to do so was thought to be the accelerated “civilization” of Indians. The so-called “civilization” means to give up “community” tribal life and adopt “the right of private property.”² So, the *Dawes Act* intended to ask Indians to give up the tradition of “tribe ownership” that had lasted for thousands of years, and assimilate Indians with the view of “private lands” in the Western society.

Therefore, the *General Allotment Act* was to authorize the US President to choose suitable Indian reservations, divide lands and allot them to tribal members. In the light of this act, the US President was authorized to allot Indian lands by the following principles: 1. Each adult head of an Indian family acquired 160 acres, each single adult and child acquired 80 acres, and each single minor acquired 40 acres (those who had multiple status may acquire their lands with each of such status); 2. Indians might select lands on their own, for those who could not make choices in time for some reasons, the Department of Interior should

1 Ibid.

2 Lin Shuya, *De-/Reconstructing the Land Policies for Indigenous Peoples in Taiwan*, a doctoral thesis at the Institute of Law, National Taiwan University, 2007, p. 188.



perform on their behalf; 3. In order to prevent Indians from selling off the lands that they acquired through such allocation, the lands thus acquired must be entrusted to the State for 25 years, and the allotted lands should not be transferred during this period; 4. The Indians who accepted allotted lands and broke away with tribes would acquire the statuses of USA citizens, and were ruled by the law of the state where they resided; and 5. The surplus lands not allotted were sold by the government to white peasants¹.

This legislation seems to have a very good intention, for once acquiring lands through allotment, individual Indians would be able to make use of their own lands and take responsibilities for their own life. When Indians learned to be farmers and thus make a living on their own, the government could thus relieve its financial burden, too. In addition, the “remainder of lands” that Indians did “not use” could be sold to white immigrants to satisfy their requirements; moreover, the *Dawes Act* forbade Indians from transferring the lands that they had been allotted to within a certain period, and this could prevent the loss of lands before Indians were “civilized.” However, what really happened was not so optimistic at all; in fact, the allotment of lands was extremely quickly done, and the extinction of reservations was surprisingly quick, too. In 1881, Indian lands amounted up to 155,632,312 acres, but in 1890 this number decreased to 104,314,349 acres, and by 1900, there were only 77,865,373 acres left. This statistic indicates how many Indian lands had been ranged as “surplus lands” and fallen into the hands of the white². At last, under the *General Allotment Act*, two thirds of Indian lands were a result when the Government transferred them to the white in the name of “surplus lands,” and the rest one third were lost because Indian owners of the allotted lands transferred them to white people after 25 years entrustment periods. In the latter case, Indians often broke contracts or lost their rights of redemption in fraudulent deals or mortgage and thus had to transfer their lands to the white. Even worse, despite the restriction that forbade transference of allotted lands within 25 years, the *Burke Act* in 1906 allowed anyone who received allotted lands directly became an integration obligee of lands where he was qualified and able to take care of his own business. Therefore, the *Burke Act* accelerated the course in which Indians acquired the whole rights of lands, and also speeded up the course in which the Indian lands fell into the hands of the white. At the end, at least 90% integration obligees of allotted lands lost their lands and got impoverished³.

3) The *Meriam Report*, the *Indian Reorganization Act* and the land-returning policies

The “Institute for Government Research” in Washington D. C. authorized the

1 Liu Tianfu, *The Ideal and Reality of Indigenous People's Autonomy: An Analysis of Policies for Indian Indigenous People in America from the 1970s to the 1980s*, a MA graduate thesis at the Institute of Americas, Tamkang University, 1998, pp. 26.

2 Lin Shuya, *De-/Reconstructing the Land Policies for Indigenous Peoples in Taiwan*, a doctoral thesis at the Institute of Law, National Taiwan University, 2007, pp. 189-190.

3 Ibid, p. 193.



Department of the Interior in 1926 to investigate the social status of Indians at that time, and the *Meriam Report* that the latter delivered made a detailed report and pointed out problems that the Government's policies had caused in all aspects such as Indians' health, education, economy, law and religion; the result of the report shocked the administrative units. As for the policy of Indian land allotment, the report pointed out that the "private ownership of lands" did not lead to the result of "civilization," and that facts had proven just the contrary. The report pointed out that Indians had lost their lands in mass, but were unable to improve their economic status to proper levels, and that this situation had caused high mortality, poor health condition and lower education degree. The report came to a conclusion that the Government should allot special funds to support Indians, and it had urged the emergence of the *Indian Reorganization Act* with progressive views in the 1930s¹.

The *Indian Reorganization Act* had the following major goals: to terminate the land allotment policy, to protect Indians' religion and freedom, to preserve tribal culture and societies, to preserve and re-settle Indian lands, to grant Indian reservations federal loans for the economic development over there, to assist Indians to seek redress from the Federal, and so forth. The policy objective of this law was to terminate the "in-severalty" policy on Indians, and restore their previous life style as tribal community. As for the issue of lands, the major content of this law rested in its annulling the afore-mentioned "*General Allotment Act*," trying the best for the Federation to return the lands that Indians had lost during the enforcement of the "*General Allotment Act*," and preventing the continuous loss of indigenous people's lands. The "*Reorganization Act*" rectified the view of having lands in severalty during the period of land allotment, replacing it with a tribal registry system, that is, to carry out a system under which lands were registered by groups of members in certain proportions; as for the definition of "member," most tribes employed a system of consanguine proportion to determine tribal membership². The vigorous implementation of the "*Indian Reorganization Act*" had an absolutely positive influence on the development of indigenous people, for the population of Indians gradually grew under the implementation of the "*Indian Reorganization Act*," increasing from the mere remaining 220,000 in 1910 up to 550,000 in 1945, with an increase as many as twice and a half within 35 years; what is more, the *Indian Reorganization Act* had recovered four million acres lands within an inch of loss during the implementation of the land allotment act³.

In the 1970s, the US President Richard Milhous Nixon (1913-1994) pursued a self-

1 Liu Tianfu, *The Ideal and Reality of Indigenous People's Autonomy: An Analysis of Policies for Indian Indigenous People in America from the 1970s to the 1980s*, a MA graduate thesis at the Institute of Americas, Tamkang University, 1998, pp. 29-30.

2 Ibid, pp. 30-31.

3 Ibid, p. 32.



determination policy for indigenous people in his incumbency, including the returning of the lands to indigenous people. In particular, the most famous example was the case of returning the lands to Taos Pueblos. As for Taos Pueblos, the Blue Lake at the central New Mexico State had been the source of life and the center of national spirit. However, the Federal Government set up the Kit Carson National Forest at this place, which prevented the people of this nation from freely accessing it and thus caused a loss of 48,000 acres lands. The Taos Pueblos had constantly claimed to recover this land. In the 1950s, a claims commission accepted their petition, and decided that the procedure through which the Federal Government acquired the Blue Lake was illegal, but the claims commission merely required the Federal Government to offer ten million US dollars and thousands of acres of lakeside lands rather than demanding the Congress to legislate for returning the Blue Lake. This nation had been repeatedly demanding the returning of the land in the 1960s, but the Government at that time, in fear of the similar demands rising from other nations, did not consent to its request. This land was finally returned in Nixon's incumbency, and it was particularly stated that this return does not represent the US Government's kindness towards Indians, instead, it was a deed based on the principle of fairness and justice¹. What is more, The Alaska Native Claims Settlement Act of 1971 turned out to transfer lands covering one twelfth of Alaska to indigenous people, and returned 21,000 acres lands to indigenous people in 1972².

4. Taiwan's Guarantee on the Lands of Indigenous Peoples

"Yuan zhu min" (aborigines or indigenous people) in Taiwan had been called "shan bao" (mountain compatriots) even up to 1992, and the name had not been rectified until 1994. In 1997, "indigenous people" were renamed "indigenous peoples," with a slogan added that "the State affirms multiple cultures, and actively develops indigenous people's languages and cultures." This course indicates that the indigenous peoples in Taiwan had received little attention.

4.1 The Meanings and Objectives of Indigenous People's Reserved Lands in Taiwan Region

The 3rd section in the *Regulations on Development and Management of the Lands Reserved for Indigenous People* gives a clear definition about "the reserved lands of indigenous peoples": It "refers to the mountain land originally reserved by the aborigine administration office and reservation land legally delineated and annexed for aborigines to

1 Liu Tianfu, *The Ideal and Reality of Indigenous People's Autonomy: An Analysis of Policies for Indian Indigenous People in America from the 1970s to the 1980s*, a MA graduate thesis at the Institute of Americas, Tamkang University, 1998, pp. 46-47.

2 Lu Lü-Jinde, *Discussion on Policies about the Ownership of Indigenous Peoples' Lands in Taiwan*, a MA thesis at the Institute of Public Administration Research, National Dong Hwa University, 2010, p. 46.



safeguard their livelihood.” In fact, the source of indigenous peoples’ reserved lands dates back as early as to the Qing Dynasty, and the delineation of reserved lands began in the Japanese occupation period. The delineation and establishment of reserved lands had been to restrain residents in plains from entering the reserved lands of indigenous people in case they disturbed the life of indigenous peoples on the one hand, and on the other hand, it was intended for preventing the indigenous peoples’ expansion and flowage so that they could be easily administrated. In particular, the real intention of Japanese colonist government’s delineation and establishment of “reserved lands” was to contain the indigenous people so as to plunder the mountain resources outside reserved lands. After Taiwan was recovered, the government largely followed the boundary delineation of indigenous people’s reserved lands in the Japanese occupation period; its policy did not change greatly, that is, the purpose of the delineation and establishment of indigenous people’s reserved lands was still to conveniently exercise administration in mountains and take care of the livelihood of indigenous peoples¹. What is more, in order to guarantee the indigenous people’s rights and interests, stabilize the indigenous people’s life, and develop the indigenous people’s economy, the government specially allotted more than 240,000 hectares state-owned lands for the indigenous peoples to use. Now, the evolution of reserved lands in Taiwan is described as the following five stages²:

1) The Period of Kangxi Reign of the Qing Dynasty

In 1683, the 22nd year of the Kangxi Reign, the Qing Dynasty government recovered Taiwan as its territory, and its policy about the relations to indigenous minorities and foreign countries at that time was mainly to “protect indigenous minorities, and foster, educate and assimilate them.” The government of the early Qing Dynasty held that the sovereignty of dry lands and hunting grounds around the tribes should belong to the Pingpu Minority, and set up stones as boundary markers, strictly forbidding people of the Han Ethnic Group from stealthily crossing the borderlines. It carried out “a policy of protection for indigenous people’s lands”³.

2) The Yongzheng Reign of the Qing Dynasty

In 1727, the fifth year of the Yongzheng Reign, Yin Tai, a censor from Taiwan, submitted a “*Report on the Advantages and Disadvantages of Lands and Grains in Taiwan*” to the Emperor. According to this report, the borders between immigrants and indigenous minorities were delineated, a rent system of “*fan da zu*” (rents that Han people paid to

1 Lin Qiumian, *Preliminary Discussion about the Issues of Indigenous People’s Reserved Lands in Taiwan*, in the *Analysis on National Policies* by the National Policies Research Foundation of the Consortium Corporation, September 30, 2002, <http://old.npf.org.tw/PUBLICATION/SD/091/SD-B-091-029.htm>.

2 Visit website <http://thao.ngo.org.tw/land/>.

3 See Lin Qiumian.



indigenous people when they rented the latter's lands) was carried out to allow the Han people rent indigenous people's lands. A larger community was granted five hundred *jia*, a middle-sized community four hundred *jia*, and a smaller community three hundred *jia*. Such places were used for indigenous people to farm and hunt, preventing civilized aborigines from losing property and thus degenerating into barbarian aborigines because of the Han people's invasion. That is the source of indigenous peoples' reserved lands¹.

3) The Period of Jiaqing Reign of the Qing Dynasty

A reform was introduced to set up "*fan she*" (literally barbarians' community), two kilometers around a "*fan she*" were planted trees as fences. "*Fan she*" was provided for indigenous peoples to farm and hunt, strictly forbidding the Han people from crossing borderlines and infringing the indigenous people in the pattern of reclamation and farming. Such lands were the rudiment of "indigenous peoples' reserved lands."

4) The Period of Japanese Occupation in Taiwan

In order to exactly control the territories of indigenous peoples, the Japanese Government carried out a land survey known as "15 years continuous project" in 1925. Before the survey, the indigenous peoples' activity regions amounted 1.66 million hectares or so in area. After the end of the survey, a "Forest Project Regulation" was formulated in 1928, and the lands were divided into three types in accordance to their different natures: "forest lands to be reserved (about 1.094 million hectares)," "forest lands to be half reserved (about 0.2 million hectares)" and "forest lands not to be reserved (about 77,000 hectares)." In particular, the "forest lands to be half reserved" were also called "lands demanded by the indigenous people" or "the reserved lands of the Gaosha Tribe." They were specially provided for indigenous people to farm, and they were territories for indigenous people's life and activities. These kinds of lands were the basis of indigenous people's reserved lands. The above-mentioned indicates that the lands used by the indigenous people had decreased from the previous 1.66 million hectares to mere 200,000 hectares or so².

5) The Period after the Recovery of Taiwan

The existing land system and executive regions that Japanese established were followed in the first place; after the recovery of Taiwan, in the light of factual requirement, the government renamed the previous "forest lands to be half reserved" in the Japanese occupation period to be "reserved lands in mountainous regions" after discussion and negotiation by a specially organized project contingent. The "reserved lands in mountainous regions" amounted about 240,000 hectares, exclusively for the use of indigenous people's livelihood and the implementation of administration in mountainous regions³. In 1948,

1 See Lin Qiumian.

2 See Lin Qiumian.

3 See Lin Qiumian.

the Taiwan provincial government formulated the *Procedure of Management of Reserved Lands in Each County of Taiwan Province* as a legal basis for its administration; in 1960, it amended this *Procedure* to be the *Procedure of Management of Reserved Lands in Taiwan Province* (The afore-mentioned two *Procedures* were amended again respectively in 1966 and 1974); in 1990, the “reserved lands in mountainous regions” were renamed to be “reserved lands for mountain compatriots,” and the *Mountain Compatriot Reservation Land Development Management Procedure of Taiwan* was formulated by the “Executive Yuan”; and in 1995, in order to match up with the amendment of the *Constitution*, the “reserved lands for mountain compatriots” was renamed “indigenous people’s reserved lands,” and the afore-mentioned *Procedure* was amended to be the *Regulations on Development and Management of the Lands Reserved for Indigenous People* at the same time (amended for five times respectively in 1998, 2000, 2001, 2003 and 2007 later on). Up to now, it is still the major basis for the development and administration of indigenous people’s reserved lands.

In the light of the provision in the 3rd section of the *Regulations on Development and Management of the Lands Reserved for Indigenous People*, the purpose with which the government set up reserved lands for indigenous people was to “guarantee indigenous people’s livelihood, and perform indigenous people administration,” and more than 240,000 hectares state-owned lands were allotted for indigenous peoples’ use in farming. The purpose of such establishment has mainly been to guide and improve the development of livelihood of indigenous people as “individuals” or families, and at the same time concurrently take into account the livelihood opportunities of indigenous people as a “whole” and the development of their national economy. Such “reserved lands” have special political and economic purposes and uses, and are different from other public lands in nature¹. At present, the indigenous people’s reserved lands in the Taiwan area contain the following three types:

1) “Reserved Lands in Mountainous Regions”

The “forest lands to be half reserved” specially for indigenous people to use in the Japanese occupation period, i.e., “lands required by barbarians” or “reserved lands of the Gaosha Tribe,” were specially for the use of indigenous people in farming; after the recovery, more than 240,000 hectares “reserved lands of indigenous peoples” were measured and registered in total.

2) Annexation to Reserved Lands of Indigenous Peoples

During the period from 1988 to 1991, the Taiwan provincial government enlarged indigenous peoples’ reserved lands, the reason was that due to the population growth of indigenous people every year, the farmlands (agricultural lands and forest lands) previously allotted to indigenous people had been insufficient to maintain their basic livelihood, and

¹ Visit website <http://thao.ngo.org.tw/land/>.



that the reserved lands that the government had allotted to the indigenous peoples were in poor geographical conditions and difficult to properly operate agricultural industry, and had constituted considerable pressure upon the development space of indigenous people as a “whole.” Therefore, the government formulated and promulgated the *Principles for Measuring and Dealing with the State-owned Lands Outside Indigenous Peoples’ Reserved Lands Used by Indigenous Peoples as Prearranged Annexation to Reserved Lands of Indigenous People* and a related work plan, with the added lands totaling 16,999 hectares. The addition was implemented in the measured and affirmed areas in response to the requirement of reservation annexation put forward both by the indigenous people in plains and township (town, cities and district) who had already owned reserved lands¹.

3) Allocation of Reserved Lands to Indigenous People

During the period from 1990 to 1992, the Government allotted reserved lands to indigenous people because of the consideration that since the recovery of Taiwan, no reserved lands of indigenous people had been allotted in township (town and city) where plain-inhabited indigenous peoples resided, and the construction lands where plain-inhabited indigenous peoples resided mostly belonged to public lands, and had to be rented or purchased from land administration institutions. In order to meet the requirement of reality, the construction lands within the range of public lands inhabited and used by plain-inhabited indigenous peoples were allocated and registered as allotment by related regulations, so as to satisfy the requirement of improving the quality of life of the society as a whole and increasing the area of used land of indigenous people. In order to carry out the work on allocation, the government specially formulated and promulgated the *Essentials of Allocation of the Public Lands Inhabited and Used by Indigenous People to the Indigenous People as Their Reserved Lands in Taiwan Province* and related work plan, allocated the construction lands that had already been used by indigenous people to the indigenous people as allotment, and the lands allocated amounted to 285 hectares in area. That had been designed for developing the economy of indigenous peoples².

The existing reserved lands of indigenous people actually total more than 25,000 hectares in area, are sparsely located in 39 townships and towns all over 12 counties, which are Taipei, Taoyuan, Hsinchu, Miaoli, Taichung, Nantou, Chiai, Kaohsiung, Pingtung, Taitung, Hualien and Ilan in Taiwan Province. They are mostly lands within the range of mountain slopes, part of which overlap with water source, water quality and water quantity reserves, natural reserves, wild animal reserves, national parks, coastal and ocean reserves, fishery resource reserves and so on. People should take care to avoid excessive exploitation which might damage ecological environment, protect important natural and cultural assets,

1 Visit website <http://thao.ngo.org.tw/land/>.

2 Visit website <http://thao.ngo.org.tw/land/>.



and prevent disasters, intending the sustainable development of future generations¹.

4.2 The Declaration on the Rights of Indigenous Peoples and the Guarantee for Indigenous Peoples' Land Rights

The *Declaration on the Rights of Indigenous Peoples* largely divides indigenous peoples' rights into two general types: the right to subsistence and the right of equality. The right to subsistence has a narrower range, and what it is concerned with is how to guarantee the minimum subsistence of indigenous people. In comparison, the right of equality is a major part of basic human rights, and it requires the active promotion of the rights of indigenous peoples. Having a relatively broader range and being more positive, the right of equality can be divided into citizen rights and group rights: What the former is concerned is how to guarantee the rights of individual indigenous people not to be discriminated, and what it stresses is the equality in form², including the provisions in the 2nd and 6th articles of the *Declaration*, i.e., "Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity" and "Every indigenous individual has the right to a nationality"³; the latter takes the collectivity of indigenous people as a unit to look after, including the right to identity (the 9th article), the right of self-determination (the 3rd and 4th articles and part of the 8th article), the right of culture (the 3rd and 5th articles, part of the 8th article, the 11th article, part of the 12th article, part of the 13th article, and part of the 14th article), the right of property (part of the 5th article), the right to jurisdiction (part of the 5th article, part of the 13th article, and the 27th, 34th and 40th articles) and the right of redress (the 28th article)⁴. Now, a further analysis of the afore-mentioned right to identity, right of property and right of redress of indigenous peoples related to indigenous people's reserved lands is made as follows:

1) The right to identity

As the 9th article of the *Declaration on the Rights of Indigenous Peoples* provides, "Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right."⁵ So,

1 See Lin Qiumian.

2 Shi Zhengfeng, *Taiwan Indigenous Politics and Policy*, Xinxin Taiwan Cultural and Educational Foundation of Consortium Corporation, Feb. 2, 2005, p. 33.

3 Council of Indigenous Peoples of Taiwan "Executive Yuan," *Declaration on the Rights of Indigenous Peoples*, bound edition, <http://www.apc.gov.tw/portal/docDetail.html?CID=5ACAA5BA58B3BC0C&DID=3E651750B400646777CA893EF9062D71>.

4 Shi Zhengfeng, *Taiwan Indigenous Politics and Policy*, pp. 33-34.

5 Council of Indigenous Peoples of Taiwan "Executive Yuan," *Declaration on the Rights of Indigenous Peoples*, bound edition, <http://www.apc.gov.tw/portal/docDetail.html?CID=5ACAA5BA58B3BC0C&DID=3E651750B400646777CA893EF9062D71>.



indigenous people are entitled to require keeping and developing their unique collective identity, and meantime are entitled to view themselves as indigenous people, in other words, indigenous people asks to be recognized as indigenous peoples by others. The term “mountain compatriots” had been stigmatized by the society of the Han people for long, so the primary goal in the movement of indigenous people was to “correct the name”: to claim that they themselves are the “indigenous people” in Taiwan, expect to integrate the indigenous peoples with their collective identity, and obtain the legitimacy of true owners of lands. The “indigenous people” is a collective noun, when it is used as singular, it refers to all the indigenous people as a whole; when the plural form “indigenous peoples” is used, it refers to particular indigenous nations¹. So, the 1st item of the 2nd section in the *Taiwan Indigenous Peoples Basic Law* prescribes as such, “Indigenous peoples: refer to the traditional peoples who have inhabited in Taiwan and are subject to the state’s jurisdiction, including Amis tribe, Atayal tribe, Paiwan tribe, Bunun tribe, Puyuma tribe, Rukai tribe, Tsou tribe, Saisiyat tribe, Yami tribe, Tsao tribe, Kavalan tribe, Taroko tribe and any other tribes who regard themselves as indigenous peoples and obtain the approval of the central indigenous authority upon application.” So, this provision has made a specific definition of “indigenous peoples”; this definition is different from that of the “ethnic groups in the frontier regions” prescribed in the 168th and 169th articles in the Constitution of Taiwan, which says that “The State shall accord to the various ethnic groups in the frontier regions legal protection of their status...” and that “The State shall actively undertake and foster the development... among the various ethnic groups in the frontier regions.” The term “indigenous peoples” views the “indigenous peoples” in Taiwan as “national minority” outside the Han people, and holds that they must be guaranteed².

2) The right of property

As the 5th, 25th and 26th articles in the *Declaration on the Rights of Indigenous Peoples* respectively provide, “Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State,” “Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard,” and “1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. 2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional

1 Shi Zhengfeng, *Taiwan Indigenous Politics and Policy*, pp. 113-114.

2 Shi Zhengfeng, *Taiwan Indigenous Politics and Policy*, pp. 113-114.



ownership or other traditional occupation or use, as well as those which they have otherwise acquired. 3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.”¹ So, indigenous peoples are entitled to maintain and strengthen their right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired, and are entitled to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired. Likewise, the 20th section of the *Taiwan Indigenous Peoples Basic Law* also discloses, “The government recognizes indigenous peoples’ rights to land and natural resources. The government shall establish an indigenous peoples’ land investigation and management committee to investigate and manage indigenous peoples’ land. The organization and other related matters of the committee shall be stipulated by law. The restoration, acquisition, disposal, plan, management and utilization of the land and sea area owned or occupied by indigenous peoples or indigenous persons shall be regulated by laws.” As the definition of “indigenous peoples” shows, the “indigenous peoples” have existed even before the State was or is established. Therefore, internationally all countries respect indigenous peoples’ existing territory jurisdiction, and acknowledge the indigenous peoples’ rights of lands and natural resources deriving from the jurisdiction over territories, and a government should be more obliged to take effective measures to prevent these rights from being infringed². What is more, the 37th article of the *Mountain Slope Conservation & Utilization Law* provides, “Aborigines of reservation lands located within the mountain region should be taught to develop land and obtain cultivation rights, land surface rights, and lease rights. Individuals continuing to operate their cultivation and land surface rights for a period of five years are entitled to acquire gratis ownership of said land, except for land designated for special purposes. Land ownership transfer is limited to aborigines. Land development management procedure is as provided by the “Executive Yuan.” This article specifically guarantees that indigenous peoples can acquire such rights as the cultivation rights, land surface rights, ownership and lease rights related to the reserved lands that they have used; therefore, there are more reasons to safeguard the indigenous peoples’ related rights and interests concerning the 250,000 hectares plus reserved lands of indigenous people that have been delineated, added and allocated at present. What is more, for non-indigenous

1 Council of Indigenous Peoples of Taiwan “Executive Yuan,” *Declaration on the Rights of Indigenous Peoples*, bound edition, <http://www.apc.gov.tw/portal/docDetail.html?CID=5ACAA5BA58B3BC0C&DID=3E651750B400646777CA893EF9062D71>.

2 *Agenda Related Documents of “Legislative Yuan.”* In order to respect and acknowledge the basic rights of indigenous peoples, Walis Pelin, member of Non-Partisan Solidarity Union, specially made the *Draft of Indigenous Peoples Basic Law* on November 19, 2003.



peoples, lands might have only the value of property, but to the indigenous peoples, they have to maintain their right of identity through their relations/the feeling of attachment to lands. Therefore, the lack of indigenous peoples' right of lands (including the possession of lands, territories and related resources) is just equivalent to the infringement of their rights of cultural identity, and even the harmed practice of indigenous peoples' right of self-determination/autonomy; in this case, their right to subsistence will lose its meanings¹.

3) The right of redress

According to the 28th article of the *Declaration on the Rights of Indigenous Peoples*, "Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent. 2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress."² Likewise, the 18th and 21st sections of the *Taiwan Indigenous Peoples Basic Law* respectively provide, "The government shall establish indigenous peoples' development fund for developing indigenous peoples' economy and assisting indigenous businesses. The sources of the fund shall include budget allocated by the central government in accordance with the budget procedure, compensations made to indigenous peoples' land, reparation, revenues, funds distributed in accordance with other relevant laws and regulations as well as other revenues"; and "The government or private party shall consult indigenous peoples and obtain their consent or participation, and share with indigenous peoples benefits generated from land development, resource utilization, ecology conservation and academic researches in indigenous people's regions. In the event that the government, laws or regulations impose restrictions on indigenous peoples' utilization of their land and natural resources, the government shall first consult with indigenous peoples or indigenous persons and obtain their consent. A fixed proportion of revenues generated in accordance with the preceding two paragraphs shall be allocated to the indigenous peoples' development fund to serve as returns or compensations." The lands and natural resources in the indigenous peoples' territories are possessed by the indigenous peoples; hence the government or individuals' development and use of indigenous peoples' reserved lands or the provision restraining the indigenous peoples' use of their reserved lands

1 Shi Zhengfeng, *An International View on the Land Rights of Indigenous Peoples*, included in the *Human Rights of Indigenous Peoples*, Nationality School of Indigenous Peoples of Dong Hwa University, Feb. 2008, pp. 35-37.

2 Council of Indigenous Peoples of Taiwan "Executive Yuan," *Declaration on the Rights of Indigenous Peoples*, bound edition, <http://www.apc.gov.tw/portal/docDetail.html?CID=5ACAA5BA58B3BC0C&DID=3E651750B400646777CA893EF9062D71>.

by law should be negotiated with the indigenous peoples and acquire their consent, and the profits from the former two paragraphs in question and the compensation for the restraints against proper use should be partially allocated by proportion into the foundations of indigenous peoples' comprehensive development, in a form of return or compensation funds¹. And also, the Article 12.3.2 in the *Taiwan Water Supply Law* provides, "The local resident representatives on the account management board for water quality and quantity protection area involving the areas of indigenous peoples shall comprise a number of indigenous people according to their percentage of population in the protection area; the water resources conservation and compensation fees collected shall also be spent on the areas of indigenous peoples by proportion." What is more, with regards to the lands, territories and resources traditionally owned, possessed or used by indigenous peoples, where they are confiscated, occupied, used or damaged in the case of not self-determined or not being informed of, the indigenous peoples have the right to claim them back. Where they cannot be restored to their former status, the indigenous peoples have the right to acquire equal compensation. Unless with the consent of indigenous peoples, the amounts, scales and legal status as the compensations for the lands, territories and resources must be equivalent to the previous ones².

As early as before the UN General Assembly passed its *Declaration on the Rights of Indigenous Peoples*, the Taiwan "Legislative Yuan" had passed the *Indigenous Peoples Basic Law* through three readings on January 21, 2005, and promulgated it on February 5 the same year. That has not only indicated Taiwan's stress on the protection of indigenous peoples' "collective human rights," but also has been an epochal milestone in the course in which all circles of indigenous peoples have launched one social movement after another and strived for the guarantee on the collective human rights of indigenous peoples and their national basic rights over 20 years in the past. Therefore, the event that the *Declaration on the Rights of Indigenous Peoples* was passed is not the end of the struggle for the basic rights of indigenous peoples; instead, it is a start point. Taiwan should follow the spirit of many a provision guaranteeing the basic rights of indigenous peoples in the *Declaration on the Rights of Indigenous Peoples*, formulating related domestic decrees from the point of protection of indigenous peoples' rights and really effectively carrying out such decrees so as to guarantee indigenous peoples to acquire cultivation rights, the land surface rights, the lease rights and the right of free use concerning the reserved lands they use. Only with

1 See Walis Pelin.

2 Shi Zhengfeng, *Draft of Particular Chapters of Guarantee for Indigenous Peoples' Human Rights*, May 19, 2005, a research report entrusted by the Council of Indigenous Peoples of the "Executive Yuan." September 22, 2006, "Symposium about the Guarantee for Taiwan Indigenous Peoples' Human Rights in the New Century" by the "Chinese Association for Human Rights," pp. 23-27.



this new global standard of guarantee for the basic rights of indigenous people, can the disadvantaged indigenous peoples greatly improve themselves and live equally and at liberty in Taiwan, a beautiful treasure island.

4.3 Problems Caused in the Practical Implementation of the *Regulations on Development and Management of the Lands Reserved for Indigenous People*

The indigenous people who moved from Hualien to Taipei more than 30 years ago resided along the Xizhou Road at the Bitan Bridge, gradually aggregating and forming a “Xizhou Tribe”; in order to carry out the “Plan of Re-building Great Bitan,” the Taipei County Government, on the excuse of building bicycle ways and enlarge green areas in parks along the banks of Xindian Stream, paid each of indigenous people 10,000 dollars relocation payment in September 2007, asking the Xizhou Tribe to move into the “Longenpu Temporary Shelter for Indigenous People” at Sanxia. However, the residents at Xizhou expressed as such, “That is equivalent to asking us to give up the existing jobs and life, but we cannot afford rents, so we can live there only temporarily, and two years later, we will have to contest against other disadvantaged people for the qualification of state-owned housing residents!”¹

Similarly, the houses of six households of the “Sanying Tribe” were forcibly dismantled by civil servants of the bureau of the water conservancy administration of Taipei County Government and a large group of police with dismantling machines on February 18, 2008. Five households moved into the “Longenpu State-owned Houses for Indigenous People” at Sanxia, but residents of the sixth household (a palsied old man, a movement-hampering old woman and a spouse from the mainland who stayed at home to take care of the old couple), who still stayed inside, were seized and escorted away by the police. The house of this household had no doorplate number, and consequently the family was not qualified to move into the “Longenpu State-owned Houses for Indigenous People,” so they could do nothing but helplessly shedding tears, witnessing their house was crushed into ruins by bulldozers with their own eyes².

The 14th and 23rd sections of the *Taiwan Indigenous Peoples Basic Law* respectively provide that “The government shall formulate economic policies for indigenous peoples and give guidance on conservation and utilization of natural resources for the purpose of developing indigenous economy in accordance with the will of indigenous peoples and characteristics of environmental resources” and that “The government shall respect indigenous peoples’ rights to choose their life style, customs, clothing, modes of social and

1 “*Assembly for the Founding of Backup Association for Xizhou Tribe*,” Citizens Actions Video and Audio Record Database, Coolloud Collective, December 18, 2007, <http://www.coolloud.org.tw/node/13161>.

2 Yang Zongxing (practice journalist at Coolloud Collective), “*County Magistrate Zhou Showed His Bloody Tyrannies, County Government Forcibly Dismantled Sanying Tribe. Amis People: We Just Want Live Where We Are!*” Feb. 18, 2008, <http://www.coolloud.org.tw/node/16381>.

economic institutions, methods of resource utilization and types of land ownership and management.” And the 37th section of the *Mountain Slope Conservation & Utilization Law* provides, “Aborigines of reservation lands located within the mountain region should be taught to develop land and obtain cultivation rights, land surface rights, and lease rights. Individuals continuing to operate their cultivation and land surface rights for a period of five years are entitled to acquire gratis ownership of said land, except for land designated for special purposes. Land ownership transfer is limited to aborigines. The land development management procedure is as provided by the ‘Executive Yuan’.” These laws and regulations have guaranteed that indigenous peoples can acquire the cultivation rights, the land surface rights, ownership, the lease rights and other rights concerning the reserved lands within the range of mountain slopes they have used, however, due to the rapid development and changes in such many aspects as society, economy and politics in Taiwan, the following problems have been caused concerning the lands except for the afore-mentioned reserved mountainous lands:

1) The *Regulations on Development and Management of the Lands Reserved for Indigenous People* is a mere “administrative order” in the legal hierarchy, unable to offer sufficient guarantee for indigenous peoples.

The *Regulations on Development and Management of the Lands Reserved for Indigenous People* formulated and proclaimed by the “Executive Yuan” of Taiwan is a mere “administrative order” in the legal hierarchy, but it is the uppermost basis in administrating the reserved lands of indigenous people; in the meantime, partial ranges of the reserved lands of indigenous people overlap with the water source, water quality and water quantity reserves, natural reserves, wild animal reserves, national parks, coastal and ocean reserves, fishery resource reserves and so on. So, when the guarantee of indigenous peoples’ rights and interests conflicts with the protection of ecology, the laws and regulations related to environmental protection, such as the *National Park Law* and the *Water and Soil Conservation Law* rather than the *Regulations on Development and Management of the Lands Reserved for Indigenous People* will have the priority to application because of the former ones’ higher places in the legal hierarchy. Hence, for the maintenance and safeguard for indigenous peoples’ rights and interests, the *Regulations on Development and Management of the Lands Reserved for Indigenous People* is relatively in a disadvantage place¹. Therefore, some people have suggested improving the above-mentioned *Regulations* to the hierarchal place of “Law,” so that it meets the provision of the Article 20.2 in the *Indigenous Peoples Basic Law*: “The restoration, acquisition, disposal, plan, management and utilization of the land and sea area owned or occupied by indigenous peoples or

¹ See Lin Qiumian.



indigenous persons shall be regulated by laws.”

2) The administrative organizations concerning the reserved lands of indigenous people have suspiciously defined power and responsibilities.

According to the 2nd section of the *Regulations on Development and Management of the Lands Reserved for Indigenous People*, the Council of Indigenous Peoples under the “Executive Yuan” is the very institution administrating the reserved lands of indigenous people, but the 2nd section of the *Mountain Slope Conservation & Utilization Law* also provides that the Agricultural Committee under the “Executive Yuan” is the very competent authority in charge of mountain slopes, and the land administration and construction affairs concerning mountain slopes are handled by the “Ministry of Interior” together with the competent authority in charge; the entrusted management and operation concerning mountain slopes are transacted by the “Ministry of Finance” together with the competent authority in charge. In this situation, the power and responsibility of the competent institutions in charge cannot be clearly clarified in practical business, which causes the inconsistent business and power of the administrative organizations in charge of indigenous people’s reserved lands in terms of hierarchy. In addition, indigenous people’s reserved lands involve multiple types of uses, and the use of lands in multiple land types involves different competent institutions in charge; this causes the phenomenon that competent institutions in charge of indigenous people’s reserved lands overlap with each and power and responsibility are not easily defined¹.

3) That non-indigenous people are allowed to use indigenous people’s reserved land may conflict with the purpose of pertinent laws and decrees to guarantee the reserved lands are used and owned by indigenous people.

The 24th and 28th sections of the *Regulations on Development and Management of the Lands Reserved for Indigenous People* respectively specify as such: “In order to promote the construction of the mining, quarrying, sightseeing and amusement, gas stations, and agricultural products distributing and storage facilities, the development of industrial resources, the preservation of the indigenous culture, and the initiation of social welfare enterprises in the areas reserved for indigenous people, assistance and guidance shall be provided preferentially for the indigenous people to carry out development or construction under the precondition that the national security, the preservation and nursing of environmental resources, the livelihood of indigenous people and the administration of indigenous affairs will not be encumbered. To apply for leasing the lands reserved for indigenous people for the purpose of development or construction as referred to in the preceding paragraph, the indigenous people shall prepare development or construction plans

¹ See Lin Qiumian.



and illustrations, and submit to the governing Township/City/District Office for the Office to transfer them to the Reserved Land Rights Review Committee for examination and reporting to the central competent authority for approval. After the application is approved by the Council and the official document produced by the competent authority of target business to approve the development or construction has been acquired, the applicant may lease the lands reserved for indigenous people. Each lease term may not exceed nine years, and relet may be applied for according to the original procedure upon expiration of the term. The development or construction plans and illustrations as referred to in the preceding paragraph shall include the following documents: 1. Annual development or construction plans. 2. Configuration map of the land required, marked in relief map of a proportion scale and cadastral map of not less than 1:5,000. 3. Transcription of land register book. 4. Plans for assisting the indigenous people to seek for employment or change their vocations. If a public or private enterprise or a person other than indigenous people (“non-indigenous people” for short) applies for leasing lands for development or construction, the Township/City/District Office shall first give a public announcement for thirty days, and handle the application in accordance with the provisions of the preceding two paragraphs only provided that no indigenous people applies with the 30-day period. The central competent authority shall prescribe guidance measures to normalize the plans for assisting the indigenous people to seek for employment or change vocations as referred to in Subparagraph 4 of the third paragraph.” And “For the non-indigenous people who have leased lands reserved for indigenous people before these Regulations are enforced and continue to cultivate or use the lands by themselves, the performance of the lease contracts may be continued. For the already leased farming and foresting lands changed into building plots due to renewal or alteration of urban plan or alteration of non-urban lands, the area for reletting may not exceed 0.03 ha/family upon renewal of lease contract. The non-indigenous people who are domiciled in a township/city/district where there are lands reserved for indigenous people may lease the lands reserved for indigenous people in the township/city/district that may be used for construction according to law as the bases for self-provided houses, and the area may not exceed 0.03 ha for each family.” The above-mentioned provisions break the rule that after indigenous people acquire the ownership of indigenous people’s reserved lands, the transferees of the reserved lands in question are limited to mere indigenous people, thus cause the following exceptional cases in which “non-indigenous people” acquire indigenous people’s reserved lands:

1) A public or private enterprise or a person other than indigenous people (“non-indigenous people” for short) applies for leasing lands for development or construction on indigenous people’s reserved lands;

2) For the non-indigenous people who have leased lands reserved for indigenous people before these *Regulations* are enforced and continue to cultivate or use the lands by



themselves, the performance of the lease contracts may be continued.

3) The non-indigenous people who are domiciled in a township/city/district where there are lands reserved for indigenous people may lease the lands reserved for indigenous people in the township/city/district that may be used for construction according to law as the bases for self-provided houses.

The above-mentioned three exceptional cases in which non-indigenous people are allowed to use indigenous people's reserved lands seem to conflict the purpose of provisions in the 37th article of the *Mountain Slope Conservation & Utilization Law* and the 24th section of the *Regulations on Development and Management of the Lands Reserved for Indigenous People*, which have been intended for making sure the reserved lands are used and owned by indigenous people. It is true that where non-indigenous people apply for renting the reserved lands for development or initiation, the applications should be filed by the township/city/district authorities in charge to the examination committee on the land rights of indigenous people's reserved lands for the examination and approval of such plans and initiation, and be reported to pertinent competent authorities one level after another for affirmation and approval, and the applicants have to acquire necessary approval documents from the competent institutions in charge of the target projects, however, once the competent institution in charge fails to strictly examine whether non-indigenous people's renting the indigenous people's reserved lands meets the principles of national territory security, environmental and resource protection, indigenous people's livelihood or indigenous people's administration or not, it will offer legal channels for non-indigenous people to use indigenous people's reserved lands, and indirectly encourage indigenous peoples to illegally underlet or transfer indigenous people's reserved lands, and this would frustrate the legislative purpose of guarantee indigenous people's rights and interests. Hence, some scholars hold that the *Regulations on Development and Management of the Lands Reserved for Indigenous People* cannot achieve the objective of guaranteeing indigenous peoples' land rights and interests by benefiting them with the development of their lands, and instead, it has the defect of facilitating people who have no qualification of indigenous people but the capability or funds for land development, with the excuse of helping the country and indigenous peoples with economic development, to purchase indigenous peoples' reserved lands on a large scale and thus obtain enormous commercial benefits without risking the responsibility of destructing indigenous peoples ecological environments¹.

4) The lack of complete regulation on collective rights

As for the proposition that the right of lands possessed by indigenous peoples (including the cultivation rights, the land surface rights, ownership, the lease rights and so forth)

¹ Yohani Isqaqavut, "Hold and Pass on Indigenous Peoples' Land Legacy," included in the *"Indigenous Peoples' Awakening and Revival,"* Vanguard Press, September 2002, p. 51.

belong to collective rights, the *Declaration on the Rights of Indigenous Peoples* also lays much importance to the identity of indigenous peoples as a subject, but as for how the subject of group rights exercise its rights, there is no concrete provision in the existing law or regulations, consequently there is no way to exercise the group rights of indigenous people; what is more, indigenous peoples' rights are restrained by a series of administrative regulations, and indigenous peoples enjoy merely a few rights under the purview of administration, so it is necessary to legislatively establish a complete guarantee mechanism¹ in order to really safeguard the reserved lands possessed by indigenous peoples.

5. Conclusion

In fact, the Taiwan "Ministry of Interior" had held symposiums on issues related to indigenous people's reserved lands in the Taiwan areas as early as in 1988; considering that the indigenous peoples in Taiwan are citizens with special life customs, the government made the following suggestions for guaranteeing their rights and interests and encouraging their development so as to further take care of indigenous peoples' life and guaranteeing their livelihood: Survey reserved lands in mountainous regions as soon as possible, and thoroughly check state-owned forest lands and state-owned property lands so as to return them to indigenous peoples. The reserved lands in mountainous regions are divided into forest lands, dry lands, water lands, paddy fields and construction lands, and certificates of ownership should be granted concerning all such reserved lands, and there should no such regulations as unfavorable to indigenous people; the lands which previously belonged to indigenous people but latter were allocated to be owned by the State, the Province, counties or used by the Taiwan Sugar Corporation, and the newly emerging lands along rivers, should be returned to plain-inhabited indigenous people as reserved lands at no cost of payment. All the principals and interests paid to the "Bureau of State-owned Property" for the purchase of lands should be returned as soon as possible; where the previous reserved lands in mountainous areas have been expropriated by the State for other uses and cannot be restored to their former state, lots of "state-owned" land in equivalent area and value should be allocated to compensate the indigenous people; the indigenous peoples' land rights in Taiwan should be immediately guaranteed through legislation; a ministerial institution with exclusive responsibility should be established under the government to formulate regulations concerning the affairs of indigenous people in Taiwan and administrate such affairs. The existing *Regulations on Development and Management of the Lands Reserved for Indigenous People* has also

¹ Yapasuyongu Poiconu, sectional director of the Council of Indigenous Peoples of the "Executive Yuan," "Current Situation of Lands and the Guarantee on Indigenous Peoples' Right of Subsistence," included in "An All-round View of Guarantee for Indigenous Peoples: A Symposium about the Right of Subsistence and the Right of Habitation," an activity of Taiwan Indigenous People's Day 2008 held by the "Chinese Association for Human Rights," pp. 5-17.



tried to fulfill most of the afore-mentioned suggestions, and repeatedly indicated that the government has paid much attention to the issue of indigenous peoples, however, the issues concerning the indigenous people's reserved lands in Taiwan are very complicated; while the indigenous peoples' rights and interests must be taken into account, ecological protection and national security should also be considered to avoid threatening the ecological environment system in Taiwan¹. Therefore, the government should really implement the afore-mentioned laws and regulations, properly develop and administrate indigenous people's reserved lands, and maintain indigenous peoples' livelihood, so as to accord to the provision in the article about indigenous peoples' rights in the *Declaration on the Rights of Indigenous Peoples* and comply with the tendency of the policies about indigenous peoples of the international community. Only in this way can the guarantee for indigenous peoples' rights and interests be really carried out.

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¹ See Lin Qiumian.



The Defense of Cultural Rights in Multiethnic and Multicultural Nations

Luis Ortiz MONASTERIO

Mexico

Culture

In defining the concept of “culture” we might be able to better understand certain premises which derive from the term, such as cultural traditions, cultural values, cultural diversity, cultural heritage, cultural rights and in turn human rights.

It hasn't been an easy task. Indeed various generations have analyzed the term, arriving at more than thirty definitions of the word culture, with one's point of view dependent upon the context in which one seeks to use the word: anthropological, sociological, humanistic-aesthetic, philosophic etc. The definition cited by Edward B. Taylor in the 19th century is perhaps one of the most comprehensive: “*that complex whole which includes knowledge, belief, art, morals, law, custom, and any other capabilities and habits acquired by man as a member of society.*”¹ Taylor's definition is similar to that established in the Final Declaration of the World Conference on Political Cultures which took place in Mexico in 1982 which found culture to be: “*the whole complex of distinctive spiritual, material, intellectual and emotional features that characterize a society or social group. It includes not only the arts and letters, but also modes of life, the fundamental rights of the human being, value systems, traditions and beliefs; that it is culture that gives man the ability to reflect upon himself.*”

With these definitions one can ascertain that culture is represented by the wisdom held by a community and that the culture of these communities is synonymous with wealth.

Cultural Heritage

Cultural heritage is the legacy that an individual or community has inherited, conserved and passed through the generations. The **material** side of cultural heritage is comprised of all the tangible elements which make up the wealth of a nation, namely: constructions and real estate holding historic, artistic, aesthetic, urban, scientific, documentary or anthropological value and manifestations of culture. The **immaterial** part conversely is that which is intangible, such as traditions, customs, religion, language, musical expression, dance, cuisine etc.

1 E. B. Taylor, *Primitive Culture*, London, 1871.



The National Commission of Human Rights in Mexico recognizes the importance of conserving cultural heritage, which through its protection offers the safeguarding of our memory, roots and traditions – everything which makes us special. Cultural heritage plays an important and transcendental role in reinforcing the pride and protection of cultural identity – something which aids social cohesion and above all, the unity of the nation.

The access of communities and individuals to said heritage must take place under strict conditions of equity and in no case discrimination. Examples of tangible cultural heritage, such as monuments or archeological zones must then be open and accessible to disabled people.

In Mexico City in the coming school year, a study program has been integrated into secondary education focusing on the preservation of the Cultural and Natural Heritage of the Federal District, with the aim of raising awareness and responsibility in preserving these facets in order to ensure their passing to future generations.

Preservation and safeguarding must base itself in the utilization of Heritage in order to build a peaceful and democratic society whilst also promoting cultural diversity.¹ Through this, we are able to honor talent and respect the traditions and knowledge contained in all cultural manifestations, guaranteeing free and plural speech.

Such actions must be carried out under the joint responsibility of individuals, communities and authorities in order to defend the cultural identity of every person, respecting their sovereignty.

Chinese and Mexican Culture: Multi-Ethnic and Multicultural Diversity

Both countries possess a broad historical trajectory. Mexican culture is the result of the acculturation of indigenous and Spanish people – a process seen through the reception and assimilation of the cultural elements of one community on the behalf of another, as much through rapid occupation (military conquest), as gradual and intangible (spiritual conquest); the result being the birth of a multicultural and multi-ethnic diversity.

Chinese culture – one of the first to truly establish itself on this planet, is comprised of many valuable strands of knowledge, seen in every facet of their being. It is one of the first developed communities to have shown “History and heritage of humanity,”² signals Miguel León Portilla.

China and Mexico are multi-ethnic cultures and therefore multicultural. Both countries boast an enormous Cultural Heritage whose protection necessitates the joint efforts of individuals, communities and authorities, both of present and future generations.

1 Farida Shaheed – independent expert in the field of Cultural Rights in their report submitted to the United Nations General Assembly on 21st March, 2011.

2 León Portilla, Miguel. *Rostro y corazón de Anáhuac*, SEP, Mexico, 2001.



Cultural diversity is the plurality of cultures coexisting both nationally and internationally. It implies the preservation and continuity of existing cultures, through the respect owed towards them. The vitality of the community is evident through its production and subsequent reproduction of meaning and cultural identity.

A recognized and valued cultural identity motivates the spirit of a nation. Cultural traditions are fundamental cultural values, representing a firm base of unity through diversity. A multicultural nation contains a great wealth felt through its many customs, religions, celebrations and the multitude of expressions and manifestations of its communities.

In order to develop multiculturalism, the State must create the correct conditions for the diverse cultural manifestations of its people, regions and ethnic groups. Mexico is home to various different ethnic groups, both in rural regions as well as urban scenes. In Mexico City there are various indigenous communities who form part of Mexican society with widely recognized cultural rights, values and traditions. It is necessary that this social context is seen as a method of enriching and adding to traditions, customs and wisdom, whilst never fragmenting these assets.

The link between Cultural Heritage, cultural diversity and cultural rights has been strengthened¹. Diversity and multiculturalism must be considered as key factors in the building of a culture of democracy.

Values and Traditions

The spreading, defense and protection of human rights means the defense of universal values: to defend the values of each individual is to defend people's traditions and cultural identity. Great cultures build upon a base of cultural traditions and values, with a firm but dynamic foundation towards a future of development and progress.

Universal values are born of culture. "The preservation and safeguarding of Cultural Heritage must have as its base human development and the building of a peaceful and democratic society along with the promotion of cultural diversity."²

Cultural Rights are Human Rights, relating to identity, cultural heritage, education, formation and information, the belonging to one or various cultural communities and access to the media. Other Cultural Rights according to article 15 of the International Covenant on Economic, Social and Cultural Rights are: to take part in cultural life; to enjoy the benefits of scientific progress and its applications; to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

¹ Farida Shaheed – independent expert in the field of Cultural Rights in their report submitted to the United Nations General Assembly on 21st March, 2011.

² Ibid.



Cultural Rights, like Human Rights, are interdependent. They cannot exist on their own, but rather depend upon the pre-existence and co-existence of other rights. They are universal and indivisible.¹

In the past, Human Rights were classified by the establishing of first, second and third generations. Such classifications were shaped by the moments in history which demanded the recognition of such rights, according to the nature, origin, content and subject matter concerned. The classification is historical in character, with their recognition by the legal order of each country to be considered chronologically². Such classifications are no longer employed due to the confusion that they generate, as some rights appeared more important than others, depending on the place or generation that they occupied. Cultural Rights are Human Rights and all hold the same importance.

Human beings belong to one or many cultural communities. These cultures help construct identity and contribute towards the emergence of nationality.

It is the State's responsibility to adopt the necessary measures to conserve, develop and promote science and culture in order to create an eternal freedom under which scientific investigation and creative activity can operate. The international community considers it their duty to ensure the preservation and defense of the cultural identity of each person, as indicated by section 7 of the Final Declaration of the World Conference on Cultural Policy which took place in Mexico in 1982.

Cultural Exchange, Dialogue between National and International Communities

Cultural reciprocity is an invaluable channel of communication. Going beyond that offered by economic exchange, cultural exchanges present a dialogue of traditions, values, feelings and identities; strengthening ties and promoting universal cohesion. They aid communication and understanding between communities, adding a shine to the pluralistic development of world culture. President Hu Jintao on the 12th of November 2004 during a session at the Brazilian Congress expressed his desire for a new approach to the friendship shared by China and Latin America.

Our country has been involved in cultural exchange with China for various decades now. Recently in September 2000, a number of cities across the Mexican Republic hosted the exhibition of Cultural Heritage entitled: "China in the Dynastic age: the Xi'an Dynasty." Then in 2001 the exhibition "Mayan Civilization" was taken to Guangzhou, Xi'an, Beijing and Shanghai. It is worth also mentioning that Cultural Exchange agreements such as the signing in 2006 of the *Memorandum of Understanding* on the Installation of the Institute of Confucius in several Mexican Universities, have also taken place.

1 World Conference of Human Rights – Vienna, 25th June, 1993.

2 Cottom, Bolfi. *Cultural Rights in the framework of Human Rights in Mexico*, p. 28. Mexico, Porrúa Publishers, 2011.



The Legal Framework of Cultural Rights

International Law provides various provisions aimed at protecting the access and participation of all people to cultural life. It is necessary however, that each country applies regulations befitting of their environment and heritage, while respecting sovereignty.

In Mexico, cultural rights are recognized and established in the final paragraph of the 4th article of the Political Constitution of the United States of Mexico.

“Every individual has the right to access culture and enjoy the goods and services offered by the State in the area, along with the full exercise of their cultural rights. The State will promote the means for the dissemination and development of culture, taking into account cultural diversity in all its forms and expressions, with full respect for creative freedoms. The law will establish mechanisms for the access and participation to any cultural manifestation.”¹

Besides this article, Cultural Rights are offered protection by the 3rd article which refers to education as a State obligation, handing autonomy to higher education institutions in order to promote culture. The 6th and 7th articles also guarantee access to information and freedom of expression.

The Mexican National Commission of Human Rights, amongst other functions, receives complaints and issues Recommendations corresponding to the violation of Cultural Rights in indigenous or other ethnic communities where they have been restricted in their ability to exercise their religious practices or have seen a lack of respect or deterioration of the National Cultural Heritage.

The Fourth Inspector General of this organization is concerned with matters relating to indigenous communities; receiving and handling complaints from communities and individuals, carrying out promotion and training on the human rights of indigenous people. They also research and publish many documents surrounding this matter, as well as defending the human rights of indigenous persons detained, tried and convicted in both federal and common courts.

Conclusions

Multi-ethnic and multicultural nations present a plurality seen through their rich and invaluable history, means, customs, folklore and artistic manifestations – all of which are cultural. This cultural heritage – both material and immaterial, is integrated through cultural traditions and values and is the base of the pride of national identity and belonging.

Cultural diversity promotes the sentiment of a strong nation, with firm foundations in

¹ 4th Article of the *Political Constitution of the United States of Mexico*. Added by decree published in the Official Journal of the Federation on 30th April, 2009.



tradition and strong cultural practices in each of its communities, showing full respect to sovereignty.

Cultural rights constitute a significant pillar in social cohesion and the development of the individual. It is a tool which aids the strengthening of sovereignty and the creating of collective meaning.

Multicultural nations characterized by a rich and strong culture form the beginning of the utopian vision of a universal culture where the cultural development of the community and the exchange of values will permit the overcoming of differences, social decomposition and the environment of violence in the internal and external communities of the world in which we live.

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Cultural Traditions and Human Rights

Luis Alberto Amoros NUNEZ

Cuba

Introduction

Importance of culture and cultural traditions

Culture, with cultural traditions as one of its components, contributes to the development of countries, not only in terms of the economic growth of nations but also as a means to access a higher intellectual, emotional, moral and spiritual existence of the members of these societies.

The promotion of a genuine culture helps to address injustices and inequalities of today.

The relevance of culture helps to understand why cultural rights are an integral part of human rights, and therefore, universal, indivisible and interdependent, as it has been internationally agreed.

For all these reasons, it is vital the defense of local, national and regional cultural identities, and the respect for the rights of minorities, the excluded, marginalized and of the indigenous, Afro-descendant and originating peoples.

Neoliberal Globalization and the Harmful Homogenization of Culture

However, the reality is that the current neoliberal globalization process promotes the breakdown between culture and development and has contributed to the promotion of the commercialization and privatization of most of the cultural production, making it a manipulator instrument of ideas.

Authentic art, popular expressions of our countries have become an integral part called alternative culture, in the face of the globalization of so-called culture of entertainment.

The powerful transnationalized mass media, led by the film industry, the TV and the news agencies in the industrialized world, with its simplistic formulas, has created universal patterns that alienate and homogenize human beings, thus erasing the memory of peoples, their history, cultures and even their reality.

We are witnessing a “pseudo-cultural homogenization” that threatens the genuine artistic expressions of peoples. We face the increasingly successful attempts of neo-liberalism’s cultural industries to impose their hegemonic will as well as the transculturation



exercised through the entertainment industry. This has accelerated the disappearance processes of languages, cultures and ethnicities, with its consequent social and cultural impact.

Failure to respect cultural diversity and the racist, discriminatory and xenophobic conceptions that promote the superiority of races, cultures and nations for the benefit of the powerful ones, have been among the root causes of painful conflicts throughout history, whose repetition we must avoid.

The current process of neoliberal globalization, the asymmetrical access to information and communications technologies that accompany this process, and the attempts by developed countries to impose cultural hegemony, and particularly by its most powerful representative, constitute serious threats to achieving the cultural rights, the preservation of cultural identities and thus to a cultural diversity.

Attempts to impose a cultural homogenization and a pseudo-culture manufactured in the imperial centers of power are dangerous weapons of destruction and ideological domination.

These attempts of imposition and domination destabilize and discredit the international system of promotion and protection of human rights and within them, the respect for the cultural rights of each people. People's self-determination is an inalienable right and an essential component of the respect for cultural diversity.

How to Face the Serious Threat to the Identities and Cultural Traditions of Most Nations?

What to do to confront and try to reverse this harmful situation that threatens to wipe out identities and the most genuine cultural traditions of many countries and of their peoples, particularly in the developing world?

The answer is not simple. Several factors are essential in order to make progress in defense of the cultural survival of these societies.

For example, in our opinion and without exhausting all relevant factors, it is crucial the defense of cultural diversity against the ongoing neoliberal globalization and the hegemonic visions referred to, while recognizing the universality of cultural rights.

In addition, it is vital the prevalence of ethical and esthetic values in opposition to commercial approaches, as well as the safeguarding of identity and the links of culture with the preservation of the human species.

It is also essential the strengthening of multilateralism through genuine international cooperation, away from selfishness and based on solidarity and the respect for diversity, as well as the articulation of a fair and equitable world and order.

Before referring to other important elements, it is required to undergo a particularly broader reflection on the importance of cultural diversity.



Importance of cultural diversity and universality of cultural rights

In defending this diversity, it is necessary to recognize that it is also linked to the necessity to rescue the memory of the peoples and to clear roads and find ways to defend and promote their own culture and the universal one, in order to achieve freedom and justice that humanity demands.

In this context, it is necessary to address the adverse effects of neoliberal globalization in the culture. This objective implies giving priority to the rescue and preservation of peoples' memory and history, a way to contribute to the survival of native cultural expressions in order to defend the cultural diversity.

In this regard, States are responsible for promoting the full enjoyment of cultural rights for all and the respect for the different cultural identities as well as for the definition and implementation, through the means it deems appropriate, of its own cultural policy with due regard to their international obligations.

There is no doubt that the universality of all human rights will only become a reality when the differences and particularities of each human being and of every people are respected. Thus, we must recognize the importance of national and regional particularities of various historical, cultural and religious backgrounds as well as the diversity of political, economic and social systems existing in the world and which have been sovereignly determined by the peoples.

All peoples and nations should preserve and develop their cultural heritage on a national and international environment of peace, tolerance and mutual respect.

The international cooperation system on human rights matters bases its universality on respect for diversity.

Respect for cultural diversity is a guiding principle of the promotion and protection of human rights and of the international community's efforts to consolidate international peace and security in the realization of the right to development and the strengthening of multilateralism.

In this regard, we recall the Declaration and Plan of Action of the World Conference on Human Rights in Vienna in 2003, when it noted in its fifth paragraph: "... While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms."¹

No less important is the eighth paragraph of this document, which states inter alia that "... democracy is based on the freely expressed will of the people to determine their own

¹ *Vienna Declaration and Programme of Action*, as adopted by the World Conference on Human Rights on 25 June 1993; Paragraph 5.



political, economic, social and cultural systems and their full participation in all aspects of their lives.”¹

Ethnic groups, peoples, nations and other communities share their own cultures, and have the right to be recognized and that their identities be respected. Cultural diversity is based on the richness and variety of those communities.

The diversity, far from weakening the universal values of human civilization, is the main factor of strength and wealth. The defense and promotion of cultural diversity, preservation of national identities in the face of hegemonic impositions, the role of culture in shaping values and in defense of historical memory and the heritage of nations, are vital present issues. They require the design of common strategies that allow them to face successfully the attempts of hegemonic centers trying to devastate native customs and traditions of peoples.

Genuine international cooperation based, *inter alia*, on solidarity and the respect for diversity

When you go into the factor associated to the achievement of a genuine international cooperation, it is noteworthy that this cooperation should be based on a broad sense of respect, for the benefit of the peoples and to preserve and promote cultural diversity.

Dialogue and cooperation are essential to respect the universality of human rights and cultural diversity. Respectful dialogue between representatives of different cultures and civilizations encourages tolerance and respect for diversity, and contributes to strengthening international cooperation.

Developing and encouraging respect for human rights and fundamental freedoms through international cooperation require also a deep understanding of the various problems that arise in all societies, the unequal levels of development among countries, acceptance of diversity, and the respect for diversity and national, historical, religious and cultural peculiarities of each nation.

Recognition and respect for the plurality of political, economic, social, legal and philosophical systems are essential to foster true international cooperation, which is based on mutual understanding, dialogue, trust and transparency.

The right to enjoy culture and the obligation to disseminate, promote, preserve and protect it, is a political commitment of States that is enshrined in *the Universal Declaration of Human Rights*.

Market forces alone cannot guarantee the preservation and promotion of cultural identities. From this point of view, it should be ratified the pre-eminence of public policy regarding the interests of the private sector.

By expanding on the factors to address the current negative situation faced by cultural

¹ *Vienna Declaration and Programme of Action*, as adopted by the World Conference on Human Rights on 25 June 1993; Paragraph 8.



values and traditions of many countries, particularly of the Third World, it is worth mentioning the importance of safeguarding and preserving the intangible cultural heritage and to place the exercise of culture in the service of the interests of society. To achieve this, it is indispensable to involve the civil society and political men in efforts to support cultural diversity and development of art as essential enrichment of human beings and essential strength of communities.

It is also worth highlighting that there cannot be democracy or real freedom in the midst of inequality, ignorance, total or functional illiteracy, and a lack of political, economic, scientific and artistic culture, to which only small minority can have access, even within developed countries.

Other important guidelines to consider are:

- The protection and development of national cultures are prerequisites for the defense of the sovereignty of states.
- Cultural development must provide ways and means to enjoy culture both individually and collectively.
- Education is the most effective tool in understanding cultural differences and consolidating respect for cultural diversity.
- States are responsible for the central role in ensuring the development of culture and respect for cultural diversity. They should engage the press and other media as well as academies, schools, cultural organizations and other civil society actors in this endeavour.
- A new world information and communication order, truly democratic and participatory, is essential to achieve a cultural development of all peoples, based on the respect for cultural diversity.

The Multilateral System and Protection of Cultural Rights

Significant progress has been made in the regulatory framework of UNESCO, in support of the implementation of cultural development and protection of cultural diversity. But unfortunately, the work of this organization, the Human Rights Council and the UN General Assembly on the promotion of cultural rights and the respect for cultural diversity has been unable to reverse the negative situation in this area.

Hence, it is imperative to enforce basic international agreements on cultural rights and promotion of culture and cultural traditions.

In addition, all States, especially in the industrialized world must commit to the efforts undertaken under the United Nations system and within UNESCO to preserve and promote cultural identities and diversity of all peoples and nations.

Cuba has repeatedly expressed its commitment to continue strongly supporting any effort undertaken within the United Nations system, including the United Nations Organization for



Science, Culture and Education (UNESCO), to preserve and promote identities and cultural diversity of all peoples and nations. The strengthening of multilateralism is an essential tool in the promotion and protection of cultural diversity.

In that sense, it is crucial for Cuba the implementation by all States of UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions. This should strengthen the dialogue between different cultures and the enjoyment of diverse cultural expressions with equal opportunities for all. The Convention has defined a new framework for international cultural cooperation.

This instrument is contributing to promoting and protecting the diversity of all cultures in a world in which there are large and serious threats described already for the culture and where there is an unequal cultural exchange.

The Convention reaffirms that all peoples have the right to self-determination, under which they freely determine their political status and freely pursue their economic, social and cultural development. This international legal instrument recognizes the sovereign right of states to adopt their cultural policies.

Another important pattern of this instrument is the recognition of the distinctive nature of cultural goods and services as vehicles of values, identity and meaning. It also aims to create the conditions for cultures to flourish and freely interact in a mutually beneficial way.

The Convention has been helpful to address the existence of an international market under the control of dominant large economic groups. It plays a role in safeguarding the cultural identity and their expressions, especially those who may be disadvantaged in commercial exchange or which are not objectives of trade and profit.

They are also relevant to the actions that have been made in developing the Human Rights Council, despite their limitations.

Thus, by emphasizing the responsibility of all States in the promotion of cultural rights and identities and taking into account the big challenges and serious threats to the rights and cultural identities, it is important to support the work of special procedure of the Human Rights Council. This is the Special Rapporteur for the promotion and protection of cultural rights, who is trying to put these rights at the same level as the other categories of rights.

Cuba and Cultural Development

In Cuba, the development of culture was favored and promoted from the establishment of institution of real democracy in the country with the triumph of the revolution in 1959, which promoted the development on several fields of the intellectual and artistic life. That democratization, which in Cuba goes beyond the community level, was the premise of this development. In this context, there were landmarks as the National Literacy Campaign, the



creation of educational and cultural institutions throughout the country and the combination of universal knowledge with the revaluation of the nation heritage.

In 50 years, Cuba has promoted a culture without chauvinism, xenophobia or ideological prejudices. The Revolution has prioritized the protection of living heritage and promoted universal culture in the midst of a strong defense of the national aspects, but always keeping people's access to universal heritage thus trying to counteract the mediocrity and barbarism that could come through the big media.

The Constitution of the Republic of Cuba establishes that the State foment and promotes education, culture and science in all its forms and particularly advocates the freedom of artistic creation and the defense of the identity of the Cuban culture, the conservation of the cultural heritage, the nation's artistic and historical wealth and the protection of national monuments, also taking into account the universal traditions and values.

Cuba promotes the design of strategies that allow overcoming the mediocrity of the neoliberal industries. It also promotes the development of policies that respond to the imperatives of the defense of cultural identity, social creativity and the access to the culture by the majorities.

In recent years, there has been in Cuba a renewed surge in the most varied artistic and intellectual expressions along with a colossal effort in the field of culture and education, all of which help to provide new weapons for the knowledge and the elevation of the spirituality and quality of life for Cubans. While there has been more than a million people involved in the new cultural programs favored by many conditions and possibilities, these are not intended to cram the country with professional artists, but to foster an appreciation for the best of the Cuban and universal art.

The Revolution's cultural policy has been based on the joint promotion of artistic vanguard and the people who act as protagonists of cultural programs and processes that have been implemented in the country, both being focal points of our culture's development. In this framework, one of the most important experiences in the field of culture after 1959 has been the study and the recovery of traditional folk culture. In doing so, it has been essential the role of the system of Houses of Culture that has prioritized as essential line of the work of the traditional folk culture.

It has also made significant progress in further developing programs of education such as University for All, the audiovisual program for children, adolescents and youth enrolled in schools in the country, the development of video facilities and community computer centers for students and the population in general, the mass training of art teachers and social workers, etc.

Among the most important achievements that can be showcased by the policy implemented by the Cuban government in the cultural sphere in recent years, it is worth



mentioning the following:

It has completed the construction of 15 new schools of art instructors and the new National Ballet School, with a capacity of 300 students of vocational training. This school also operates vocational ballet workshops with an enrollment of more than 4,000 children. The registration of this new ballet school is extended to students from all provinces. Seven new schools of plastic arts have been built, and 17 major cities in the country now have a school of plastic arts.

More than six thousand public and school libraries get collections of encyclopedias, dictionaries, atlases and other books that renewed their library collection.

In the past ten years, hundreds of million copies of books, tabloids, brochures and other printing production have been manufactured to be used as educational supports in various programs on development and cultural promotion.

The University for All, linked to television, was established on October 2, 2000, and has become the most massive and diverse university in the country. Through it around 50 courses were taught. Hundreds of teachers, many of whom are PhDs and Masters, have participated in these courses.

The Family Library contributed to our people's access to the best of the Cuban and world literature at affordable prices. There were 100,000 collections of 25 titles.

Book fairs have been expanded, exceeding the frameworks of their traditional grounds in the capital to reach more than 30 cities.

It has strengthened the work of cultural education in primary school with the addition to the teaching staff thousands of graduated art instructors who perform, on that level of education, the cultural work and the artistic promotion. These instructors will work, not only in the education sector, but also in other social and cultural institutions of the community by promoting culture and bringing our children and teenagers closer to the best traditions of Cuba and the world.

Efforts have been achieved in the promotion of awareness and widespread use of new technologies, particularly in the field of computer science and communications. In fulfilling this, all schools have TV sets, video players and computer labs, including schools for children with special educational needs who have also received new and modern teaching methods for their training.

From these programs and the achievements of Cuba, which have already fulfilled the goals set by UNESCO in the education sector until 2015, my country developed several projects of cooperation in the framework of this organization. For instance, Cuba is implementing the literacy program "Yes, I can," which has guaranteed the literacy of thousands of people in the world.

However, these efforts and the achievements by the Cuban government in the promotion



of a comprehensive culture for the benefit of all the people¹ have been constantly affected by the economic, financial and commercial blockade imposed on Cuba by the U.S. government.

The negative impact of the blockade on the trade of Cuba's art music has prevented the realization of commercial contracts with Cuban musicians by business means and even in personal capacity. It has excluded direct business relationships with record labels in the United States, preventing access to that market.

Similarly, the blockade has hampered the registration in organizations and societies that protect and represent the record companies against piracy and other abuses being committed. This means the loss of key distributors in other countries because their companies operated in markets controlled by U.S. transnational companies. It also hampered official participation in cultural events hosted in the United States or in any other country being an ally of its foreign policy.

The blockade restrictions have prevented Cuba's institutional participation in the U.S. art market, even when it is known that there is a demand fueled by the high prices at which the works of Cuban modern painters are quoted. In the area of books, the blockade has prevented or severely limited the sale of Cuban publications, scientific and literary materials in the United States. Cuban artists cannot participate in book fairs in the United States. The Cuban film industry, as a result of the blockade, has been unable to buy U.S. materials, spare parts and equipment, with the consequent substantial limitation of sales in this area and the impossibility to attend with our film productions to important audiovisual markets in the U.S.

The actions of the U.S. government to destabilize Cuba have also included the area of thought considering that culture, knowledge and the consolidation of national identity as its main shield are at the heart of the national development strategy.

Conclusions

Without a full cultural diversity in the face of the growing globalization and homogenization, without ethical and aesthetic values, without the safeguard of national identities and the relationship between culture and development, without genuine international cooperation and without a just and equitable world order, culture and cultural traditions of many nations will disappear.

It should be reaffirmed the call of the Commander in Chief of the Cuban Revolution, Fidel Castro, on March 30, 2005, to say goodbye to chauvinism and narrow nationalism, hates, intolerance and to prejudice and to take the good of all cultures, all civilizations and all religions. The leader called also to educate the human being into a universal ethic, which is essential in this globalized neoliberal world that globalizes the attempt to seize the

¹ Additional elements regarding Cuban efforts in the promotion of culture are reflected in the annex.



resources of others, to enslave others.¹

Annex: Recognition and protection of cultural heritage in Cuba

The movable or immovable cultural heritage is registered and protected in Cuba pursuant to Law No. 1 of August 1977 for the Protection of Cultural and Natural Heritage and the Law No. 2 Local and National Monuments of August 1977.

In the Cuban legislation, the Material or Physical Cultural Heritage and the Intangible Cultural Heritage giving it its value are defined. The merger of the two creates an intangible value product of the human knowledge.

Cultural heritage in danger is primarily identified by the community, which is the first to recognize it as such because it has lost its historical, architectural, artistic, cultural values and its integrity and authenticity, for which they were valued, recognized and declared Cultural Heritage.

The Cuban Ministry of Culture is responsible for the implementation of Laws No. 1 and No. 2, which regulate the protection, cultural policy for its performance with a system of state ownership. The National Commission on Monuments is the ultimate responsible for its compliance as a body established by Law No. 2. This commission is attached to the National Council for Cultural Heritage, which serves the Commission through its Executive Secretary, and which chairs a personality recognized nationally and internationally.

Material Cultural Heritage includes: objects, manuscripts, historical sites, civil, domestic, and religious, of industrial construction, popular festivities, community traditions, musical instruments and others.

The main international instruments recognized by Cuba for the protection of cultural heritage are:

- Convention for the Protection of Cultural Property in the Event of Armed Conflict (Hague Convention), and the First Protocol of the Convention (1954).
- Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970).
- Convention concerning the Protection of the World Cultural and Natural Heritage (1972).
- Convention for the Safeguarding of Intangible Cultural Heritage (2003).
- Convention on the Protection of Underwater Cultural Heritage (2005).
- Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2007).

Essential measures taken in Cuba for the protection of cultural heritage are as follows.

¹ Speech Given by Commander in Chief Fidel Castro Ruz at the closing ceremony of the “World Conference Dialogue among Civilizations – Latin America in the 21st Century: Universalism and Originality” at the Havana Convention Center on March 30, 2005.



- Creation of the National Cultural Heritage (CNPC), an institution that methodically directs Provincial Centers and Museums.

- National Commissions of Monuments and Safeguarding of Intangible Cultural Heritage, established through laws and by Ministerial Resolution respectively.

- Subcommittees of Cultural Diversity Archaeology, and Creation of the National Registry of Cultural Property under the Council of National Cultural Heritage.

- Creation of the National Center for Conservation, Restoration and Museology (CENCREM).

- Creation of more of 300 museums.

- Approval of the Law No. 106, founding the National Museums.

Public access to cultural heritage is materialized in the community being the first instance to recognize it and protect it. It is a means of distraction and increase of the community's knowledge. It is a right of the general population. It has the mission of educating, training and integrating in the educational curricula of the different levels of formal and informal education. In this sense, there are programs for the elderly, prison facilities and schools.

Tourism has specific programs for protecting the cultural and natural heritage that are driven by specialized and highly qualified personnel for their protection and promotion.

By implementing the conventions governing the protection and safeguarding of cultural heritage, relations of cooperation are essentially established with other peoples of the region through workshops, the participation of researchers and experts and capacity building.

Cuba has good practices in the evaluation of laws and public policies of cultural heritage throughout the country. As an example, there are commissions to analyze the cultural heritage; to assess its conservation status; visits are paid by authorities and experts to heritage sites and values; courses organized and conducted for the handling and management of cultural and natural heritage.

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Cultural Traditions, Values and Human Rights: Historical, International and National Experience

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1. The Contribution of Western and Oriental Cultural Values to Formation of the Human Rights Conception

Last decades issues of correlation of human rights and cultural values and traditions began to be put forward even more often in political rhetoric within the framework of the international organisations as well as actively to be discussed in scientific literature. Working meeting on traditional values and human rights in Geneva on 4 October 2010 according to the Resolution 12/21 of Human Rights Council¹ was devoted to this theme. Nevertheless its studying deduces so significant and fundamental questions, the solution of which is far from at present, and mentions such sharp political and social problems, that its many aspects have not received exhaustive consideration yet and remain a subject of heated debates.

Basically, immutable and universal values are above geographical distinctions and do not know cultural, gender, class or language barriers. It is an issue of values based on human rights. Some of these values, close to all human beings and the peoples, include aspiration to freedom, dignity and absence of fear and need and make a basis of *the Universal Declaration of Human Rights*. The Declaration reflects expectations of all people, men and women of all cultures and traditions of the whole world. Though the document does not possess force of the international treaty, obligatory for execution, it has received a general recognition among the states, level of development, the political system and cultural traditions of which essentially differ. Universal declaration does not impose one-sided approaches, on the contrary, underlines importance of a variety, the account of regional specificity, national, cultural, religious and historical traditions of the states.

In modern more and more globalized world the problem of human rights is one of the most significant and difficult. It excites mankind since the most ancient times.

The history shows, that at each stage of development of a society, including in the conditions of a lawful state, there is an objective necessity for protection of human rights.

¹ UN High Commissioner on Human Rights Report "Working meeting, devoted to traditional values of humanity." Document UN A /HRC/16/37.



And the situation at which efforts for maintenance and protection of the rights and freedoms of the individual would be required or not is still unknown to mankind. Each generation in own way answers the calls of history connected with upholding of such not passing values, as freedom and human rights. The modern catalogue of human rights fixed as originally both in national and international legal documents, is the result of long historical evolution of formation of standards, which have become the conventional norm of a modern society.

Historically human rights have been connected with its self-determination through an accessory to a tribe, where traditions and the customs formed on the basis of a common law (military democracy, communal self-management) as rudimentary form of the natural right were the basic sources of the rights and freedoms. Inalienable rights of the individual of the antique policy were the first legal form of human rights which received establishment in the classical Roman law.

Ideas of natural equality of people – equalities by the nature, so essential to understanding of human rights – were stated by Ancient Greek sophists (Protagor, Antifont, Licofron) and the Chinese thinkers (Mo Tzu, Confucius) in VI-IV centuries B.C.

Ideas of a fair society, human dignity, the person as the higher value, have received the development both in the East, and in the West including Central Asian region.

The important role in evolutions of human rights belonged to great humanists of the Middle Ages in the east, such as Abu Nasr Farabi (870-950), Abu Rayhon Beruni (973-1048), Abu Ali Ibn Sina (980-1037), Ibn Rushd (1126-1198), Ibn Haldun (1332-1406), Alisher Navoi (1441-1501), etc.; and in the West – F. Vittorio (1480-1546), G. Grotzy (1583-1645), T. Gobbs (1588-1679), V. Paskal (1623-1662), J. Lock (1632-1704), F. Voltaire (1694-1778), S. Monteske (1689-1755), Z. Z. Russo (1712-1778) and etc.¹

Thereupon the ex-Federal President of Germany Roman Herzog fairly noticed: “The widespread statement that it is necessary to search for roots of ideas on human rights only in the western cultures is especially incorrect. Original experts on Near-Eastern and Asian cultures know very well that in classical primary sources of Hinduism, Confucianism, Buddhism and Islam the same standards of humanism are listed, as in philosophy of ancient Greeks, Jews and Christians on which our culture is based.”²

It is necessary to notice, that ideas of thinkers of the East are less studied, less known, and there is a huge layer of not studied primary sources which require special research and which should be studied in the long term. But also that is already investigated, published, requires, in our opinion, analytical generalisation.

Professor R. A. Mullerson considers that it is impossible to deny that human rights are defined not only by character of public relations, but also by the nature of the person

¹ A. Saidov. *International human rights law*. - M., 2003; A. Saidov. *Universally recognized human rights*. - M., 2004.

² R. Herzog, *Only principles do not protect human rights*, 1997, p. 3.



as biosocial beings as biological and social requirements of the person underlie the rights and personal freedoms. He makes a true conclusion that human rights and freedoms are predetermined by level and character of development of a certain state-formed society and a human civilisation as a whole. There we find the economic, social, political, cultural, moral, religious and other roots defining level and condition of human rights and freedoms¹.

Thus, at the approach to the concept of human rights it is necessary to avoid unilateral generalisations, and it is necessary to consider traditions and customs, specificity and mentality of the certain people and society.

In modern understanding “the conventional human rights” are natural rights by which each person is allocated, being the representative of mankind. They are universal and belong to everyone – rich and poor, man and woman. These rights can be violated, but they under no circumstances can be taken away².

The approach to human rights in Islam is rather interesting and original. They are a component of Islamic order, and all Muslim governments are obliged to carry out them according to the letter and spirit of this order. According to Russian researcher N. V. Zhdanov, Islamic theologians have rather democratic idea about them. Thus, he refers to Mohammed Sadek Afify's, the researcher of problems of influence of Islam on international relations, which confirms: “The human person is developed and formed in the conditions of freedom: freedom of a residence, movement, creed, thought, expression of the point of view, state freedom. Any person should not dispose others similar to him, and the state should not enthrall another and should not dispose of destiny of people. At the same time the state exercises administration by people if they have admitted infringement of order by their behaviour and have broken known borders. Even punishments in Islam are not directed to restrict freedom as restrictions always limit movement, and movement is life while Islam is a religion of life.”³

Professor Abdullahi Ahmed an-Naimi, noting presence of “universal standards of human rights,” underlines that they are obligatory within the limits of international law, and it is necessary to use the best efforts to put them into practice. But the main difficulty in establishment of general intercultural and interreligious standards of human rights is connected with that each tradition has its own internal referential frameworks, as deduces the importance of rules and norms from own sources to provide itself loyalty and submission of the adherents, and cultural and religious traditions usually declare their superiority over other traditions.

1 R. Mullerson. *Human rights, ideas, norms, reality*. - M.: Legal literature, 1911, p. 12.

2 A. Saidov. *Universally recognized human rights*. Educational manual. / Edited by Prof. I.Lukashuk. - M.: M3 Press, 2004, pp. 15-16.

3 N. Zhdanov. *Islamic concept of peace order: international legal, economic and humanitarian aspects*. - M.: International relations, 1991, pp. 103-104.



Nevertheless, he continues, there is a general standard rule which is capable to become the basis of general standards of human rights: "Everyone should treat other people how he would like that others treat him." And this rule "is supported by all main religious traditions."¹

It is necessary to notice, that Islam, being universal religious-standard system, addresses to mankind as a whole, without distinction of race, nation, sex, age, class and language, and comprises own understanding of human rights. Moreover, modern Muslim theorists notice that their concept of human rights was initially contained in Islamic doctrine.

Human rights should be considered as important universal norm of international legal relations, but not departing from the recognized standards. It is necessary to recognise that each state, society has the right to create values and understandings taking into account traditions and customs, mentality, specificity and features which would be equitable to interests of its person, societies and states.

Such short historical digression allows us to draw the following conclusions:

Firstly, formation and development of the human rights conception has a long history, and it dates back to origin of mankind and occurrence of the first state formations;

Secondly, views, ideas on human rights, their volume and structure varied eventually depending on features of development of the states and gradually found their physical embodiment in a common law and the legislation;

Thirdly, formation of modern human rights conception is influenced not only by the western standards, but also the richest philosophical heritage and ideas of thinkers of the East, including Central Asian region. Politico-legal doctrines of thinkers of the East, having given an extensive material, have essentially enriched human rights conception with ideas about well-being submitted, justice, legality, the world and calmness in a society, generated in east countries;

Fourthly, unlike the western understanding of idea of human rights and freedom where the preference is given to the individual, in east understanding, on the contrary, the collectivist beginnings (patrimonial, breeding, clan) were at all times definitive; security and completeness of individual human rights depended on degree of security and completeness of the collective rights of all sort, a tribe, a clan. At the same time in a modern society the individual and collective rights are closely interconnected, and consequently they should not contradict each other;

Fifthly, to the early 21st century the system of the international protection of fundamental human rights and freedoms is created and is shown in activity of the United Nations, regional human rights protection institutes;

Sixthly, globalisation processes, occurrence of new threats to interests of the person,

¹ An-Naimi Abdullahi Ahmed. On path to Islamic reformation (civil rights, human rights and international law). - M.: Museum and Public Centre named after A. Saharov, 1999, pp. 182-183.



society and state arises, and sharp contradictions between a person and a society, the citizen and the state face the problem of the improvement and further development of Human rights conception in the 21st century with the account of necessity of protection of the rights of the people and the nations on a cultural variety.

2. Influence of Cultural Traditions and Values on Promotion of Human Rights

The modern human rights conception personifies views, ideas and aspirations of the East and West people and it is synthesis of a cultural variety of people's understanding of human rights.

The unity in understanding of human rights is shown in following moments:

Firstly, all human rights are universal, indivisible, and interdependent and consequently the international community should concern human rights globally, on a fair and equal basis, with the identical approach and attention, to consider value of national and regional features, distinctions of historical, cultural and religious character irrespective of political, economic and cultural systems of the states.

Secondly, cultural variety and realisation of cultural development by all people and nations are a source of mutual enrichment of the cultural life of mankind. Encouragement of the rights of people and cultures and traditions promotes respect and preservation of a cultural variety of all people and nations.

Thirdly, tolerance concerning cultural, ethnic, religious and language distinctions, and dialogue between civilisations are necessary conditions for the mutual understanding and friendship of peoples and states representing different cultures when world wide cultural prejudices, intolerance and xenophobia concerning various cultures and religions, and hatred and violence between peoples and states arise.

Fourthly, each culture possesses advantage and value which deserve recognition, respect and preservation, and in their rich variety, and mutual influence, all cultures are a part of the general heritage of all mankind.

Fifthly, all cultures and civilisations bring contribution to mankind enrichment, understanding great value of respect and recognition of religious and cultural variety in world-scales. To strengthen international peace and safety, it is necessary to increase of the well-being of people universally, strive to achieve more freedom and progress, and also encourage tolerance, respect, dialogue and cooperation between various cultures, civilisations and peoples.

Sixthly, in the United Nations Millennium Declaration, member-states proclaim that the tolerance is one of the fundamental values having essentially great value for the international relations in the 21st century, and that it should include active encouragement of culture exchange and dialogue between civilisations so that people respect each other against



a variety of beliefs, cultures, languages, surpass the limit of social distinctions and social institutions, and fostered diversified beliefs, cultures, languages as the most valuable property of mankind.

Seventhly, all subjects operating on international scene should build the international order on the basis of imposing appearance, justice, equality, human advantage, mutual understanding, encouragement and respect of a cultural variety and general human rights, and reject all isolating doctrines based on racism, a racial discrimination, xenophobia and the intolerance connected with them.

At 64th session of General Assembly of the United Nations on 18 December 2009, Resolution 64/174 Human Rights and Cultural Diversity was adopted, which urges the states to provide necessary conditions for the cultural heritages and traditions of all peoples and nations to realize tolerance and mutual respect at national and international levels.

Universal Declaration on Cultural Diversity, together with its Plan of action, adopted on November 2nd, 2001 by the 31st session of UNESCO general conference has offered system for the United Nations organizations and other relevant intergovernmental and non-governmental organisations to co-operate and coordinate on strengthening cultural diversity construction.¹

3. Bases of Legal Culture

The legal culture of a society acts in three aspects. The first aspect is a cultural level of the law in force as standard system. The second aspect is a culture law enforcement activity or is wider – legal culture of the government. The third aspect is a legal culture of the citizens – members of the society, appreciably defining its social behaviour. Uzbekistan gives great value to the development of all these three aspects of legal culture.

Speaking about legal culture, we start with “valuable,” instead of the “subject” understanding of culture extended in the sociological literature. For us, the **legal culture** is not only a set of all legal material which has been saved up by the given society, but also the spiritual culture, social and legal values reflected in the material. Accordingly, the value of culture of the law in force lies in reflecting, maintaining and guaranting achievements of a civilisation, social progress and democratic principles.

Cultural level of the law in force is also based on political, ideological, historical, cultural urological factor, which are interconnected in action.

The culture of the legal form which consists in connection of accuracy of legal concepts and norms, their conformity to requirements of legal techniques with their clearness and availability to a wide range of people is also significant.

¹ UNESCO, General Conference acts, 31st session, Paris, 15 October-3 November, 2001, Volume 1: Resolutions, Chapter 5, Resolution 25, Annex 1.



What is the culture of law in force as standard system (the first of the named aspects) defined by?

From political factors we name a state policy, a socio-political position of the legislator. Its democratic orientation promotes establishment of law in force of such principles, norms and institutes which at the given stage of social development are a substantial indicator of legal culture. On the contrary, its reactionary-authoritative installations of the legislator, a course on curling of democratic constitutional principles, discriminative law-breaching legislation, other “legal” displays of a reactionary policy of the legislator should negatively affect legal culture.

From ideological factors we will specify the relation of ideology dominating in a society to the law. In the total plan it is possible to tell, that histories are known as ideology in which law had important role and it took a high place in hierarchies of social values, and the ideologies characterised by negative attitude to the law. It is natural, that domination in a political life of ideology of the second type should have adverse effect on character of the law in force and legal culture of a society.

In formation of legal culture the historical factor is extremely essential. In cultural development as a whole the important role belongs to historical continuity – preservation and accumulation of the cultural values created in process of a civilisation. Legal culture is not an exception in this respect.

In long historical development of the law and legal thought many legal concepts, definitions, principles of the law and justice which represent not passing values are developed and on the value in a society life can be equal to the greatest achievements in history of the world culture. Perception of this heritage is the important indicator of cultural level of the law in force.

One of major cases of legal culture is the jurisprudence. On the one hand, the condition of this science is one of indicators of legal culture of the given society. On the other hand, the jurisprudence is urged to play important role in development of all named above aspects of legal culture. In particular, cultural level of the law in force to some extent depends on to what extent the given sciences are used in law making process. In Uzbekistan great attention is paid to scientific validity of law-making process.

Certain value for development of legal culture also belongs to all-round studying by jurisprudence on critical problems that are put forward in a forum. In recent years the attention of our jurisprudence to this problem has sharply increased.

Above was a question of the bases of legal culture with reference to the law as to standard system. The second of the above-mentioned aspects of legal culture – legal culture of the government and cultural law-enforcement activity, is one of the major bases of law in force. This aspect of legal culture in many respects depends on character and



the maintenance of a legal regulation of the state activity in general, law-enforcement in particular, on those requirements which are shown to this activity by the law in force. One of such major requirements is the principle of legality of the government, in conformity with that all bodies of the state and officials are obliged to observe the law and to provide protection of the law and order, the rights and freedoms of citizens.

The legal culture of the person is closely connected with individual sense of justice. However, the category *Legal Culture of the Person* is in a sense wider, than a category of sense of justice. It includes as representation about legal, knowledge of the right, its estimation, and conscious behaviour of the person in sphere of action of the right. The legal culture of the person is a behavioural category which speaks about adequate enough reflexion of certain level of consciousness and the general culture of the person in its legally significant behaviour.

It is necessary to reject caste-elite approaches to the considered category, asserting, that the legal culture is property of only small layer of professionally prepared persons. In a democratic society the legal culture should be the mass phenomenon. The various measures pursuing it aim to raise legal awareness of people (teaching of bases of the right at schools, to lecture about the right for the general public, the special popular legal literature, etc.). Set of these measures has received the name *legal education*.

The legal culture in all its aspects is an important component of the general spiritual culture of a society. It is natural, that it in many respects depends on the level of this general culture. From its part the right is urged to play an important role in development and perfection of this general culture. But it's always been difficult enough and many-sided theme demanding separate consideration.

4. Cultural Traditions, Values of the People of Uzbekistan and Their Maintenance within the Framework of Realisation of Fundamental Human Rights

Cultural traditions are historically developed and transferred from generation to generation customs, ceremonies, public establishments, ideas and values, norms of behaviour, the elements of a welfare heritage remaining in a society or in separate social groups during the long historical period. There are progressive traditions connected with creative development of culture, and reactionary, connected with vestiges of the past become obsolete. The state problem to keep and develop progressive cultural traditions and to eradicate obsolete customs and the ceremonies interferes with realisation of the human rights and freedoms.

From the first days of independent development the Republic of Uzbekistan has laid down the aim directed to create the base for spiritual growth of the people which, according to the Constitution, covers all people living in territory of Uzbekistan. Strengthening of friendship and consent in society, revival and development of the values which have remained in the inheritance from ancestors – became one of priority directions of development of the



young independent state.

The President of the Republic of Uzbekistan Islam Karimov notes that the major problem is to promote development of language, culture, customs and traditions of all nations and people living in Uzbekistan, to the further expansion of the possibilities created for this purpose and conditions. He has underlined that a holy duty of everyone is to keep the international consent which has developed in the country and stability, to cherish them as the apple of the eye. We should show the noblest qualities and the lines inherent in our people, to create the base to our further spiritual growth. Our purpose is to strengthen the feeling of love in hearts of people, mercies, generosity, and nobleness and to make the kind affairs uniting our people.

The Republic of Uzbekistan has centuries-old historical experience of joint residing of various faiths and various ethnoses. From time immemorial, throughout more than three millennia in its territory various religions and beliefs co-existed. Now, when in independent Uzbekistan representatives of 136 nations and nationalities peacefully live, the majority from which identifies itself from one of 16 religious faiths, and this historical experience is again claimed.

The Republic of Uzbekistan has created all necessary legal, organizational conditions for development and support of a cultural variety of all people and the nations living in its territory.

Firstly, the basic act providing realisation on the equal beginnings of fundamental human rights and freedoms in political, economic, social, cultural and other areas of public life, is the Constitution of the Republic of Uzbekistan of 1992. Article 8 of the Constitution of the Republic of Uzbekistan says: "People of Uzbekistan are made by citizens of the Republic of Uzbekistan irrespective of their nationality."¹

Secondly, all acts of the Republic of Uzbekistan fix for citizens the identical rights and freedoms to equality before the law irrespective of race, floor, nationality, language, religion, social origin, belief, personal and a social standing (Constitution, article 18)².

Thirdly, with a view of creation of necessary conditions for realisation of human rights by all people and the nations living in the country, Uzbekistan ratified the Convention of the United Nations on elimination of all forms of racial discrimination in 1995, and in 2010 the Sixth-seventh periodic reports of Uzbekistan on performance of the Convention have been considered³.

Fourthly, the state policy of the Republic of Uzbekistan in the field of elimination of

1 The Constitution of the Republic of Uzbekistan. - T.: «O'zbekiston», 2010, p. 7.

2 Ibid, p. 8.

3 Concluding observations of the Committee on the Elimination of Racial Discrimination: Uzbekistan. CERD/C/UZB/CO/6-7.



all forms of racial discrimination is directed to: creation in a society of atmosphere of the international consent and tolerance; development of institutes and legislative mechanisms on maintenance of individual and collective human rights, including racial, national and ethnic minority; acceptance of definite measures on preservation of cultural originality of national minorities and their integration in Uzbek society; maintenance of proportional representation of national groups in all spheres of public life.

Fifthly, the state provides the valid relation to languages, customs and traditions of the nations and the nationalities living in its territory, creates conditions for their development by means of prohibition of the organisation of political parties on racial and national ground, and also of creations of the public associations whose activity is directed to propagation racial and religious intolerance; interdiction of use of religion with a view of excitation of enmity, hatred, international break a set; non-admission of uses of mass media for the purpose of propagation national, racial and religious hostility; prohibitions to interfere with realisation of the right of citizens on a free choice of language in dialogue, education and training.

The legislation of the Republic of Uzbekistan legislative provides administrative and criminal liability for kindling of racial hatred. So Criminal Code, article 141¹, provides criminal punishment for infringement of equality of citizens. And the given structure of a crime is in the Chapter VII of Criminal Code in which crimes against constitutional laws and freedoms of citizens are provided².

In article 156 of the Criminal Code: “Excitation of national, racial or religious hostility” – for the deliberate actions humiliating national honour and advantage, offending feelings of citizens in connection with their religious or atheistic belief, made for the purpose of excitation of enmity, intolerance or break a set to population groups to national, racial, ethnic or religious signs, and equally direct or indirect restriction of the rights or establishment of direct or indirect advantages depending on a national, racial, ethnic accessory or the relation to religion – is punished by imprisonment of five years³.

In the Republic of Uzbekistan Code on administrative responsibility infringement of the rights of citizens to a free choice of language in education and training, creation of obstacles and restrictions in language use, the neglect to a state language, and also to other languages of the nations and the nationalities living in the Republic of Uzbekistan, causes imposing of the penalty from one till two minimum sizes of wages (art. 42)⁴.

Activity of the Government of the Republic of Uzbekistan in the given direction is shown also in establishment of award *Do'stlik* (“Friendship”), which awards workers in

1 Criminal code of the Republic of Uzbekistan. - T.: «Adolat», 2008, p. 264.

2 Criminal code of the Republic of Uzbekistan. - T.: «Adolat», 2008, pp. 264-268.

3 Ibid. - C. 271.

4 Code on administrative liability. - T.: «Adolat», 2008, p. 58.



science, culture, formation, public health services, mass media and social sphere for the contribution to strengthening of the international consent between people living in the Republic of Uzbekistan. For years of independence representatives of 24 nationalities have been awarded by high state awards (71 persons) for creation and support of the International cultural centre of the Republic of Uzbekistan opened in 1992 for coordination of activity of the national cultural centres; in support of activity of societies of friendship with foreign countries, first of all with what are the historical native land for the national minorities living in Uzbekistan: Russia, Korea, Ukraine, Latvia, Poland, Azerbaijan, Kazakhstan, etc.

Now in Uzbekistan 2,225 religious organisations of 16 various faiths including: Muslim, orthodox, Catholic, Lutheran, Baptist, the full Gospel, Adventist and other Christian churches, and also religious communities of Bukhara and European Jews, Bakhai, Krishna's followers and Buddhists. 179 non-Islamic religious organisations and 2,050 Islamic organisations carry out activities.

Annually more than 120 representatives of non-Islamic religious communities make pilgrimage to relics of the religions in Israel, Greece and Russia, using all privileges created for believers, going abroad.

For years of independence more than 80 thousand citizens of the Republic of Uzbekistan have carried out pilgrimage to Saudi Arabia and more than 1,000 to Russia, Greece and Israel.

In Constitution Article 42 it is fixed, that to everyone the right to use culture achievements is guaranteed. The state cares of cultural, scientific and technical development of a society¹. It concerns both physical training and sports. Now in the country 37 professional theatres and set of theatres-studios work: 1 opera and ballet theatre in two (Uzbek and Russian) languages, 7 drama (from them 3 Russian), 14 musical and is musical-drama (from them 1 Russian, 1 Karakalpak), 4 youth theatres and theatre of young spectators (from them 1 Russian, 1 Karakalpak), 10 theatre of dolls (among them 1 Karakalpak, 4 bilingual (Uzbek and Russian)).

In Uzbekistan there are many theatres-studios, for example, *Ilhom*, *Alladin*, *Mulokot*, *Eski machit*, *Turon* and others. Besides, almost in all higher educational institutions of Republic theatres-studios operate. Festivals of these collectives *Nihol* and *Hazina* are annually held.

At the Republican international cultural centre the collective of amateur performances from students of the republican festival of friendship and culture *Uzbekistan – our general house* is generated. Its concerts are held in all regions of Uzbekistan.

Under the authority of the Ministry of cultural affairs there are 85 museums. Museum collections consist of one and a half million museum items. These are historical documents,

¹ The Constitution of the Republic of Uzbekistan. - T.: «O'zbekiston», 2010, p. 12.



subjects of archaeology, ethnography, numismatics, applied art product, sculpture, painting, drawing, etc.

In Uzbekistan 10 art museums from which State museum of arts of Karakalpakstan of Savitsky has got world popularity due to richness of collections, uniqueness of collections, their importance.

In Uzbekistan great attention is paid to protection of cultural heritage, of the people living in territory of the state, citizens are obliged to preserve historical, spiritual and the cultural heritage, culture monuments under state protection.

Laws *on protection and use of objects of cultural heritage*¹, *on protection and use of objects of archaeological heritage*² define concept and kinds of a cultural and archaeological heritage, power of the state bodies on their protection, an order of carrying out of researches in the given sphere archaeologists, critics and other experts.

Now in Uzbekistan there functions more than 150 national cultural centres and associations created by representatives of 27 nationalities. 14 national cultural centres (NCC) have the republican status.

31 National cultural centres are created by Koreans, 23 – Russian, 9 – Kazakh, 6 – Tatar, 3 – Bashkir, 6 – Kyrgyz, 7 – Turkmen, 4 – Armenian, 4 – German, 10 – Tajik, 3 – Uygur, 8 – Jew, 5 – Turkish, 6 – Ukrainian, 8 – Azerbaijan, 4 – Pole, 2 – Belarus, 2 – Crimean Tatars, and 1 – Arab, Bulgarian, Greek, Georgian, Lithuanian, Karakalpak, Chinese, Dungan.

National cultural centers play leading part in preservation of language, traditions, customs of each ethnos of Uzbekistan and strengthening of stability and civil consent in a society. Thanks to their work, nations and nationalities living in republic, do not feel like national minorities. They support close contacts with historical native land, study native language, folk art, traditions, thus actively participate in a political and cultural life of the country, which has become their native land.

In all cultural centres there are youth centres, sports, art mugs, folklore ensembles of dance, national choruses. National cultural centers hold art exhibitions, folklore festivals, evenings of poetry, thematic and creative evenings, and charitable actions. The meetings devoted to creativity of poets and writers, actors, sportsmen are held regularly.

Cultural centres support wide communication with ethnic native land by close contacts with various creative unions and cultural-educational organisations, ministries of culture, higher educational institutions, parliaments and business circles.

According to article 29 of the Constitution of the Republic of Uzbekistan, everyone has

1 The Law of the Republic of Uzbekistan dated from 30.08.2001г. №269-I // Bulletin of legislative acts, - 2001, #17, Art. 116.

2 The Law of the Republic of Uzbekistan dated from 13.10.200г. №3PY-229 // Bulletin of legislative acts, - 2009 г., #42, Art. 448.



the right to freedom of thought, word and belief. Everyone has the right to search, receive and extend any information, except for directed against an existing constitutional system and other restrictions provided by the law. Freedom of opinions and their expression can be limited by the law on motives of state or other secret¹.

Now the mass media in the country are in 12 languages, from which 502 names are published in the Uzbek language, 164 editions are published in two and more languages, and 84 editions are published in 3-4 languages (Uzbek, Russian, Karakalpak, and Tajiki).

In Uzbekistan the central editions of other nationalities, such as, *Bark Sinmun* in the Korean language, *Ovozi Tojik* in the Tajik language, *Nurli jon* in the Kazakh language are published. Newspapers of the Armenian diaspora *Apaga*, in the Korean and Russian languages – *Tlthonil – Unity*, in the Tadjik language – *Bulbulcha Dono* with wide readers' circle are published.

In areas of compact residing of representatives of other nationalities newspapers are published in languages of these nationalities. For example, in the Tadjik language newspapers *Ovozi Samarkand* are published in the Samarkand area, *Isticlol Yoli* and *Sadoi* in the Fergana area.

In the Republic of Karakalpakstan there are about 40 newspapers and 7 magazines published. More than 80% of these editions are published in the Karakalpak language.

Such television and broadcasts, as *Under the only sky*, *In a whole family*, *Uzbekistan is our common house*, *Chinsen*, *Didar*, *Aspiring to be fair*, *Rondo*, *Elaman* enlighten history and the present of the nations, ethnoses and nationalities, living in Uzbekistan, and their culture and art, national customs and traditions are directed to strengthen international mutual understanding and consent, intercultural links and communications.

On central national radio channel more than 20 television and radio programs are broadcast in languages of the nations living in the country, in particular, Korean, Tajik, Kazakh, Karakalpak, Russian, Turkmen, Tatar, Uyghur, Kirghiz as well as other languages.

In Uzbekistan access to education of all national minorities is provided, and secondary and higher education is conducted in 7 languages – on Uzbek, Karakalpak, Russian, Tajik, Kazakh, Turkmen and Kirghiz. The edition of manuals for these schools is financed by the government. Besides, in many cultural centres Sunday schools and classes operate. Native and other languages, as well as culture, art, traditions of the people are studied there. Such schools are opened in coordination with local departments of national education at comprehensive schools or in the most cultural centres; classes are opened during free time from school.

In Tashkent for more than 15 years there successfully work school-grammar school 321 in which the Hebrew and the Jewish national traditions are profoundly studied. The

¹ The Constitution of the Republic of Uzbekistan. - T.: «O'zbekiston», 2010, p. 10.



association of the Azerbaijan cultural centres of Uzbekistan at school #147 Mirabad district of Tashkent has opened classes on Azerbaijan language.

The President of the Republic of Uzbekistan Islam Karimov said that crucial importance in maintenance of stability and realisation of large-scale reforms on updating of the country belonged to huge and purposeful work on strengthening of the international and interreligious peace and consent in the country, strengthening of spiritual and moral education, returning to the roots, increase of political consciousness and legal culture of the population. The climate created in a society has positive effect on people's mind when human traits peculiar to our people since olden days such as mutual understanding and tolerance, an openness and indulgence, kindness, hospitality and sincere generosity are to the full extent shown.¹

The analysis of historical development of mankind shows, that all human thought and mind have the roots in cultural views and opinions of people, and it assumes recognition of universality of human rights by all communities in the world. At the same time, the further development of universal standards of human rights can be real only in the event that it will occur with the account of a cultural variety of nations in the world. Interaction between universal standards and understanding and a variety of local specificity generates the serious questions demanding consideration.

The recognition that each society has both valuable, and negative aspects, freedom of their criticism and, at the same time, openness to loan of the positive should become norm of intercultural dialogue and social reforming. In each tradition there is something that is able to bring contribution to development of global human rights culture.

All cultures divide general set of values which belong to all mankind, and these values have brought important contribution to development of norms and standards in the field of human rights. These values are established in the Universal declaration of human rights which, having incorporated various cultural and political traditions and prospects and being adopted by a consensus, represents "the highest standard common for all people and all states."

Intercultural dialogue on the basis of equal respect of world cultures and protection and respect of human rights provides possibilities for original exchange of opinions and serves as extremely useful means of strengthening harmony and overcoming gap between abstract principles of universalism and certain in coincident features. Dialogue should be conducted between cultural traditions and inside them.

(The author is Director of the National Human Rights Centre of Uzbekistan.)

¹ Speech of the President of the Republic of Uzbekistan on joint meeting of Oliy Majlis, Cabinet of Ministers, President's Office, devoted to the 16th anniversary of the Independence of Uzbekistan // Народное слово, 2007, 31 августа.



Chinese Cultural Traditions and Rights Protection of Ethnic Minorities

WANG Ping
China

Human Rights and Traditional Culture

Regarding the relation between human rights and traditional culture, I support the following views:

Firstly, the basic concept of human rights thoughts boasts universality, that is, it has or should have the same value judgment standard in all cultural traditions across the world.

Secondly, the universality is a theoretical abstraction, while the human rights philosophy exists in various concrete human rights practices or models (if there are models). Therefore, the form of human rights has to be concrete and diverse. It grows in the realistic political, economic and cultural soils of different countries and regions, and is subjected to their influence. It can't leave the soils, or else it would die. If we uproot the aboriginal tree of human rights and put in its place one introduced from another country, the result would probably be death because of climate sickness. In addition, the human rights practice of a country and region has its own development stages and rules, just like a plant does. A dutiful gardener should water it and apply fertilizers timely and take conscientious care of it so that it might grow. Rough handling would cause it to wither away.

Thirdly, the cause of human rights is evolving. The modern concept of human rights germinated in the 17th to 18th Century in Europe during the Enlightenment Period and Bourgeoisie Revolution era. Maybe the first systematic human rights theory or practice model is the one (including that in the 19th Century) with classical liberalism features in the period of capitalist free competition in Europe and America. Since its advent, the model has had enormous impact worldwide. However, neither the theory nor the practice of human rights has stopped development ever since. The reasons are 3-fold: 1) The Europe-America model is developing. 2) Countries entering the rank of modern civilized countries successively established and developed their respective characteristic theories and practice models for human rights, while acknowledging the universal value of human rights. 3) In the international community and in the international documents on human rights, the concept of human rights is constantly being developed. Thus, it is a historical fact that the cause of human rights is incomplete and developing.



Fourthly, dialogs and exchanges in the area of human rights are beneficial. Previously, I compared the thoughts and systems of human rights to a plant, so as to clarify my point. However, human rights are not a plant. First and foremost, they are a concept and idea of mankind. Second, they are laws and systems established on them. As a thought, their formation and development not only depend on local traditions, but also benefit from dissemination of, and exchanges and mutual influences between cultures. In a modern world with highly developed communication technologies, the mutual influence is self evident.

Dialogs and exchanges are possible because different cultures recognize the universal value of human rights. They are beneficial because different countries and regions can all derive nutrition to help development of human rights causes within their own borders.

Protection of Rights of Ethnic Minorities in China

In the following I'd like to further explore the influence of traditional culture on human rights protection with examples of rights protection theory and practice for ethnic minorities in China.

The protection of rights for ethnic minorities in China has the following characteristics.

1) Both individual equality rights and group rights are protected. All citizens have equal rights and obligations. This is the principle stipulated in the Constitution and laws, as many modern democratic countries do. Meanwhile, many national laws and policies treat groups as the subject of rights, emphasizing equal rights between groups. For example, in China, we have a law ruling that there must be appropriate proportions of minority groups in state legislative bodies. Many local governments prescribe that students of minority background are entitled to bonus credits in college entrance exam or admission at lower credits, and the preferential treatment of more children in family planning. Some countries may have similar practices, while western countries with particular emphasis on equal civil rights may find it difficult to exercise such policies. China endeavors to find a balance between equal individual rights and equal group rights.

In the western liberalist human rights model, the principle of non-discrimination and equal civil rights constitutes the major protection for the rights of ethnic minorities. Some countries, like the US, once implemented "affirmative action," adopting preferential measures for minority groups in college entrance. However, its scope and intensity is incomparable to the policy of group preferential treatment administered by the Chinese government.

The difference is attributable to traditional cultures. Western countries like the US uphold individualism as the mainstream culture, with citizen-state dual structure as the typical feature. Although social groups are well developed in the US, they are primarily striving for individual rights. China has always emphasized the importance of "group." In ancient China, family and clan played a significant role in political and economic lives. When



clan is thought of as one type of “group,” protection of its rights will be more acceptable by the people at large.

Emphasis is laid not only on protecting the civil and political rights of ethnic minorities, but also on their socio-economic development. The Constitution of the People’s Republic of China regulates, “The State shall help accelerate economic and cultural development of national autonomous regions in accordance with their respective characteristics and needs.” According to Article 19 Chapter 6 of *Law of the People’s Republic of China on Regional National Autonomy*, state organs at higher levels have the obligations to provide financial, material and technical assistance to national autonomous areas to accelerate their economic and cultural development, covering budgetary support, financial support, preferential taxes, resources development and infrastructure construction, environmental protection, development of domestic and international trade, development and transformation of applied technologies, and development of education and talent cultivation. Since the foundation of the People’s Republic of China, one of the core content of state national policies is to accelerate the development of minority regions for common prosperity of all nationalities.

The national policies of China emphasize the inseparability in the political rights and socioeconomic rights of ethnic minorities, and both are promoted simultaneously. This is attributable to the cultural traditions of China. In ancient China, emphasis is placed on solving “livelihood” issues, which was expected of wise rulers. This is the old tradition. In the modern era, China has accepted Marxism, emphasizing the part played by economic foundation on the superior structure. Thus a new tradition of underpinning “livelihood” emerged. Both the old and new traditions have exerted significant influence on its national policies.

In the system design of autonomy in minority regions, emphasis is laid on state unity, as well as on efforts to protect the right to self-government of ethnic groups to some extent. The system of self-government of autonomous regions is a fundamental political system in China. Its basic feature is organic integration of unified leadership by the state and self-government by the ethnic minorities to some extent. Currently, there are 155 self-governing autonomous regions in China, including 5 autonomous regions, 30 autonomous prefectures and 120 autonomous counties (banners). They all have to abide by the Constitution and laws formulated by the National People’s Congress. And all of them have dual identities, in that they are local government agencies and local autonomous agencies at the same time. Article 115 of Constitution stipulates that: “The organs of self-government of autonomous regions, autonomous prefectures and autonomous counties exercise the functions and powers of local organs of state as specified in 5 of Chapter III of the Constitution. At the same time, they exercise the power of autonomy within the limits of their authority as prescribed by the Constitution, the Law of the People’s Republic of China on Regional



National Autonomy and other laws and implement the laws and policies of the state in the light of the existing local situation. In other words, the self-governing agencies of ethnic autonomous regions exercise the powers and duties of common state agencies at regional levels. They are also entitled to self-governing right in accordance with law. Legislatively, self-governing power is reflected as the right to effect adaptation of state laws by formulating autonomous regulations and separate regulations, submitting it for approval, and putting it into effect upon approval. According to article 66 of *the Law on Legislation of the People's Republic of China*, the people's congresses of the national autonomous areas have the power to formulate autonomous regulations and separate regulations on the basis of the political, economic and cultural characteristics of the local nationality (nationalities). The autonomous regulations and separate regulations of the autonomous districts shall be submitted to the standing committees of the national people's congresses for approval and shall go into effect upon approval. The autonomous regulations and separate regulations of the autonomous prefectures or counties shall be submitted to the standing committees of the people's congresses of the relevant provinces, autonomous regions or municipalities directly under the Central Government for approval and shall go into effect upon approval. Where certain provisions of the laws and administrative regulations are concerned, adaptation on the basis of the characteristics of the local nationality (nationalities) may be made in autonomous regulations and separate regulations, but such adaptation may not contradict the basic principles of the laws and administrative regulations; where the provisions of the Constitution and the Law on Regional National Autonomy as well as the provisions in other laws and administrative regulations specially formulated to govern the national autonomous areas are concerned, no adaptation may be made. From the above introduction it can be seen that the autonomous system in ethnic regions in China is not a simple decentralization model, but a system integrating state unification and ethnic minorities governing their internal affairs. There would be no understanding of the autonomous system in ethnic regions if one doesn't understand this.

The autonomous system for minority regions with Chinese characteristics is also rooted in the reality and traditional culture of China. Seen from the traditional culture, different nationalities or minority groups in the independent geographic region between the Himalayas and the Chinese coastline have established close and profound inter-relations over thousands of years. In history there had been many wars, the majority of which aimed at establishing a unified central monarch. Only after unification can there be peace. Therefore, in times of peace, peoples from all nationality value solidarity and national unification. In addition, since the Opium War in 1840, China was subjected to bullies from Western Powers and Japan. The most majority of Chinese are not narrow nationalists. However, the modern history of China has indeed made people of all ethnic groups treasure solidarity and national unification more.



They believe that only solidarity and unification can help a country exchange with other countries on an equal footing. Therefore, it is also the value pursuit of the system design to protect the self-governing rights of the ethnic minorities while benefiting state unification.

China is a member state of many international conventions on protecting the rights of ethnic minorities, like the *International Convention on the Elimination of All Forms of Racial Discrimination* and *International Convention on the Suppression and Punishment of the Crime Apartheid*. China acknowledges prevalent international regulations on protecting the rights of ethnic minorities. However, from the above-mentioned characteristics it can be seen that the concrete models or methods for protecting the rights of ethnic minorities have their own unique characteristics because they are based on the actual circumstances and cultural traditions of China. Actually, besides China, other countries and regions around the world have their own features in protecting the rights of ethnic minorities. From this we can see the significant influence of cultural traditions.

Going back to the theme of traditional culture and human rights, I wish to reiterate my opinion at the beginning, after the example of protecting the rights of ethnic minorities in China:

The basic philosophy of human rights concept has universal value in the modern world. However the practice models of human rights in countries around the world are diverse. Maybe it is the cause of human rights that requires respect for diverse human rights model and culture.

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The Historical Vicissitude of Chinese Human Rights Culture

XIAN Kailin
China

Culture is the spiritual essence and support of human rights, and human rights are the value orientation and objective of culture. Human rights are universal and particular at the same time. Each nation has its own specific concept and value orientation of human rights culture. In the broad sense, human rights culture is the collective name for the material and spiritual civilizations fruit of human rights. In the narrow sense, human rights culture is the ideological form of the spiritual civilization fruit of human rights, i.e., the complex ideological form composed of knowledge system, value concept and subsistence mode of human rights, gradually established in practice. It is the profound reflection of the subsistence of human rights and the crystallization of subsistence wisdom of human rights. The human rights culture of China is not only a result of Chinese human rights history, but also the condensation of the historical process of human rights in China. It is complete with the characteristics, style and manner of China. However, over a long period of time people mistakenly believe that human rights culture rises from the West, as if China has no human rights culture. In fact, the Chinese human rights culture has a glorious past and a brilliant future. "Hardship will spur you on to great success." In the vicissitude over the five thousand years of Chinese culture, the following historical stages can be sketched.

1. The Genes of Human Rights Culture in Ancient China are Diverse.

The excellent genes of human rights culture from ancient China are an evident demonstration of the profound historical and cultural foundation of human rights in China. Comrade Mao Zedong once had a famous remark, "From Confucius to Sun Yat-sen, conscientious study should be made."¹ This is an ideological tradition of the "inseverable" excellent culture of the Chinese nation. True understanding of the cultural basis for the Chinese human rights thought would be impossible without knowing the "inseverable" excellent culture of the Chinese nation. Comrade Jiang Zemin pointed out more definitively, "Recognition of the dignity and value of human beings is a traditional virtue of the Chinese nation. Thoughts like 'Nothing in the world is more valuable than the people,' and 'There is

¹ *Selected Works of Mao Zedong* [M], Book 2, The People's Press, 1991, p. 533.



no greater benevolence than love for the people' proposed by sages in ancient China have a profound influence in the society." "The Chinese nation has always attached great importance to the dignity and value of human beings."¹

Confucius is a historical and cultural personage of the world. His far-reaching influences on China and the world transcend the boundary of time. His doctrine is the representative of traditional Chinese culture. His theory of benevolence reflects the supreme achievement and condensed representation of the native human rights thought of ancient China. The core of Confucian Thought is his theory of benevolence, which played an active role in enlightening the native human rights concept in ancient China. Major cultural genes of human rights contained in it include:

First is discovery of "human." Confucius is the first advocate in Chinese history of thought liberation. He liberated "human" from the theology handed down from the Shang Dynasty (BC 1600-BC 1046), and thus discovered "human," establishing the human study of native human orientation in ancient China. The theology of destiny predominated the Shang Dynasty, and everything of the mortal world was at the disposal of "destiny" and heaven. Contrary to the tradition, Confucius channeled the concept and consciousness of human beings to the track of emphasis on humans. He treated the heaven as a natural phenomenon of the growth of things that changed with the seasons, thus negating the absolute authority of heaven, and emphasized recognition and study of the actual life of humans, thus attaching great importance to the material and spiritual lives of humans. Thus Confucius created the native human concept of ancient China. Confucian discovery of human predates Western Europe (in Renaissance) for over one thousand years. Thus, Confucius is awarded a ranking in the World's Top Ten Cultural Personages by Western thinkers.

Second is the philosophy of "human as the center of the universe." The Confucian school represented by Confucius believes that human is the center of the universe. In the Chapter "*Operation of Rites*" of *the Book of Rites*, there is the remark, "Humans, the center of heaven and earth,," defining the central position of human in the universe. According to the view of macrocosm in *the Book of Changes*, the universe comprised three materials, namely, the heaven, the earth and humans. And those three materials are collectively termed "San Cai," with the heaven at the top, the earth at the bottom and human in the center. Occupying the central position in the universe, humans are its observer and perceiver. Now that humans are the center of the universe, they should be the scale and subject of value. Value without humans would be meaningless.

Third is the thought of "human as the wisest of all creatures." The Confucian school founded by Confucius attaches great importance to humans, believing that they are the most

¹ Jiang Zemin on Socialism with Chinese Characteristics (Featured Abstracts), Central Party Literature Press, 2002, pp. 323-325.



intelligent of all creatures. *The Book of History* pointed, “Humans are the most intelligent of all living lives.” Zhou Dunyi, founder of Neo-Confucianism in Song Dynasty, also remarked in much the same vein in *Illustration of Taiji*, “Only humans are endowed with all the advantages and thus are the most intelligent.”

Fourth is the thought of “people are the most important.” Mencius said that “land, people and political affairs are the three treasures of ducal states.” As can be seen, people are one of the three treasures of a country. “The people are the most important element in a state; next are the gods of land and grain; least is the ruler himself.”¹ For a country, people are the most important. Therefore, the Confucian school represented by Confucius came to the truth “People are the foundation of a country. Solid foundation ensures a peaceful country.”² Xun Zi also said, “The emperor is like the boat, while his subjects are like the water. The water can bear the boat, as well as overturning it.”³ Those views helped to maintain the rule of the exploitative class, while playing an active role in enlightening the native human rights thought in ancient China.

Fifth is the philosophy of “harmony supremacy.” The traditional Chinese culture is the main source of East Asia cultures, while Confucian culture is the mainstream of traditional Chinese culture. The philosophy of “harmony supremacy” takes up an outstanding position in the Confucian culture of China. Confucius pointed out in *The Analects*, “In application of rites, harmony is of overriding importance.” Mencius said, “The time isn’t as important as the terrain; but the terrain isn’t as important as unity with the people.” Xun Zi also said, “All creatures survive because they are in harmony with each other.” *The Doctrine of the Mean* proposed, “Harmony is the greatest way under heaven.” *The Book of Han* and *the Book of History* proposed the thoughts of “harmony for auspice” and “unity for combating hardships” respectively. The thought of “harmony supremacy” is an expansion of the Confucian thought of “human supremacy.” The thought of “human supremacy” acknowledges that “Nothing under the heaven is more valuable than humans,” and advocates love for humans and maintenance of human dignities. The thought of “harmony supremacy” advocates harmonious, kind and friendly interpersonal relations, believing that benevolence should be emphasized in circumstances involving two or more people. Confucius proposed “putting oneself in another’s position” and “Do not do unto others what you wouldn’t want others do to you,” believing that personal interest should be guarded while respecting the interests of others. This indeed could be termed the “golden rules” for handling international relations in the modern world. The tolerant thought of preserving differences while seeking common ground embodies the broad bosom of the Chinese culture.

1 “Devotion: Book 2,” *Mencius*.

2 “Song of the Five Wise Men,” *The Analects*.

3 “Lord Luaigong,” *Xunzi*.



And there is Mo Tzu with his empiricism, emphasizing the subjective initiative spirit of humans, “universal love,” “no war” and “frugality.” All those thoughts have had an active and profound influence on the succeeding generations, providing active materials for historical development of the Chinese human rights culture. Han Fei is the last famous thinker of pre-Qin scholars. He inherited the thoughts of previous thinkers like Shang Yang, and drew on the doctrines of Xun Zi and Taoism to become the most outstanding representative of the Legalist School. Supportive of previous legalists in the view that, circumstances differ with time and adjustments are necessary, he proposed “changing the old ways” and “lauding the present” and opposed “following the ways of precedent kingdoms.” He inherited and changed the theory of “Tao” by Lao Tzu, proposing “rationalization” for interpretation of “Tao,” clearly defined the boundaries for the concepts of “rationalization” and “Tao,” and illustrated the relation between the two. Inheriting the thoughts of “understanding the distinction between heaven and human” and “mastering the laws of heaven to make use of them” by Xun Zi, Han Fei underpinned the subjective initiative of humans, and proposed active reclamation of nature with human strength. He pointed out that utensils and arms were not readily available, but were made by humans. It was humans that had changed nature with tools and made it useful to them.

The native human rights thought of ancient China has not only had an active and enlightening role in the pursuit for survival and development of ancient Chinese, but also has given prominence to the active role of harmony, tolerance and other elements of the traditional Chinese culture in international dialogs on human rights.

2. The Decadence and Wane of Human Rights Shackles in Modern China

Among the four countries of great ancient civilizations, China has created brilliant Chinese civilization, and made indelible contribution in pushing forward the historical process of the world. However, in 1840, the invasion of Western powers, corruption of feudalistic despotism and the fetter of ignorance subjected the sovereignty of the Chinese nation and the human rights of the Chinese people to unprecedented and unrepeatable abuse.

First is the self-vanishment of feudalistic ignorance. Suffocation of human nature and rights by feudalistic ignorance reached its peak in the Ming and Qing Dynasties, with the fettering doctrine of “preserve justice and extinguish human desires” proposed by Zhu Xi as the most typical. The fundamental defect of his theory consists in putting justice and human desires in opposing positions, as reflected in his saying “Existence of justice means the demise of human desires, and prevalence of human desires means the demise of justice.” According to this view, “justice,” which belongs to social ethics, is an existence independent of humans, and its content can be randomly stipulated before a legitimate process is formulated to establish it, thus resulting in “killing of humans by justice” and “eating of



humans by justice” described by Dai Zhen of the Qing Dynasty. In modern times, the feudal rulers used obsolete and petrified ethics and cardinal guides like “the three cardinal guides (ruler guides subject, father guides son and husband guides wife) and the five constant virtues (benevolence, righteousness, propriety, wisdom and fidelity) as specified in the feudal ethical code” as the spiritual weapon to govern the people. The ignorant feudalistic “three cardinal guides and five constant virtues,” the outdated preaching of loyalty, filial piety, righteousness and chastity, the ignorant superstition of ghost worship, and the philistine low-browed culture rendering people listless intertwine to form an ideological fetter that eradicated the thoughts of human rights and freedom, and snuff out national vigor.

Second is the whimsical exploitation by the feudalistic monarchy culture. The feudalistic monarchy culture of subjects’ absolute loyalty to the sovereign emperor is in fact its random exploitation of their rights. Bloody exploitation by dynasties of feudal rulers has made unsustainable the subsistence of the Chinese people. Governments of the old China (before foundation of the P. R. China) failed to solve the problem, but instead aggravated their sufferings. At that time, landlords and rich peasants, whose population accounts for 10% of the rural population, yet possess 70% of the land, while the poor peasants and farm laborers, accounting for 70% of the rural population, own a mere 10% of the land. With possession of land, the landlords and rich peasants ruthlessly exploited the peasants. The Chinese people in the feudal society had no human rights at all. The bureaucratic capital led by the Jiang, Song, Kong and Chen families took control of economic lifelines of the country with their privileges and deprived the people of their hard-won possessions. Issuing currencies whimsically for financial monopoly, made the living and development status of the Chinese people more miserable.

Third is whimsical abuse by Western colonialist culture. During the 110 years between 1840 and 1949, Western imperialist powers successively launched hundreds of invasive wars on varying scales against China, and forced it to sign over 1,000 unequal treaties. Western powers scrambled for stretches of Chinese land through warfare and unequal treaties, dividing sovereign China into their respective “spheres of influence.” A large China was cut into fragments and national sovereignty became void. If a country loses its sovereignty, its people will be bullied and ravaged. In the spring of 1867, at the gate of the garden in the French concession in the Bund area in Shanghai, foreigners came and went, yet there was a plaque on the gate, saying, “Chinese and dogs forbidden.” It is gangster logic that the Chinese soil should deny the admittance of the Chinese. When the imperialist powers compromised the wall of China, another war – a war without gunpowder and smoke – was waged in another arena, i.e., cultural invasion led by missionaries. They not only covered the design of loot and exploitation with the pretext of preaching their religion, conducting the infamous deal impossible for armed invasion, but also introduced the thought of worship



and blind faith in foreign things, “creating submissive intellectual cadres and befooling the Chinese people.” By preaching, newspapers, “charity” causes, and school education, they disseminated the toxin to the towns and rural areas. Those were important means adopted by Western powers in implementing cultural invasion on China.

3. Struggle and Loud Cry of Human Rights Culture Enlightenment in Modern China

The history of modern China is a history of human rights meditation, and a history of struggle and loud cry by human rights culture enlightenment. Awakened and angry, people with lofty ideals introduced human rights theory into modern China, and started the loud cry and struggle for human rights enlightenment.

The first is the enlightenment of human rights thought by Kang Youwei. Kang Youwei is the leader and outstanding representative of intellectuals advocating reform in late 19th Century China. Back then, Kang often used the term “civil rights” as opposition to regal rights in human rights campaigns against regal rights. Therefore, the human rights thought of Kang Youwei can be deemed the initiation of “civil rights” concept. Its main content includes, abstract theoretical illustration of “promoting civil rights and downgrading regal rights,” advocacy of human nature, opposition to the feudal concept of ethics and morality suppressing human nature, call for changes to irrational system encroaching on human rights, and description of an ideal cosmopolitan society in which all were equal and diligent.

The second is the enlightenment of human rights thought by Sun Yat-sen. The forerunner of revolution in China, Sun Yat-sen is not only a great revolutionary leader, but also an outstanding fighter for human rights. His entire life is devoted to struggle for various rights that should be entitled to the Chinese people and to fight tirelessly against the feudal despotic system and Western colonial invaders ravaging and suppressing human rights. In decades of revolutionary practice, Sun Yat-sen left rich heritage of human rights thought. His “Three Principles of the People,” i.e., nationality, democratic (civil) rights and the people’s livelihood, and the constitutional thought of separation of legislation right, administrative right, judicial right, examination right and supervisory right, are the typical representative and highest achievement of human rights thought by the bourgeois class in modern China.

The third is *the Revolution Army* by Zou Rong, *the Human Rights Covenant* by Hu Shih, and *On Human Rights* by Luo Longji, which are important literatures of human rights enlightenment by the bourgeois class in modern China. In addition, there are many others contributing to the issue of human rights. Seen from the human rights concept involved in China, virtually all the human rights popular in West Europe could be found. Moreover, many had taken into consideration the traditional Chinese culture and the social status quo of China at that time, lending touches in varying degrees of Chinese characteristics.



On the basis of accepting the Western human rights concept, the enlightenment thinkers of human rights from the modern bourgeois in China played an active role in integrating the circumstances of modern China to awaken the people to self-emancipation and break the fetter of feudalistic traditional culture. However, their enlightenments of human rights theory inevitably encompass spiritualism, insincerity, self-interest and other limitations like those of the Western bourgeois. All attempts and wishes to use this human rights theory to oppose imperialism and feudalism naturally resulted in failure.

4. Rebirth of Human Rights Culture Revolution in Contemporary China

The May Fourth New Culture Movement, especially the establishment of the Communist Party of China, who integrated the universal principle of Marxist Human Rights with the specific circumstances of China, inaugurated a new epoch in Chinese human rights revolution.

First is human rights revolution of the May Fourth New Culture Movement. The May Fourth Movement is an epoch-marking event in Chinese history. It greatly promoted the combination of Marxism with Chinese labor movement, and unveiled the historical curtain of neo-democratic revolution in China. The May Fourth Movement is also a milestone in the development of human rights history. It enabled an essential leap forward for the human rights theory emphasizing personal equality and freedom based on simple borrow of the Western human rights concept, elevating it to the height of anti-imperialism and anti-feudalism, bringing forth the strongest voice in the era of democracy and science. People's awareness, in the loud cry of "overthrowing the Confucian store" and "avenging the insult of loss of national rights and disgrace imposed on the country," of a nation, of democracy and of human rights was greatly popularized and improved in their struggle for freedom of speech, in emancipation of individuality. With the dissemination of May Fourth Movement in China, the advanced intellectuals reached a new height in their recognition of the human rights concept, after baptism in the May Fourth Movement and acceptance of Marxism.

Second is the unrelenting struggle of neo-democratic revolution for human rights and freedom. The first generation of CPC members represented by Mao Zedong led the peoples of all nations across China established a new human rights theory and heralded a new dawn for human rights in China after twenty-eight years of unrelenting struggle amid hardships. It has always been the fundamental stance and principle of CPC people in the neo-democratic revolution to vie for human rights, freedom and emancipation for the greatest majority of the poor and laborers in China. At all stages of the neo-democratic revolution, it has been a banner raised high by the CPC to strive for human rights, freedom and national independence and emancipation. At the start of its foundation, the CPC unequivocally put forward the slogan of "Strive for Human Rights and Strive for Freedom" in leading the



“7th February” strike in 1923. In the anti-Japanese war, the CPC called on all peoples to “fight for human rights and freedom” and “to struggle for the three objectives of national independence, civil freedom, and happy livelihood for the people,” led the people to establish democratic governments in anti-Japanese base areas, formulated the democratic guidelines, and promulgated a series of specific regulations for protecting human rights. During the war of liberation, the CPC forwarded the revolutionary policy of “protecting human rights, salvaging people’s livelihood and complete unification,” and formulated and implemented various administrative guides, constitutional principles and special laws and regulations for “protecting human rights, property rights and civil rights” in the liberated areas, and waged patriotic democratic movements of “anti-hunger, anti-oppression and anti-internal war” and “struggle for freedom, democracy and human rights” in the areas ruled by Kuomintang.

Third is the establishment of Mao Zedong human rights thought. The CPC people represented by comrade Mao Zedong integrated the principles of human rights in Marxism with the specific practice of revolution and construction in China to establish the Mao Zedong thought of human rights and creatively forward his ideal of rights for the people, in the process of leading democratic revolution, socialist revolution and construction in over half a century. Mao Zedong’s thought of rights for the people is the theoretical banner of Rights for the people in the real sense of the word. His human rights thought is the first leap made by Marxist human rights theory indigenized in China, laying a solid foundation for the development of human rights theory and cause later on. However, the succeeding “Cultural Revolution” incurred heavy losses on the causes of the CPC, the country and the people, hurting the legal interests of the people. This came in the way of fully objective assessment of Mao Zedong’s human rights thought. The antagonist forces took this in attacking and distorting the socialist human rights cause in China. This is the lesson that we must learn and sum up.

Fourth is national independence and emancipation of the people. The foundation of The People’s Republic of China on Oct. 1, 1949 proclaimed that the Chinese people has stood up and won the real “qualities of being humans,” fundamentally changing the miserable conditions of “Chinese and dogs are forbidden,” “sick man of East Asia” and complete deprivation of personal dignity. It realized the great span from feudal system which had lasted thousands of years to the people’s democratic system, completely ended the history of semi-feudal and semi-colonial society in old China and achieved unification and unprecedented solidarity among all the nations, eradicated the scenario of zero solidarity in old China, and abolished all the unequal treaties imposed upon China by Western powers and the privileges of imperialism in China.

Fifth is a brand-new socialist human rights system established. Establishment and improvement of people’s democratic state system, National People’s Congress System,



Political Consultative System under the leadership of CPC, and Minority Regional Autonomous System after the foundation of the People's Republic of China provided fundamental political guarantee for realizing the democratic rights of people as the master of their country. The establishment of the fundamental socialist economic system in 1956 provided fundamental economic guarantee for people from all nations to equally participate in economic development and share the results. Formulation of the first Constitution of the People's Republic of China and Marriage Law provided reliable legal guarantee for various rights of peoples from all the nationalities.

5. Self-Knowledge and Self-Confidence of Contemporary Human Rights Culture with Chinese Characteristics

First, the historical experience and responsibilities of self-knowledge and self-confidence of contemporary human rights culture with Chinese characteristics. The invaluable experience over the 90 years since the foundation of the CPC, and the practice of human rights construction over the 60-odd years since the foundation of the People's Republic of China, especially the theoretical and practical innovation of human rights over the 30-odd years since the policy of reform and opening-up, pushed the self-knowledge and self-confidence of contemporary human rights culture into a brand new stage. In *the Lecture Delivered on Conference Celebrating the 90th Anniversary of the Foundation of the Communist Party of China*, comrade Hu Jintao pointed out, "We must carry out cultural creation in the great practice of socialism with Chinese characteristics," "with high cultural self-knowledge and self-confidence."¹

Second, the basic connotations and lively embodiment of self-knowledge and self-confidence of the human rights culture with Chinese characteristics. Cultural self-knowledge mainly means the cultural awareness and improvement of a country, a nation and a political party, including the proud recognition of the position and role of culture in historical progress, in right comprehension of the cultural development regularities, and in active assumption of the historical responsibility of cultural development. In the golden saying by the great sociological master Fei Xiaotong, it consists in the fact "self-knowledge of the culture by the people living in it, and of its history, its formative process, its characteristics and its development trend." And its purpose lies in "strengthening the independent ability for cultural transformation, and obtaining the independence of adapting to new environments and cultural choice in the new era."² Cultural self-knowledge is the relentless pursuit and strong inclination of the progress in human civilization, and the internal impetus promoting

1 Hu Jintao, *The Lecture Delivered on Conference Celebrating the 90th Anniversary of the Foundation of the Communist Party of China*. Offprint. The People's Press, 2011, p. 23.

2 Fei Xiaotong, "Appreciation of Mutual Beauties and Human Civilization." [J] *Xinhua Wenzhai*, 2005(8), p. 13.



the great prosperity and development of human cultures. Cultural self-confidence mainly refers to the confidence and creativity of the mainstream culture of a state, a nation, and a political party, including the attractiveness, charisma, openness, tolerance of diversity and viability of creative thought of the mainstream ideological culture and excellent traditional culture. The scientific outlook on development features of people orientation, construction of a harmonious society domestically and construction of a harmonious world that respects differences, and advocates diversity and tolerance of diversity are lifelike embodiments.

Third, the spiritual essence and basic content of the self-knowledge and self-confidence of the human rights culture with Chinese characteristics. Over the 90 years since the foundation of the CPC, especially since the policy of reform and opening-up, China has gradually carved out a path for development of human rights with Chinese characteristics, formed a theoretical system and a series of protection systems for human rights with Chinese characteristics. It profoundly reflects the spiritual essence of self-knowledge and self-confidence of the human rights culture with Chinese characteristics. As the cultural self-knowledge and self-confidence, the basic content of the theoretical system of human rights with Chinese characteristics mainly consists of regulations on the essence of human rights, theoretical foundation, the basis for human rights practice, the human rights protection system, the human rights principles and stances, the developmental path for human rights, and international cooperation in human rights with Chinese characteristics. It takes protection for the rights of the greatest majority of the people as the core, the scientific outlook on development as the overall guideline, the new human rights thought and views of the theoretical system of socialism with Chinese characteristics as the logic mainline, and the creative practice of socialism with Chinese characteristics as the solid foundation.

Fourth, the series of new thoughts and views of self-knowledge and self-confidence of the human rights culture with Chinese characteristics. 1) People orientation, protecting the rights to equal participation and development of all social members. 2) Human rights are not the patent of capitalism, but the essential requirement of socialist democratic politics. 3) The administration of CPC aims at leading and supporting the people to take the power of governing their country, respecting and protecting human rights. 4) "The state respects and protects human rights," and safeguard the legitimate rights of its citizens by using the Constitution and laws. 5) The realization of human rights is a process subjected to limitations by various conditions. 6) The rights to subsistence and development are taken as the foremost and fundamental rights, with a view to the actual circumstances of China. 7) Arrange coordinated development in a scientific manner, and promote the full development of socialist human rights. 8) Fundamental civil rights are the organic unification of all rights. 9) Build a relatively well-off society and forge a harmonious society, continuously improving the level of social and economic rights entitled to the people. 10) Integrate the universality principle of



human rights with the specific circumstances of different countries, and accordingly choose the appropriate path and mode for human rights development. 11) Realistically respect and protect the legal rights of special groups. 12) Join hands to construct a harmonious world, actively launch international cooperation and dialog in human rights, and promote the healthy development of international human rights causes. 13) Step up efforts to promote the free and full development of individuals, which is an important objective for full achievement of human rights. 14) Education of the masses, especially the youth students with systematic Marxist human rights concepts. The new concepts and views of human rights are not only the new results of indigenized Marxist human rights theory, but also a new contribution to the modern international human rights causes.

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The Cultural Basis of Cognition of the Attributions of Human Rights and Its Inclusive Development

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The cognition of the attributions of human rights and their relationships not only exert an important impact on the development of human rights and the actual enjoyment of human rights subjects, but also are the important ideological roots of causing international disputes in the area of human rights. As people around the world live in different and specific cultural environment, so the cultural differences will result in people around the world having different cognitions on the attributions of human rights, thus the diverse situations of values and practices of human rights have formed. People of all countries have diverse demands towards the development of human rights. To meet such demands, on the one hand, we should respect different cultural beliefs of people of different countries and recognize the fact of diverse human rights, so that we can establish a dialectical, scientific and inclusive concept of human rights. On the other hand, we should enhance cultural exchanges among different countries to promote mutual understanding and trust, establish and expand cultural consensus, strengthen the common cultural foundation of world peace, and promote the healthy development of a variety of international cause of human rights. To promote these goals, this paper has made the following discussions.

I. Historical and Cultural Basis of the Cognition of Attributions of Human Rights

Human rights have the features of universality and particularity. The universality of human rights originates from the similarities of human culture, while the particularity of human rights originates from the differences of national culture. By taking a view from the similarities of human culture, all national cultures are people-oriented and take “human beings” and “how ‘human being’ live among various relationships” as the starting point. Although the culture of human rights did not develop at the same time in all national cultures, and emphasized the differences between individuality and collectivity of human beings as well as between performance and the degree of perfection, they all showed the subject status and values of human beings and concerns for human beings, which are the common characteristics and foundations of different national cultures of human beings. By taking a view from the cultural differences, those differences among ethnic groups are



due to cultural differences, which are the roots of particularity, relativity and diversity of human rights. The human rights conflicts between modern Western countries and Eastern countries are mostly due to the differences among different national cultures, besides national interests.

The reflection of similarities and differences of culture on the concept of human rights indicates that the Western human rights concept in modern times is built on individual liberalism and cultural expansionism. In Christian culture from which Western cultures originate, the concept of “human beings” emphasizes on a spiritual quality, self-seeking and self-approval, which recognizes the power and values of human beings. Christian culture has given birth to the concept of human rights among western ethnic groups, that is, oppose autocratic oppression, respect for individual freedom and actively seek from the outer world. Mr. Qian Mu has summed up Western culture as “business culture,”¹ which reflects the characteristics of capital expansion – “as they lack internal essence, so they have to seek from the outer world; therefore, Western culture advocates flowing, progress, independence and freedom.”² The economic foundation of this culture is the commodity economy. Since ancient Greece, the development of Western commodity economy has formed the economic structure of individual ownership. The commodity economy has strengthened the individual consciousness, and promoted the growth of personality factors of human beings. The salient features of political structures in Western countries, which are appropriate to the commodity economy, show strong oppression against authoritarianism, and call for decentralization, freedom and democracy. This economic structure is oriented with free competition and the achievement of maximization of individual interests, together with the political structure pursuing decentralization, which eventually makes “human beings” the self-interest subjects of rights who are against others. These “human beings” are not only independent of the group, but also prior to and superior to the group. Probably from the 13th centuries, Western cultural elements, which advocated personality, have developed into a complete form of individualism. Thomas Hobbes was the first person who systematically described individualism in Western philosophy. In the long-term penetration of interpersonal relations, individualism has made Westerners self-centered, exaggerated the personality of human beings as well as the universal, global and absolute habits of individual human rights. The concept of “superior position of individual human rights” has applied in the international human rights areas, which have resulted in Western countries wanting to change or create an international order in line with their economic, military and cultural strength; therefore, the cultural hegemony, together with the integration of economic and military hegemony, has been formed. However, hegemony is the greatest threat to the construction of a new

1 Qian Mu: *Introduction to the History of Chinese Culture*, Joint Publishing Company, 1988, Page 2 of the preface.

2 Xu Xianming: *Principles of Human Rights Laws*, China University of Politic Science and Law Press, 2008, Page 108.



international order with equality and harmony.

Western culture is different from the oriental culture, which has a more complex structure. Oriental culture either takes Chinese Confucian culture as the main body, or Indian culture and Islamic culture as the basis. As the main body of Chinese traditional culture, Confucian culture is an agricultural culture with a basis of natural economy. Confucian culture advocates collectivism, and the ideal personality of decency, propriety, gentlemen and saints. Moreover, it also advocates the ideal interpersonal relationship of loyalty and integrity, and pursues the ideal state of “pursuing the prior knowledge, but following the doctrine of the mean.” Furthermore, Confucian culture shows a tendency to conservatism in the change mechanism. Indian culture is diverse and inclusive and consists of a variety of religious and cultural elements, including Brahmanism, Buddhism, Islam, Jainism, Christian, Sikhism and Baha’i that is developed in modern times. Since ancient times, different kinds of local, linguistic and religious cultures in India are compatible with a variety of foreign cultural elements more or less. Buddhist culture pays more attention to study life and realities and make value judgments on life. Moreover, it also emphasizes self-reliance and self-consciousness on self-cultivation practices, and links the liberation of one person with the salvation of mankind. “Islam” is not just a general sense of religion, but a religious belief and cultural form with an extensively social participation. Islamic culture guides social life via its religious spirit and values, and rectifies those social behaviors that have deviated from the “right track.” Furthermore, Islamic culture combines common characteristics with individuality or diversity, and possesses strong assimilation and tolerance. These oriental cultures, which have significant differences with Western cultures, do not focus on personal interests and the realization of individual values in their features and values. However, starting with the whole “person,” they take an overall perspective to observe personal interests. On the other hand, these oriental cultures recognize both universal and special elements of human rights on the cognition of the particularity of human rights.

The above cultural diversity or values pursuing diversity have highlighted the differences of psychological structure of different national cultures. Such differences have not only enriched the international human rights culture, but also are the crucial reasons to cause conflicts in value pursuits and politics of human rights between oriental and western countries. Cultural differences and diversities are historically formed with objective necessity, which can not be artificially eliminated. However, the current trend of internationalization of human rights and the approaches to resolute conflicts increasingly demand that all countries around the world should promote and expand cultural consensus via peaceful negotiation, and inhibit those particular elements of national cultures that would result in conflicting with each other. Therefore, the tension of various cultures can be controlled within a reasonable



range without causing violent collisions, that is, under the premise of maintaining cultural features of each country and respecting people of all countries to independently choose their paths for developing human rights, we should adhere to an inclusive and constructive development road for the internationalization of human rights.

II. The Logical Relationships of Basic Attributions of Human Rights

Universality and particularity are the basic dimensions of the attributions of human rights. The particularity of human rights is the basis of the universality of human rights, and the universality of human rights resides in the particularity of human rights, which is the dialectical unity of universality and particularity of human rights. Normally, the universality of human rights contains three dimensions: the universality of the subject, the content and the value.¹ All human beings, regardless of their race, origin, nationality and color, have the same attributes and common features. As the constitute elements of human culture, different national cultures absolutely have common elements. These elements are the common basis of human culture as well as the universality of human rights. The commonality of culture or (and) the universality of human rights are the reflections of common attributions of human rights. And without culture or the universality of human rights, people with different nationalities, ethnics, colors and descents will not be possible to exchange in equality and live in peace. In the field of human rights, the universality of human rights means that people with different race, nationality, descent and color share the same constitute elements of human rights concepts or the pursuit of human rights values. It also means that human beings share common rights in the system of human rights. However, human beings live in specific natural and social environments which may develop or change in the historical process, so the differences of living environment and social conditions often cause differences in the stances, perspectives and methods of observing things, and may result in people having differences in recognition, attitudes and aspirations of the surrounding environment. The differences of life attitudes and value pursuits, determined by different living environment and social conditions, have caused the differences among different cultures. However, the essential differences of cultures are manifested in different national spirits and characters. In the field of human rights, different objective conditions and resulting subjective factors have led to the diversity and relativity of human rights values. Therefore, human rights not only have universality, but also have relativity and particularity. “Generally, the particularity of human rights is understood as different countries and regions have a variety of specific methods and modes in the course of pursuing the full realization of human rights, because they have differences in historical traditions, cultures, religions, values, resources and

1 Qi Yanping: “On Universal Human Rights,” *Literature, History and Philosophy*, 2002, No. 3.



economy etc.”¹ Ultimately, the particularity of human rights is a reflection of cultural attributions. The national characters and temporal spirits shared by all cultures have determined that constituent elements of culture, realities and the pursuit of human rights and its concepts are bound to have particularities or differences. The universality of human rights and commonality of human rights concepts are rooted in cultural cosmopolitanism, while the particularity of human rights and differences of human rights concepts are rooted in the national characters and temporal spirits of culture. Therefore, human rights are the unity of universality and particularity, whose reflections are human rights concepts.

Human rights and their values have developed with the gradual enrichment and development of people's lives and their own development; therefore, human right is the unity of historical and theoretical logic. The universality of human rights has revealed that the common attributions of human beings are the foundation of establishing mutual trust among different countries and ethnics, which has provided a mutual value basis for exchanges of culture and human rights among people of all countries. The particularity of human rights is a reflection of cultural or ethnic differences, and a premise of exchanges of different ethnic groups which belong to different cultural systems. What's more, the particularity of human rights can provide a frame of reference and complementarity for the development of international human rights. Adhering to the unity of universality and particularity of human rights, we should respect the universality of human rights and the general rules of the development of human rights. We can not deny the universality of human rights on the ground of the particularity of human rights, or the situations of violating human rights and negatively treating human rights issues might be legalized in some countries. Moreover, we can not deny the particularity of human rights on the ground of the universality of human rights. Furthermore, we can not impose one's own human rights concepts to other countries and their people. Due to the particularity, history and relativity of human rights, the realization, development and safeguard of human rights are always subject to economic, political, environmental, social and historical conditions. Therefore, the development and implementation of human rights is always conditional and relative. In the international field of human rights, exaggerating the universality of human rights and ignoring the particularity of human rights tend to become the excuses for the implementation of power politics and hegemony by some countries; while emphasizing too much on the particularity of human rights and denying the universality of human rights may be the excuses of canceling human rights or negatively taking effective steps to safeguard and develop human rights of the country. Therefore, to safeguard human rights of their people and develop international human rights in practices, we must correctly handle the relationship between universality and particularity of human rights.

1 Xu Xianming: "Analysis on the Universality of Human Rights and Culture of Human Rights," *Law Review*, 1999, No. 6.



III. Adhere to the Development Path of International Human Rights with Peaceful Negotiation and Inclusive Harmony

The practice of human history tells us that the development of human rights is restrained by economic, political, social and cultural factors. As each country has different economic, political, social and historical foundations and conditions, so the cultural differences, which are developed from such foundations and conditions, are natural phenomena that can not be denied. In the field of human rights, although culture does not directly determine the nature, content, features, types and trends of human rights in one country as economic, political and social structures do, culture, which is accumulated through a long term on the basis of economy, politics and society and has reflected the ideological forms of historical traditions of a certain country, will exert a more stable and long-term impact on the concepts and practices of human rights. Cultural differences, not race, nationality, identity and color, have determined the key elements of human rights concepts and the diversity of human rights values. Cultural differences are manifested in differences of national psychology and characters, which is caused by the differences of life styles and social contacts of different ethnics around the world. These differences have more penetration power on the formation of human rights concepts and the influences of human rights practices. Meanwhile, they are also the deepest level and the fundamental reason of influencing human rights concepts and the cognition of attributions of human rights of a country or an ethnic group. Economic, political and social relationships are always in flux, while culture often shows up in a relatively solidified form. Among them, only those factors that are closely connected with the characteristics of the times will vary with the changes of economy, politics and society. However, those accumulated factors through a long term, which have reflected national spirits and psychology, have a long-term stability and historical penetration, and will be preserved as the traditional factors in culture for a long time. The changes of temporal factors of national culture will not necessarily change the cultural system and its essential characteristics, and not lead to the disappearance of an ethnic group which is the cultural carrier. However, once those national spirits, characters or cultural psychology united in the culture have changed fundamentally, then the cultural form of this “national culture” will no longer exist, and eventually this nation will disappear or be replaced by other nations. The individual cases of national extinction are very rare in human history, especially in modern times. With the progress of human civilization, the power of justice and morality is growing, so the attempt of killing out a certain race or nation via wars will be difficult to succeed. As a consequence, the multiracial and multi-ethnic existence has provided a solid and stable carrier for the objective existence of multicultural, including human rights culture. For those weak ethnic groups and developing countries, confirming cultural diversity and the complementarity and legitimacy of its objective existence, as well as following the trend of cultural diversity



will not only be closely bound up their fate, but also a prerequisite to protect their rights to subsistence and development. Meanwhile, for those nations and countries that have powerful positions in culture, they must admit the following historical fact, that is, the development of human civilization is uneven, and its development center will not be fixed permanently in one country or region. And there might be several centers of civilization around the world. Any hegemony, including cultural hegemony, may be in power for a while, but will not be in power forever. Therefore, to confirm the historical fact that the development of human civilization has several sources, recognize the practical rationality and legitimacy of cultural diversity, as well as establish and expand the consensus on the cultural diversity of human rights is our only choice to maintain world peace, enrich and develop international human rights, realize the coexistence and prosperity of all nations all over the world, and share the progress of human civilization.

To safeguard and develop their human rights, and promote the coordinated development of international human rights cause, we should adhere to human rights and their practices from a historical and dialectical perspective and confirm the objective fact that the values of human rights are diverse. Human rights, which are an objective process of development, are based on human nature with historical features. Their development is restrained by economic, political, cultural, social and ecological environment, and varies with their evolution. In different historical stages and different countries, due to the huge differences in economic, political, cultural, social and ecological environment, people inevitably have differences on subjective understandings and value expectancy of human rights. Therefore, the concepts and development modes of human rights can not be exactly the same. The value pluralism of human rights is always accompanied by the phenomena of human rights. If historical progress and cultural differences have led to different pursuit and development modes of human rights in different countries, then these differences are inevitable and rational. It will be impossible and inhumane to attempt to eliminate these differences. In the course of human rights development, those countries, which have transformed from feudal society into modern society, have advantages for human rights campaigns and realization due to the development of commodity economy and social structure. Therefore, their practices of human rights are relatively earlier than other countries, resulting in a relatively complete human rights form. However, it should not become the reason why these countries make indiscreet remarks on the human rights situation of developing countries. It also can not be the excuse that these countries impose their concepts and modes of human rights on developing countries. As human rights progress in developed countries is achieved by hard struggle of their people, and these countries all have disgraceful records of human rights in both domestic and international domain, these countries can not deny the fact that people of all countries have the right to independently choose their development modes of human



rights in line with their national conditions, or the particularity of human rights would be obliterated. To deny the particularity of human rights means denying the premise of the universality of human rights, which will eventually result in not achieving the aspirations of human rights. Consequently, we should discuss human rights from a historical and dialectical perspective, combine the universality of human rights with their particularity, so that we can truly safeguard and develop human rights.

Secondly, we should resolve human rights conflicts via peaceful negotiation and develop international human rights in an inclusive way. As mentioned above, the limitations of actual enjoyment of human rights determined by the richness of human rights contents and historical conditions which are expected by human beings are the real basis and insurmountable gap of forming different concepts and development modes of human beings. However, if A country imposes the most important aspect of human rights in its opinions on B country that does not need the most urgent protection of human rights, regardless of the limitations of actual enjoyment of human rights provided by history, and regardless of the most essential and important human rights under certain conditions in one country, it will definitely cause conflicts among different countries. So how can we resolve human conflicts? Some western countries take “human rights overriding sovereignty” as an excuse and interfere with human rights matters in other countries by force, which is actually causing new tragedies of human rights. Moreover, the ultimate realization and development of human rights does not depend on the output values and force threatening of other countries. In particular, it will be futile and inhumane to promote single values and concepts of human rights all over the world, and it will be unlikely to succeed at last. At present, the most fundamental and effective ways and methods to resolve human conflicts are to strengthen economic, political, cultural and military exchanges among different countries via peaceful negotiation, as well as develop and expand universal factors among different cultures, and establish mutual trust among each other. As all countries have formed different historical and cultural phenomena, including different values, concepts and development modes of human rights based on their unique historical conditions and national culture, we should respect history and customs of all countries, follow the rules of cultural development, and resolve conflicts via an attitude of mutual exchanges, learning from each other, complementing each other, expand consensus, seek common ground while putting aside differences, that is, adhering to the development path of human rights with peaceful negotiation and inclusive harmony is the most rational and feasible choice of all countries around the world.

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Implementing Human Rights by Relying on Local Culture and Existing Social Institutions: the Receptor Approach

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1. Introduction

The dominant discourse on international human rights is based on two misconceptions. The first is that the only way to implement human rights treaties is by according enforceable rights and by relying on law. The second is that international human rights law require states in the East and the global South to give up their traditions and institutions to make way for the Western values and institutions which are supposed to underlie human rights. The assumption then is that international human rights will only be implemented effectively if local cultural values and social institutions are pushed to the side. This article is aimed at demonstrating that these assumptions are unfounded. As will be explained in section 2, both public international law and human rights treaties leave it to the states to determine how to implement their obligations. In addition, states are not supposed to sacrifice their culture or their values when they sign up to human rights treaties.

After having rebutted these two misconceptions, the article will lay out an alternative view on international human rights, the so-called receptor approach, which assumes that the culture and the existing social institutions of Eastern and Southern countries can actually contribute to meeting international human rights obligations. The receptor approach assumes that by relying on local socio-cultural arrangements during the implementation stage human rights protection will be enhanced and reinforced rather than diminished. This can be done

¹ This article reflects ideas expressed during a presentation to the United Nations Human Rights Council on 4 October 2010, called 'How traditional values and human rights can reinforce each other: the receptor approach', and the inaugural lecture delivered on 26 June 2010 at Utrecht, called 'Underscoring the people in human rights'. I am grateful to Mimi Zou of Oxford University, who has made an outstanding contribution to the conceptualization of this approach; to Professor Zexian Chen, the Director of Institute of International Law of the Chinese Academy of Social Sciences, and Professor Yanping Qi, the Dean of the Law School of Shandong University, for offering their wise counsel and impressive scholarship during the development the concept; to Professor Rafael Wittek and Valeska Korff of the Interuniversity Center for Social Science Theory and Methodology at Groningen University for their very valuable advice on methodological issues; and to Yanqing Hong for his important intellectual and organisational contributions to this research project. I would like to thank Irene Anying, Uche Enemchukwu, Nilofar Sarwar, and Byung Sook de Vries for their very helpful comments on a previous draft, and Shameem Ahmad, Sanna Eriksson, Laura Henderson, Hailan He, Junjun Hu, Wang Leiyu and Michael Odhiambo for their great research assistance. All remaining errors are mine.



first by identifying and making visible social arrangements already in place which support and protect human rights, the so-called matching phase. This phase will be discussed in section 3. Second, if these arrangements fall short of the international human rights requirements, the solution will be to add to them rather than to replace them with Eurocentric solutions. This is called the amplification phase, which will be dealt with in section 4. Section 5 contains some concluding observations.

The receptor approach towards human rights is built on two pillars. First, states are bound by the obligations laid down in the human rights treaties to which they have signed up. In other words, states may not water down nor compromise such obligations unilaterally while invoking local cultural values, but should implement them diligently and in good faith. Second, in order to enable states to fulfill their treaty obligations to the full, they are encouraged to rely as much as possible on their own cultural values and social institutions during the implementation stage.

The receptor approach owes its name to the receptors known from biomedicine.¹ Receptors are molecules located at the outer membrane of the cell. The cells in our body are exposed to numerous external signals. The receptors on the cell determine which signals are allowed to enter the cell and which ones will be blocked. The receptor approach towards human rights assumes that international human rights will be most effective if they are able to lock on to socio-cultural receptors which allow them to play a role in the societies concerned.

The receptor approach is currently being conceptualized in close cooperation with a team of Chinese scholars working at the Institute of International Law of the Chinese Academy of Social Sciences, led by its Director, Professor Zexian Chen, and the Research Center for Human Rights of Shandong University School of Law, led by the Dean of the Law School, Professor Yanping Qi.

2. Rebutting Misconceptions about Human Rights

2.1 Human rights treaties do not require implementation through granting individual, enforceable rights

Western activists, government officials and academics often take the view that human rights treaties ought to be implemented through recognizing or according individual, enforceable rights or by using other legal means. Many African and Asian societies, which have a communal nature, prefer other social institutions than rights to provide texture to society. In the West this reluctance to translate human rights obligations into rights is often seen as a failure to implement them. The question therefore is whether international law

¹ Hiram F. Gilbert, *Basic Concepts in Biochemistry*, New York, 2000, pp. 123-126; William O. Foye, Thomas L. Lemke and David A. Williams, *Foye's Principles of Medicinal Chemistry*, Baltimore, 2007, pp. 85-98.



and human rights treaties require implementation by taking legal steps or by conferring enforceable rights, or whether they do allow the states parties to rely on other social arrangements.

Under general international law states enjoy discretion with regard to the implementation of treaty obligations within the municipal order.¹ As long as they meet the obligations laid down in the treaty to which they have signed up, they are free to choose the most appropriate way of doing so at the domestic level. In other words, domestic application is an obligation of result rather than an obligation of means.² Therefore, the implementation of treaties, including human rights conventions, is a matter of 'domestic primacy'.³

The principle of domestic primacy has been reconfirmed by the implementation clauses of international human rights treaties. Thus, Article 2(2) of the *International Covenant on Civil and Political Rights* (hereafter: the Covenant) obliges the states parties to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the Covenant. In its General Comment No. 31, the Human Rights Committee, although noting that incorporation may enhance the protection of the Covenant guarantees, made clear that Article 2(2) CCPR does not require it.⁴ Therefore, also under Article 2(2), the states parties enjoy discretion with regards to the means they would like to employ to meet their treaty obligations, be they laws or other social institutions.

In essence, therefore, it is up to the states parties to choose the most appropriate means to implement the obligations stated in the Covenant, relying either on legal or other measures.⁵ As the treaty based organs have indicated in their discussions on states reports, these measures may include actions like organizing awareness-raising campaigns,⁶ setting up training programs,⁷ initiating educational reform,⁸ and providing childcare and similar support services to allow women to continue their education.⁹ Consequently, the Covenant adopts an approach which is both discretionary and functional, leaving it to the states to choose the most suitable national means to meet their obligations.

As a result, Eastern and Southern states are perfectly free to implement these treaty

1 Manfred Nowak, *U.N. Covenant on Civil and Political Rights*, CCPR Commentary, second edition, Kehl, 2005, 57.

2 Oscar Shachter, "The Obligation to Implement the Covenant in Domestic Law," in: Louis Henkin (ed.), *The International Bill of Rights: The Covenant on Civil and Political Rights*, New York, 1981, 311; Nowak, *supra* n. 3, 57.

3 Douglas L. Donoho, "Human Rights Enforcement in Twenty-First Century," 35 Ga. J. Int'l & Comp. L. 1 (2006-2007), at 12.

4 General Comment No. 31 Nature of the General Legal Obligation Imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add.13, adopted 29 March 2004.

5 Shachter, *supra* n. 4, 319-320.

6 CEDAW/C/SR.606, 7; CEDAW/C/SR.630, 3 and 5.

7 CEDAW/C/SR.606, 7; CEDAW/C/SR.630, 9.

8 CEDAW/C/SR.606, 6.

9 CEDAW/C/SR.606, 7.



obligations without using rights but by relying on other social arrangements, like kinship, the community, solidarity, duties, and harmony, which fit better into their culture and traditions. The social arrangements in place should deal with any human rights shortcomings within the national order. Only when they fail to do so, the problem may be lifted to and dealt with at the international level, where the states will be held accountable in legal terms. Western countries may prefer rights, but others may opt for functional equivalents. Therefore, if a state chooses to implement a human rights provision not through rights, but through other social arrangement, it is not failing its duties under human rights treaties, but using one of several legitimate courses of action open to it.¹

2.2 Human rights treaties do not require sacrificing local values and culture

Many Western activists, government officials and academics adhere to the view that human rights are inalienable in the sense that every person as a human being should be able to enjoy them.² They are natural rights, to which everybody is entitled, regardless of time and place, and whether or not these rights have been recognized by existing law. They emanate from the Enlightenment, and therefore underlying them are liberal values like personal autonomy, choice, freedom, secularity, rationality and a scientific approach.

Commentators in other parts of the world beg to differ.³ Societies which revolve around communities, like the family, the clan and the tribe, assume that individuals should not only take from the community by claiming rights, but should also contribute to it by fulfilling duties and bearing responsibility. This approach is widespread in Confucian societies in Asia and those based on Ubuntu in Africa. Both of these views on human rights, the Western and the communal one, are equally valid, and one's cultural background will probably determine which one to support.

However, the leading position among Western human rights experts seems to be that theirs should not be considered just *a* but *the* view on human rights, which is binding for the whole of mankind. This approach is exemplified by the work of Sally Engle Merry who argues that the human rights regime articulates a 'cultural system rooted in secular transnational modernity.'⁴ Supporters of this position, whom Shweder calls liberal monists, assume that Western values should not only guide Westerners, but everybody else as well.⁵ Consequently, when liberal monists call human rights universal, they usually do so not to indicate that everybody should enjoy them, but to emphasize that the Western view on human

1 T. W. Bennett, *Human Rights and African Customary Law*, Western Cape, 1995 at p. 4.

2 See generally Jack Donnelly, *Universal Human Rights in Theory & Practice*, Second edition, Ithaca, 2003.

3 See generally Daniel A. Bell, *East Meets West: Human Rights and Democracy in East Asia*, Princeton, 2000.

4 Sally Engle Merry, *Human Rights & Gender Violence: Translating International Law into Local Justice*, Chicago, 2006, 90; 220-221.

5 Richard Shweder, "Shouting at the Hebrews: Imperial Liberalism v Liberal Pluralism and the Practice of Male Circumcision," *5 Law, Culture and the Humanities*, 247 (2009) at 248.



rights should have a monopoly. Thus, liberal monists are “unwilling to share moral space with alternative models of living.”¹ Under those circumstances the universalism ambition becomes a push for uniformity.

The liberal monists’ position bears the imprints of the theory of modernity. As Shanin explains, in an attempt to make sense of the huge diversity of human societies encountered by European travelers and conquerors, the theory of modernity relied on the linear perception of time, which replaced the cyclical model.² Consequently, modernists believe that societies are different, because they are in different stages of development,³ ranging from ‘underdeveloped’ to ‘advanced’.⁴ The supporters of the theory of modernity believed that underdeveloped societies should move up the development scale, assisted by the advanced ones. This approach provided legitimacy to colonialism and, later on, justified the provision of development aid to Third World countries, but there it has lost much ground. However, the concept of modernity still seems to appeal to a number of Western human rights lawyers, who use human rights as a vehicle to bring such modernization about. Since liberal monists rely on a rational, scientific approach, they find it hard to have patience with people in other parts of the world who prefer to rely on belief, intuition and tradition.

While the position that one worldview is morally superior to another is already impossible to maintain,⁵ such claims have completely lost their significance as a result of the emergence of the legal international human rights regime after WW II. This international human rights regime is binding on states and societies, not because of a particular philosophy, but because it is grounded in positive law. In other words, the obligations of states in the area of human rights are legal commitments which result from the treaties they have signed up to rather than moral ones.

All states parties, regardless of their philosophical views on human rights, have decided to put their eggs in the treaty mechanism basket. They have moved from philosophy to positive law for grounding the binding nature of human rights.⁶ By signing up to these treaties, Western states too have accepted that law rather than the accomplishments of the Enlightenment serve as the basis of human rights obligations. Interestingly, the adoption of the Universal Declaration and the subsequent human rights treaties is usually portrayed as a triumph of the Western human rights philosophy. But the opposite can be argued with

1 Thandabantu Nhlapo, “The African Customary Law of Marriage and the Rights Conundrum,” in Mahmood Mamdani (ed.), *Beyond Rights Talk and Culture Talk: Comparative Essays on the Politics of Rights and Culture*, Cape Town, 2000, 136 at 144-145.

2 Teodor Shanin, “The Idea of Progress,” in: Majd Rahnema and Victoria Bawtree (eds.), *The Post-Development Reader*, London, 1997, 66.

3 Shanin, *supra* n. 18, 67.

4 Shanin, *supra* n. 18, 68.

5 Makau Mutua, *Human Rights: A Political & Cultural Critique*, Philadelphia, 2002, at 109-110.

6 Jerome J. Shestack, “The Philosophical Foundations of Human Rights,” 20 Hum. Rts. Q. 201 (1998) at 209.



equal force: by resorting to positive law Westerners may have undermined their position that human rights obligations are morally binding on states already.

Human rights treaties are not Western, nor Eastern, neither Northern nor Southern. The states parties have to live up to the obligations to which they have committed themselves, nothing more, and nothing less. According to the receptor approach, to the extent the legal regime allows them to, states can remain loyal to their own philosophical convictions. In other words, even though many Westerners may believe that human rights provisions should be interpreted in a way which serves rational secularism, Eastern and Southern states may differ. Nowhere in the treaties does it say that human rights are the prerogative of modern states and that, therefore, traditional states which sign up to human rights treaties should modernize.

Despite the existence of this straightforward legal regime, Western normative assumptions frequently do spill over into the interpretation of treaty obligations of the states parties. This mixing of the legal and philosophical discourses is caused by the ambiguity of the concept of 'human rights', which has two meanings at least.¹ On the one hand, human rights stand for the Western movement which promotes the accomplishments of the Enlightenment and which assumes that human rights are rights people ought to enjoy because they are human. On the other hand, they are also commonly used to describe the rights laid down in the human rights treaties, which the signatory states are bound to uphold. Thus, the same words are being used to describe two different concepts, one rooted in natural law theory and the other grounded in positive law. This terminological confusion contributes to the idea that all states parties to human rights treaties have committed themselves to the Western view on human rights. But the treaties themselves require no such thing and therefore the assumption is incorrect.

3. The Matching Phase of the Receptor Approach: Relying on Ethnology rather than Legal Transplants

The receptor approach assumes that every value system, whether it is Northern or Southern, Eastern or Western, has its own inner logic and is aimed at achieving fairness and human dignity. This means that every concept in every system has to be approached in an open-minded way in order to be able to identify its rationale.

Thus, to people from the West, who usually believe in retributive justice based on punishment, the restorative justice model relied upon in Africa, which focuses on re-establishing harmony, makes little sense. Why should a person who has committed a murder be allowed to get away with it by apologising to the family of the victim and by drinking a

¹ Shestack, *supra* n. 22, 215-234.



bitter drink or stepping on an egg?

However, there is a very convincing explanation why Africans, especially in rural areas, attach so much value to this kind of mediation.¹ Communities in Africa are multiplex societies, in which economic, social and family relations are intertwined. Consequently, one comes across the same people in multiple social settings. Thus, the person one works with on the land may at the same time be a member of one's family, the traditional healer who takes care of the sick and a member of the Council of the Elders, which takes important decisions affecting every day life. Therefore tensions in one area of social life, may have a rippling effect on other areas as well. A conflict with the fellow labourer on the land may easily spill over into the provision of healthcare and the conduct of politics, which may poison the atmosphere in the community and paralyze its social life. Administering restorative justice will help to resolve the conflict and restore harmony quickly. This will not be immediately obvious to someone who is used to living in a simplex society, in which everybody plays only one specialised role.

Most experts favour legal means to implement human rights within national settings, in particular by introducing or enhancing enforceable individual rights. Undoubtedly such a legal approach will work well within a Western context. However, if applied to the East and the South such a legal approach is bound to introduce ill-fitting individualistic legal transplants to communal societies.

The receptor approach, on the other hand, is based on ethnology. It identifies the core elements of the international human rights regime and looks for analogous phenomena in the societies of the states parties to the human rights treaties. Consequently, the duty to implement a particular right may be matched by social institutions other than law, like family, kinship, education, community, solidarity, or self-help. If there is a full match, then the state is living up to its international human rights obligations, despite the fact that it is not relying on rights. If there is no match or only a partial one, the state has to extend existing social arrangements to meet its international obligations.

Many social institutions exist in China today which can assist in fulfilling international human rights obligations. It is the aim of the project conducted together with the Institute of International Law of the Chinese Academy of Social Sciences and the Research Center for Human Rights of Shandong University School of Law to identify them. The following issues can serve as starting points.

With the help of unwritten law, administrative law judges have made an important contribution to the development of due process of law.² Thus, they have introduced the right of a citizen to be heard before a potentially negative decision may be taken by an

1 Fatou Kiné Camara, *Pouvoir et Justice dans la Tradition des Peuples Noirs*, Paris, 2004.

2 Haibo He, "The Dawn of the Due Process Principle in China," 22 Colum. J. Asian L. 57 (2008).



administrative authority. In *Tian Yong v. University of Science and Technology Beijing* the plaintiff, Tian Yong, had been caught cheating during an exam. The university board decided to expel Tian Yong from the university for this reason, but he was neither heard nor informed. He continued his studies and when he was about to graduate, the university board informed that he would not receive his diploma, because formally he was no longer a student at the university. The court quashed the decision not to award the diploma, because the decision to expel Tian Yong had been taken in violation of due process. Since the decision involved the plaintiff's right to education, the university board should have allowed Tian Yong to argue case before the decision would have been taken and it should have directly notified the plaintiff itself. Similarly, in *Liu Yanwen v. Degree Evaluation Committee of Peking University*, the court quashed the decision taken by the Degree Evaluation Committee not to give a doctoral degree to the plaintiff, because it had been taken without a hearing.

Through its theory of women's liberation, Marxism has made an impressive contribution to promoting gender equality in China. Women have played an active role in the Communist Party of China from the outset. Since the establishment of the People's Republic, the CPC has been tackling the patriarchal dimensions of the traditional family and marriage system through fundamental reforms. The literacy and education levels of women have increased considerably and women have become an essential part of the workforce. Although there is still work to be done in this area, by relying on Marxist theory the CPC has succeeded in substantially decreasing the gender gap.¹ In his ethnographic study of married life in China, Yunxiang Yan comes to the conclusion that the rising status of women in the domestic sphere is the most significant development since 1949.²

Since the establishment of the People's Republic, local residents committees have been performing important social functions, such as maintaining community order and delivering social services to residents. Their role is increasingly being complemented by the home owners' committees, which represent the interests of property owning residents. These committees, which were originally set up to negotiate with property management companies, have become important stakeholders by investing in the upkeep of residential complexes and joint facilities and by assisting home owners to enjoy their properties. The personal network or *guanxi* plays a very important role in Chinese society. Research has demonstrated that such personal relationships complement the legal system and the Rule of Law by filling potential gaps. Individuals and companies have relied on *guanxi* to protect business interests

1 Kellee S. Tsai, "Women and the State in Post-1949 Rural China," 49 *Journal of International Affairs*, 493 at 515 (1996).

2 Yunxiang Yan, *Private Life under Socialism: Love, Intimacy, and Family Change in a Chinese Village 1949-1999*, Stanford, 2003, 99.



and property rights.¹

To identify socio-cultural arrangements which promote and protect human rights, the participants in the project will also rely on empirical research. They will make use of the consensus analysis method to uncover social relations which match international human rights standards.² To collect the necessary data the researchers will use the so-called 'free listing' interview technique, which will help to filter out any ethnocentric biases that may exist.³

4. The Amplification Phase of the Receptor Approach

4.1 The existing social-cultural context should be taken as the point of departure

Under the receptor approach, states parties to human rights treaties are encouraged to meet their obligations with the help of existing social arrangements. If these existing social institutions fall short of the treaty requirements, they will have to be adjusted or amended in order to bring them into line with these standards. Therefore, under the receptor approach reforms which are meant to bring existing social arrangements into line with international human rights standards should also as much as possible be linked to cultural receptors. This presumes that reformers have a clear understanding of the socio-cultural setting.

The campaign against female circumcision, or Female Genital Mutilation (FGM) as it is frequently called, is a case in point. Female circumcision is a culturally motivated practice in parts of Africa, which is often regarded as being contrary to the ban on inhuman and degrading treatment. In order to find a way to eradicate this practice, one should start by understanding its socio-cultural context. Although to the outside observer all female circumcisions may look the same, the reason why this practise is maintained actually differs from culture to culture. In order to end the practice in a particular area, it is necessary therefore to understand why women are circumcised in that region in the first place.

Ellen Gruenbaum has identified five motives for female circumcision, i.e. enhancing marriagability through preservation of virginity; undergoing a rite of passage to adult womanhood; making intercourse more pleasurable for men; marking ethnic identity or ethnic superiority; and meeting religious expectations.⁴ To find the appropriate remedy to implement

1 Pitman B. Potter, "Guanxi and the PRC Legal System: From Contradiction to Complementarity," in: Thomas Gold, Doug Guthrie and David Wank (eds.), *Social Connections in China: Institutions, Culture and the Changing Nature of Guanxi*, Cambridge, 2002, 179; Katherine R. Xin and Jone L. Pearce, "Guanxi: Connections as Substitutes for Formal Institutional Support," 39 *Academy of Management Journal*, 1641 (1996).

2 A. Kimball Romney, Susan C. Weller and William H. Batchelder, "Culture as Consensus: A Theory of Culture and Information Accuracy," 88 *American Anthropologist*, 313 (1986).

3 S. P. Borgatti, "Elicitation Methods for Cultural Domain Analysis," available at: <http://www.steveborgatti.com/papers/bhetk.pdf>.

4 Ellen Gruenbaum, "Socio-cultural dynamics of female genital cutting: Research findings, gaps, and directions," 7(5) 2005 *Culture, Health & Sexuality*, 429-441.

the ban on inhuman or degrading treatment, one should find out which of these motives pushes for female circumcision in any given society.

If female circumcision serves to enhance marriagability through preservation of virginity, a so-called pledge society is likely to be an effective remedy. In the countries where female circumcision serves marriagability, the mothers of the girls subjected to the practice usually are the strongest advocates of its preservation.¹ Mothers usually insist that their daughters undergo circumcision, which will allow them to get married and to have children. Having a husband and children will allow the daughter to maintain economic security.² Without a husband there may be barriers to or limitations on access to land, cattle, grazing rights, or cash income.³ The grandchildren will contribute labour to the family enterprise,⁴ and they will support the grandparents when they reach old age. In such a cultural setting the practice may be abandoned if parents of boys pledge that their sons will only marry uncircumcised young women, as a result of which parents of girls can safely pledge not to circumcise their daughters.⁵ By encouraging the members of the entire intermarrying community to make such pledges, the practice can be eradicated. This is what an NGO called Tostan is doing with considerable success in Senegal. The concept of the pledge society actually is a Chinese invention, which was introduced successfully to bring the practice of foot binding to an end at the beginning of the Twentieth Century.⁶

4.2 Reforms should be based on home-grown solutions

On the basis of the receptor approach adjustments made to meet international human rights standards should respect local culture and make use of home-grown remedies as much as possible. The receptor approach is based on the idea that reforms should add to but not replace the existing social arrangements. It opposes the introduction of *Fremdkörper* into customary law if home-grown remedies can be found which, while undoing the violation, remain loyal to the social relations existing in that particular society. Judges should not use Eurocentric concepts if customary law can be tailored to meet the requirements. The local values should serve therefore as sources for solutions which meet human rights obligations, like stem cells. This microsurgery will ensure that these reforms will take root and become embedded in the society concerned. Changes that add to the existing arrangements stand a far better change of being supported and carried by the community than those which are enforced top-down.

1 Ellen Gruenbaum, *The Female Circumcision Controversy: An Anthropological Perspective*, Philadelphia, 2001, p. 45.

2 Gruenbaum, *supra* n. 32, 45.

3 Gruenbaum, *supra* n. 32, 45-46.

4 Gruenbaum, *supra* n. 32, 46.

5 Gruenbaum, *supra* n. 31, 437.

6 Gerry Mackie, "Ending Footbinding and Infibulation: A Convention Account," 61 *American Sociological Review*, 999 (1996).



This approach finds support in the semi-autonomous field theory developed by Sally Falk Moore.¹ Moore assumes that social fields are semi-autonomous. This means that informal rules, *i.e.* customs, develop within the social field, but that the social field is also governed by official rules, *i.e.* state law. The relationship between these customary and state-enacted rules is crucial. According to Moore, there is a widespread belief in social engineering, *i.e.* the ability to control social arrangements with the help of state rules. Legislation is often passed with the intention of altering the social arrangements in specified ways, but the existing social arrangements are often stronger than the new laws and they are often resistant to alteration.

Relationships that have long been established are difficult to change instantly by legislative measures. In other words, in order to bring about social change, the legislation should add to rather than replace the existing customs. One cannot, therefore, simply assume that informal rules will budge. Reformers will have to make an effort to play into them. If social institutions are inadequate from a human rights point of view, they should be reformed rather than replaced.

The need to rely on home-grown solutions is exemplified by the fight against HIV/AIDS in Malawi.² International agencies, like the World Bank, have developed a strategy consisting of abstinence, being faithful and using condoms, the so-called ABC strategy. However, this strategy does not fit well into the local culture: abstinence does not lead to the necessary offspring; having extramarital affairs is quite common among men in Malawi; and married couples regard using condoms often as a vote of no confidence. By pushing such a strategy these actors ignore and deny the importance of the strategies Malawian women have developed themselves. They often discuss the risk of contracting HIV/AIDS as a result of extramarital relations with their husbands; they confront their husbands' girlfriends about this risk; and they threaten with divorce. Although on paper these indigenous strategies may look less effective than the ones that were designed internationally, they need to be enhanced rather than replaced because they are rooted in local society.

The judgment of the South African Constitutional Court in the *Bhe* case is a missed opportunity in this regard.³ In 2002 Mrs. Bhe's husband had died. Since they had been married under Xhosa customary law, the inheritance was subject to the principle of male primogeniture. This meant that the deceased's material goods, including the property where he and Mrs. Bhe had lived, were inherited by his father. Mrs. Bhe, who was left empty-handed, challenged this unsatisfactory outcome before the courts and the case went all the

1 Sally Falk Moore, *Law as Process: An Anthropological Approach*, London, 1978, 54-81.

2 Enid Schatz, "'Take your mat and go': Rural Malawian Women's Strategies in the HIV/AIDS era," 7 *Culture, Health & Sexuality*, 479 (2005).

3 *Nonkululeko Letta Bhe v Magistrate, Khayelitsha*, Case CCT 49/03.



way up to the Constitutional Court.

The Court came to the conclusion that the principle of male primogeniture discriminated against women and it struck down the contested customary law provisions as being contrary to the equal protection clause in the South African Constitution. By way of relief, the Court decided to fill the legal void by letting state succession law replace the customary provisions that had been stricken down, until Parliament would have had an opportunity to legislate on the matter. By introducing a right to inherit, the Constitutional Court did indeed remedy the violation of the equal protection clause, because the widow no longer was in an inferior position. But it did so by vesting a property right which is alien to the collective ownership which characterizes Xhosa customary law. Land is owned collectively by the people and it is allocated to families. So the husband is not the individual owner of the land, but the steward acting in the interest of his family and the tribe as a whole, rather than in his own individual interest.

As Knoetze suggests, in *Bhe* the Court considered succession in a Western way as a transaction aimed at redistributing the wealth of the deceased, rather than an important mechanism to safeguard the traditional way of life of a particular household.¹ Under the receptor approach an indigenous reform would have been sought.² For example, the widow could have been appointed the co-administrator of the estate, together with the male relative who took over stewardship from the deceased. There are precedents for such a concept in Xhosa customary law. This would have done justice to a traditional legal system to which approximately 40% of the South African population is subject.

The HOPE experiment conducted in the South African Cape region to combat HIV/AIDS offers a very good example of seeking home-grown solutions. The public health care system, which is based on Western medicine, is only able to reach a fraction of the target group. This limited coverage is caused by the fact that the system is under-resourced, and more importantly, that it does not relate to the beliefs about illness which are part of South African culture.³

Typically in Africa illnesses have a cause and a reason. The cause, which is called the proximate cause, accounts for how the disease is contracted, like having the flu as a result of being infected with a bug. This would be the same in Western biomedicine. The reason, which is called the ultimate cause, explains why the disease is contracted by a particular person.⁴ Many South Africans believe that they may become ill as a result of witchcraft

1 Elmarie Knoetze, "Westernization or Promotion of African Women's Rights?" 2006 (1) *Speculum Iuris*, 105, at 109.

2 Knoetze, *supra* n. 41, at 110 too believes that alternative remedies could have been found.

3 J. Wreford, "The Pragmatics of Knowledge Transfer: an HIV/AIDS Intervention with Traditional Health Practitioners in South Africa," 32 *Anthropology Southern Africa*, 37 (2009) at 37.

4 Christine Liddell, Louise Barrett, Moya Bydewell, "Indigenous Representations of Illness and AIDS in Sub-Saharan Africa," 60 *Social Science & Medicine*, 691 (2005) at 692.



which is invoked by people who have been offended by them. Illness may also be sent as a punishment for not paying enough attention to ancestors. Since not only the proximate but also the ultimate cause needs to be addressed in order to cure the illness, patients tend to seek the help of traditional healers who can deal with both. There is a strong mystical side to traditional healing.¹ It is therefore estimated that 80% of black South Africans regularly consult traditional healers to receive healthcare.² In light of their large numbers and strong community ties, traditional healers need to be included to be able to offer large scale HIV/AIDS care and prevention efforts.³

The HOPE experiment which has been set up in the Cape region links biomedicine to traditional healing.⁴ To be able to reach and treat patients who shun Western medicine, the HOPE project recruited a number of traditional healers who were willing to include counseling, testing and antiretroviral treatment into their divination practice. Consequently, the patients who would usually avoid western medicine but were attracted to traditional healing, were exposed to the benefits of biomedicine nonetheless. Rather than replacing the local approach towards healing across the board by scientific medicine, which would probably had driven away the patients, the experiment added to the indigenous system.

5. Conclusion

Under public international law states are bound by the treaty obligations they have accepted, but, as long as they meet the international standards, they may implement them as they see fit. Therefore they are allowed to choose the means with the help of which they would like to give effect to human rights obligations, and they do not necessarily have to rely on enforceable rights or law. The receptor approach embraces both the duty of states to live up to their human rights obligations and their discretion in choosing the appropriate means to implement them.

During the matching phase of the receptor approach social institutions are identified which can serve as receptors for human rights implementation, like family, kinship, solidarity, education, awareness-raising, community and solidarity. In case these social institutions fall short of the treaty obligations, they will be improved during the amplification phase. This will be done while taking account of the socio-cultural context and by relying as much as possible on home-grown solutions.

The receptor approach moves the discussion away from the rather narrow view

1 Liddell a.o., *supra* n. 44, 694.

2 Justin M. Shuster, Claire E. Sterk, Paula M. Frew, Carlos del Rio, "The Cultural and Community-Level Acceptance of Antiretroviral Therapy (ART) among Traditional Healers in Eastern Cape," South Africa, *J Community Health*, 16 (2009) at 16.

3 Shuster a.o., *supra* n. 46, 16.

4 Wreford, *supra* n. 43, at 37.



that human rights can only be implemented by according enforceable rights, which is the preferred means in Western countries. It emphasizes the importance of local culture and social arrangements for implementing human rights obligations at the national level. Consequently, the receptor approach may assist countries like the People's Republic of China in displaying the many social arrangements which are already in place to implement human rights obligations, and to build on those if additional efforts would be required.

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Values and the Human Rights System

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The highly important topic of “values and human rights” is the common goal of which is to ensure the happiness and preserve the dignity of human beings and establish the rules needed for them to lead balanced lives since, in this regard, values and human rights constitute interrelated and mutually complementary guidelines for the proper human conduct.

By their very nature, human beings have an innate tendency to adopt values and norms that are conducive to the preservation of their rights and dignity, which was the underlying purpose of the human rights advocacy that formed the basis for the covenants, conventions and treaties the provisions of which are being applied by societies in their daily lives. The manner in which this topic will be highlighted during our meetings in this great capital is highly significant and will help to strengthen the links and common denominators between our societies and cultures through constructive discussions and dialogue conducive to a world in which mutual cooperation, peace, security, prosperity and coexistence will prevail.

Human values as a whole constitute the ethical standards and principles by which personal conduct is guided and, consequently, they are a prerequisite for a well-balanced character and social stability.

Adherence to the common human values and high moral standards prescribed by all divinely-revealed laws and other civilizations reinforces human security, enhances the ability of States to protect their inherited values and cultures, and contributes to the achievement of the development sought by their societies.

The assurance of respect for human rights in any society is largely dependent on the extent to which the values and principles of human rights are rooted in its predominant culture.

The Kingdom of Saudi Arabia is governed by the values of the Islamic Shari’a which the various components and sections of society unanimously regard as the principal rights and obligations, as well as his relationship with his environment and his Creator, are defined. These are fundamental human values that have protected the dignity, freedom and rights of all individuals. Through its various policies, and primarily its education policy and curricula, the Kingdom has applied the lofty Islamic human values on which faith in human rights is based. The Kingdom has also placed human rights at the forefront of its national priorities



and concerns, regarding them as lofty basic norms that enable the Saudi people to enjoy a decent life and play their role in social development.

In this regard, the approach adopted by the Government of the Custodian of the Two Holy Mosques, King Abdullah bin Abdul Aziz, confirms the importance of entrenchment of the principles and values of human rights through respect for human thought, as well as the cultural diversity of peoples and the need for them to meet and learn from each other through dissemination of a culture of dialogue. The Kingdom has established a mechanism for global inter-cultural and inter-faith dialogue as a new and civilized methodology that enshrines the concept of peace and human tolerance and the numerous modes and fields of dialogue are all based on the concept of human values as a common denominator between the various religions, cultures and civilizations.

At the national level, the Kingdom has adopted many programmes designed to promote the values and culture of human rights and dialogue, broaden participation by all members and sections of society and strengthen the role of civil society institutions in such a way as to ensure justice and equality.

The Custodian of the Two Holy Mosques has also approved a programme to disseminate a culture of human rights in the Kingdom in a spirit of fraternity and tolerance, to develop the institutional capacities of the governmental and private sectors in this field in order to enhance their performance in a manner conducive to the protection of the human right to justice and equality, to familiarize citizens with their rights and obligations and warn against the dangers of the violation of such rights and obligations, to enforce the provisions of the Kingdom's Basic Law of Governance and the enactments promulgated thereunder, and to ensure that the regulations, procedures and executive conduct of officials dealing with the public are in conformity with the principles, values and concepts of human rights guaranteed by Islam and reaffirmed by international conventions and treaties. The Government of the Kingdom of Saudi Arabia has also promulgated the Suppression of the Traffic in Persons Act, which meets the international standards for the prevention of human trafficking and prescribes extremely severe penalties for anyone who commits the offence of trafficking in persons.

With a view to strengthening the values of integrity and honesty and combating corruption, the Custodian of the Two Holy Mosques ordered the establishment of a specialized National Anti-Corruption Commission, reporting directly to him, in order to promote the noble values of integrity and combat corruption in the public and private sectors.

All this is an indication not only of the considerable concern that the Government of the Custodian of the Two Holy Mosque is showing for human rights-related issues but also of its diligent endeavours to protect and safeguard the rights and interests of citizens and foreign residents within the framework of which the Human Rights Commission, the National



Society for Human Rights and other civil associations have also been established.

As a contribution to the promotion and application of social values by modern methods and appropriate mechanisms, the Prince Nayef Chair for Ethical Values has been established to make Islamic ethical values more widely known, monitor the causes and symptoms of the decline in positive values and the proliferation of negative concepts, formulate plans, projects and programmes to highlight the importance of ethical values and their propagation among all sections of society, and propose scientific and practical solutions to address and resolve ethical problems.

These programmes also affirm the need for Saudi women to play a major role through active participation in social development.

The humanitarian initiatives of the Custodian of the Two Holy Mosques, King Abdullah bin Abdul Aziz, have heralded a new phase in the promotion of the values of human rights and tolerance, the rejection of bigotry and racism and the furtherance of concerted global endeavours to disseminate a culture of dialogue, peace reform, protection of human rights and dignity and achievement of legitimate human aspirations.

The Kingdom of Saudi Arabia's achievements in the promotion and propagation of a culture of human rights and the protection of those rights, far from signifying the end of the process and satisfaction with what has already been achieved, provide an incentive for further diligent endeavours to protect and consolidate these values.

In conclusion, it must be emphasized that human rights cannot be safeguarded in isolation from the system of values that extols and defends right and provides an appropriate environment for their development and consolidation. Individuals and groups feel more motivated to respect the principles of human rights and apply them in practice when those principles stem from, or are consistent with, their social values.

Finally, I am confident that your deliberations in this Forum will make an effective contribution to all the international and regional endeavours to protect noble human values and reject whatever is incompatible with human rights, bearing in mind the need to respect the particularities, traditions and values of societies and show awareness and understanding of the guiding principles, values and present situation of every culture.

(The author is President of the Human Rights Commission of the Kingdom of Saudi Arabia.)



Controversy: Are Human Rights an Interest or a Freedom?

CHANG Jian
China

Regarding the essence of human rights, there is a controversy between the freedom theory and the interest theory. Such controversy reflects not only a divergence in theoretical interpretation, but also embodies difference in human rights protection strategies in real life. In human rights protection strategies based on interests, emphasis is placed on governments bestowing benefits to the people, superiority of collective benefits over individual benefits, and more attention is paid to guarantee of social, economic and cultural rights, while freedom is deemed as a means to higher objectives. On the contrary, human rights protection strategies based on freedom stress civil freedom; governments only respond to the citizens' demands, with the latter monitoring the former in exercising their commissions; individual rights is above collective benefits and more attention is paid to guarantee of civil and political rights, with freedom itself as the objective.

Theoretically, interests and freedom are the two inseverable dimensions of human rights. Seen from the practice of guaranteeing human rights, a system of human rights protection balancing freedom and interests should be established.

1. Controversy between the Freedom Theory and the Interest Theory

In theoretical study of human rights, there are two different interpretations of the essence of human rights: one of them is the freedom theory and the other is the interest theory.

The view of rights as a freedom deems rights as active or inactive freedoms entitled and guaranteed by the law or morality to people. The freedom here emphasis freedom of volition, that is, rights are the free will or self-determination to do or not to do something. Hobbes, Spinoza and etc. took freedom as the essence of rights, or believed that rights are freedom. Kant and Hegel adopted "freedom of volition" to interpret rights. Kant believed that rights are the free exercise of volition. Hegel held the view that the foundation of rights is spirit and their starting point and determining factor is volition, which is free; therefore volition is not only the essence of rights but also their objectives; the rights system is the kingdom of realized freedom.

From the 19th Century on, many western scholars have emphasized interests as the foundation of rights, and proposed "the interest theory." The view of rights as interests



takes rights as interests supported by laws or public opinions. It held the view that when an interest of the people is deemed by laws or morality as needing protection or promotion, it would become a right. When it is threatened or damaged, the concrete right relevant to the interest is threatened or damaged, and people may seek legal aid for protection of their rights. Western utilitarianism and legal positivism mostly support the interest theory. The theory originated from the utilitarianism proposed by Bentham. Benthamites believed that all rights and obligations are determined by social utility and all moral standards are derived from it. The essence of rights is universal utility. Positivism put rights in realistic interest relations to understand them, emphasizing interpretation of rights from the angle of positive laws. German jurist Jhering pointed out that rights are interests protected by laws. According to interpretation of traditional interest theory, the obligation for someone to do or not to do something, be it in the interest of other people or not, should be deemed as right of the one that will benefit from such action or inaction. In this sense, the basis of rights analysis is interest. According to the interest theory, only after determining who has the obligation to behave in a certain manner can corresponding rights be decided. However, the fact that performance of an obligation or responsibility may benefit a lot of people does not mean that those people have the right to require such performance. To solve the dilemma of the interest theory, David Lyons differentiated direct interests and resulting interests. Only direct beneficiary of a certain behavior can have the right. Direct beneficiaries (the obligee) are people whose interest protection is the core reason for the prior obligation of others. Joseph Raz offered sufficient argumentation for the interest theory. His core argumentation is that, rights are the criterion basis for obligation. When the protection of A's interests is so important as to constitute a reason for imposing an obligation on B, we may say that A has a right. This version of interest theory emphasizes the important role of rights in establishing obligations. According to this theory, we shouldn't first determine who has the duties before deciding who has the rights.

Scholars who are critical of the interest theory believe that the theory can not fully interpret phenomena of rights, because many rights are completely unrelated to interests. For instance, in civil law some rights have efficacies independent of rights. The major advocate of this view is Hart, who believes that the interest theory covers the essence of relative duties, which exist in civil laws and which are different from absolute duties as found in criminal laws. The characteristics of relative duties lies in that it awards the obligee "normative ownership," which is under absolute control of the obligee, who may change or forfeit it as he see fit. The latter case involves choice, not a fact beneficial to the obligee. Properly it is a right entitled to someone. Only such kind of right, i.e., the right that can be changed, forfeited or cancelled and that gives him or entitles him to "limited sovereignty," is right in the strict sense of the word. Those scholars believe that solutions to this predicament are adaptation



of “volition theory” or “selection theory” to interpret rights. According to interpretation of volition theory, when A is entitled to release B from his duties, A should be deemed as having the right. However, criticism of this interpretation is that the selection or capability is a possibility, not a right.

2. Freedom Theory Orientation in Western Covenants on Human Rights

In Western covenants on human rights it can be seen that interpretation based on freedom theory holds the dominant position, as reflected in the following aspects.

(1) Emphasizing human rights as the ultimate objective

United States Declaration of Independence states “all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are Life, Liberty and the pursuit of Happiness, that to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed that whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government.”

Declaration of the Rights of Man and of the Citizen (1789) of France iterates, “The aim of all political association is the preservation of the natural and imprescriptible rights of man. These rights are liberty, property, security, and resistance to oppression.” “Liberty consists in the freedom to do everything which injures no one else; hence the exercise of the natural rights of each man has no limits except those which assure to the other members of the society the enjoyment of the same rights. These limits can only be determined by law.”

(2) Emphasizing the non-utilitarianism of human rights

Virginia Declaration of Rights of the United States announces, “That all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the rights are the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.”

(3) Emphasizing that human rights rise from the dignity and personality properties of mankind

The Constitution of Federal Germany stipulates that “Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority. The German people therefore acknowledge inviolable and inalienable human rights as the basis of every community, of peace and of justice in the world.”

American Convention on Human Rights rules that, “Recognizing that the essential rights of man are not derived from one’s being a national of a certain state, but are based upon attributes of the human personality...”

Different from the freedom-theory spirit mirrored in Western covenants on human



rights, human rights in the *African Charter on Human and Peoples' Rights* are connected to national rights and deemed as a means toward achieving national rights: "Recognizing on the one hand, that fundamental human rights stem from the attributes of human beings which justify their national and international protection and on the other hand that the reality and respect of peoples rights should necessarily guarantee human rights."

3. Analysis of Human Rights as a Freedom from the Perspective of the Interest Theory by Marxist Classical Writers

Influenced by Hegelianism in his early days, Marx deemed freedom as the universal nature of human beings. Referring to "freedom" for the first time in *Debate of 6th Rhine Provincial Parliament (the First Thesis)* he pointed out, "because those gentlemen do not wish to take freedom as the natural gift awarded by the rational universal sunshine, but as the supernatural gift brought about by the particularly auspicious combination of bright stars; because they believed that freedom is only the individual property of certain personages and certain ranks, they would inevitably come to the conclusion that universal logos and freedom are harmful thoughts, are an imagine to 'a logically hierarchical system'. To salvage the special freedom of the privileged, they chide the universal freedom of human nature."¹ "Nature is indeed the nature of mankind; therefore its antagonists are materializing freedom while opposing it." "There is no one against freedom; if there is, he is against the freedom of others at most."²

In *On the Jewish question* written in autumn 1843, Marx analyzed the freedom in Western human rights concepts from the angle of the Interest Theory. He pointed out that, "As rights for human beings, human rights are different from civil rights." Who are the people different from citizens? It is no one but members of the civil society. Human rights as different from civil rights are nothing but the rights of members of the civil society, i.e., rights independent of human nature and communal egocentrism. Freedom consists in the right to do everything which injures no one else. Freedom as a human right is not established on the foundation of bringing people together, but of setting them apart. The actual application of freedom as a human right consists in private property. Private property rights are the right to utilize and handle one's property at random, irrespective of other people and without social restrictions. It is an ego-centered right. This individual freedom and entitlement to it constitute the foundation of civil society. This freedom causes people to look on others as restriction of their freedom, not as its realization. Therefore, no human rights

1 Debate of 6th Rhine Provincial Parliament (the First Thesis), *The Complete Works of Marx and Engels: Book I*. The People's Press, 1995, 2nd ed., p. 163.

2 Debate of 6th Rhine Provincial Parliament (the First Thesis), *The Complete Works of Marx and Engels: Book I*. The People's Press, 1995, 2nd ed., p. 167.



can transcend the scope of ego-centric individuals or members of the civil society, i.e., people dedicated to their own personal interests and self-indulgence and independent of the society as a whole. In those rights, human beings are by no means genre existence. Instead, genre life itself, i.e., society, is the external limitation of individuals and restriction of their original independence. The only bond connecting individuals and society is the natural inevitability, needs and private interests, and protection for their property and ego-centric individuals.¹

In the *Economic Manuscripts* of 1857-1858, Marx anatomized the nature of freedom and equality in the bourgeois society from the angle of productive relations. He pointed out that if economic forms, i.e., exchanges, establish full equality between subjects, then content, i.e., private materials and substantial materials used for exchanges establish freedom. Therefore, equality and freedom are respected in exchanges based on exchange values, the permutation of which is the realistic foundation for all equality and freedom to germinate. As mere concepts, equality and freedom are an idealized demonstration of exchange of exchange values; as notions developed on the basis of legal, political and social relations, they are nothing but the foundation of a next power. Exchange values, or rather, coinage, are in fact a system of equality and freedom, whose testimonies are not equal or free in themselves.² In chapter 3, *Capital* of 1894, Marx further pointed out that it was productive relations that had created various rights of the bourgeois society. Once the productive relations reaches such degrees as demanding change of the shell, the rights and material sources of exchange based on them will disappear.³

Lenin carried Marx's views further, pointing out that "He who acknowledges class struggle should admit that in bourgeois republics, even the most free and most democratic ones, freedom and equality can only demonstrate – as they have always been – the equality and freedom of commodity owners and capitals." "Under the bourgeois system (that is, as long as the private ownership of land and productive materials continues to exist), equality and freedom in bourgeois democracy are nothing but an empty form, employment slavery of workers (who are free and equal formally), unchecked powers of capital and oppressed labor by capital."⁴ "As long as class is not annihilated, all discussion on freedom and equality are self-deception, or deception to workers, or all workers exploited by capital. It all boils down to maintain the interests of the bourgeoisie class."⁵

1 Marx: *On the Jewish question. The Complete Works of Marx and Engels*: Book 1. The People's Press, 1964, pp. 435-459.

2 Marx: *Economic Manuscripts. The Complete Works of Marx and Engels*: Book 46(1). The People's Press, 1979, pp. 192-202.

3 Marx: *Capital*: Chapter 3. *The Complete Works of Marx and Engels*: Book 25. The People's Press, 1974, pp. 874-875.

4 Lenin: "Prologue to 'On Befooling the People with Slogans of Freedom and Equality'." *The Complete Works of Lenin*: Book 36. 2nd ed. The People's Press, pp. 361-362.

5 Lenin: "On Internal Strife of Italian Socialist Party." *The Complete Works of Lenin*: Book 39. 2nd ed. The People's Press, p. 423.



4. How should the Controversy between the Interest Theory and the Freedom Theory be Treated Dialectically?

Seen from its internal structure, right should include two dimensions: interest and freedom. Without interest as the foundation, it would be empty; without freedom, it would be valueless. The freedom theory and interest theory approach interpretation of right with emphasis on different dimensions of its internal structure. Seen from this angle, Marx's analysis of Western theory of right as a freedom reveals its limitation of neglecting the interest dimension. However, this should not be taken as downright negation of the freedom dimension. Instead, interest and freedom are two internal dependent dimensions that are mutually dependent, and loss of either would result in biased interpretation of human rights. Mere emphasis on the interest dimension would lead to utilitarian consideration of human rights and neglect of their purposefulness. Mere emphasis on the freedom dimension would result in abstract pursuit of human rights and neglect of the actual foundations for realizing human rights. Meanwhile, the two dimensions are mutually restrictive. The interest dimension would limit the degree of freedom, while the freedom dimension would restrict the boundary for calculation of interest. Therefore, realistic guarantee for human rights should strike a balance between freedom and interest in view of actual circumstances.

In practices of guaranteeing human rights, unilateral emphasis on the interest dimension or the freedom dimension can generate four imbalances: 1) imbalance between interest entitlement and dignity maintenance; 2) imbalance between protection for social, economic, and cultural rights, and that for civil and political rights; 3) imbalance between protection of collective rights and that for individual rights; 4) imbalance between domestic and international protection of human rights. Therefore, theoretically emphasizing the balance between interest and freedom are enlightening for formulating better balance system for guaranteeing human rights.

Since the modern times, the Chinese has paid more attention to balance between interest and freedom while accepting human rights theories from the West, because of influence from the philosophy of harmony in the Chinese culture.

For instance, Sun Yat-sen integrated Chinese and Western cultures to establish Three Principles of the People, one of which is the Principle of Democracy. His explanation of democracy emphasized the balanced relations between freedom and order, to be guaranteed by the four political rights and five governing rights. Sun believed that there were two forces in government: one is the force of freedom, and the other is the force of maintaining order. The two forces were like centripetal and centrifugal forces in physics. If the centrifugal force prevails, things would scatter; if the centripetal force dominates, objects would cluster. Therefore, the two forces should be balanced so that objects can maintain their normal state. So does the government. Too much freedom would result in non-government, while



too much restriction would bring about despotism. Political changes at home and abroad over thousands of years are interactions between the two forces. Therefore, only when the two forces of restrictions and freedom are balanced can politics develop. Only when the four political rights and five governing rights are complete can balance be reached between freedom and restriction.¹

From the explanation of human rights in *On Human Rights* by the “New Moon School” intellectual Luo Longji, it can be seen that both the dimension of freedom and that of interest are emphasized: “Human rights are prerequisites for being a human mankind, including the rights to food and shelter. They are the guarantee for physical safety, the conditions for ‘me to become the best me’, to enjoy the bliss of life, and further on for the group to become the best group, awarding maximal happiness to the greatest majority.” In my opinion, the purport of human rights boils down to function. All rights with the following three functions are prerequisites for being mankind, and are human rights: 1) subsistence of life, 2) development of individuality and nurturing of personality, 3) achievement of the objective of maximal happiness for the greatest majority.²

One more example, Premier Wen Jiabao offered the following explanation on “dignity” during a dialog with netizens: “In my proposition of ‘I will make the life of our people more dignified’, there are three aspects: First, every citizen is entitled to freedom and rights invested by the Constitution and laws, within the scope stipulated by the Constitution and laws. Individuals, whoever they are, are equal under the laws. Second, the ultimate objective for state development is to satisfy the ever-growing material and cultural needs of the people. This is the only objective. That’s it. Third, the full development of the entire society must take as its prerequisite the development of all individuals. Therefore, we shall create beneficial conditions for free and full development of the people so that their resourcefulness and talents can be fully displayed. That’s what I mean by dignity.”³ The attention on the balance between interest and freedom can be clearly seen in this explanation.

Such emphasis on the balance between the two internal dimensions of human rights, i.e., interest and freedom, has great theoretical and practical significance.

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1 Xiao Jiabao, Liu Yingqi: *History of Human Rights over the Past 100 Years in China*. Liaoning People’s Press, 1994, pp. 173-174.

2 Luo Longji, “On Human Rights.” *New Moon* (2); (5).

3 *Interpretation of Dignity by Wen Jiabao: Creating Conditions for Human Freedom and Development*. http://news.xinhuanet.com/politics/2010-02/27/content_13062217.htm.



Diversity of Values in Human Rights

Neil Forbes DAVIDSON
UK

My theme today is to examine the issue of diversity of values in human rights, which this conference in itself eloquently represents.

As a minister in two different governments, one in Scotland and subsequently in the UK government, I had responsibility among other matters, for defence of government policy, decisions and prosecutions from human rights based attacks. The UK introduced a Human Rights Act in 1998 and in consequence there began, and has continued to be, a surge of human rights cases before the UK courts.

One of my perceptions based on this experience is how often in the UK system how difficult it can be to identify what decision the UK courts may arrive at. Whether it is in the legality of anti-terrorist legislation or in criminal court procedures from time to time government found itself on the losing side of the human rights argument.

What is perhaps interesting about this is how the subject of human rights, which one might have thought, dealing as it does with major human issues, such as right to life, freedom from torture and so on, can in the UK system reduce in argument to an issue such as for example when and whether the police can question a suspect with or without a lawyer present.

The difficulty of assessment of what the 'human rights' answer may be in a particular case and the sometimes micro-level issues of procedure that can arise for a 'human rights' decision, together raise the question to my mind of how applicable in day-to-day decisions, is the general statement that human rights embody universal values.

By way of illustration as a minister on one occasion I was to visit Vietnam and it was suggested to me I address my Vietnam hosts on the question of the death penalty. It was suggested I criticise Vietnam on this matter in the name of universal values. I pointed out that the US has the death penalty and asked was I also meant to criticise the US? More seriously, it seemed to me that to embark on criticism without understanding the different civilisation, history and culture of Vietnam risked being both disrespectful and patronising.

This brings me to the theme of diversity of values. It can of course easily be said that democracy, rule of law, freedom from torture are seen of universal appeal but these generalities only gain definition in context.



One of the controversies in defining human rights concerns the emphasis that should be given to individual rights as opposed to social economic rights. One view focuses on how the individual is treated by the State and the protections that are afforded to the individual in his relationship with the State. Another view looks at society more broadly seeking to establish standards of living and health, and to reduce poverty, hunger and disease. Where one society emphasizes the individual and values individual achievement and the independence of the individual, it approaches human rights conceptually with a different perspective from another society which values social achievements such as raising large sections of its population out of poverty, extending the provision of healthcare to broader numbers and generating employment for its people. One can see this clearly in the UK's emphasis on the rights of the individual compared with China's emphasis on the concepts of 'people first' and harmonious society. Neither nation ignores the other factors of course but rather it is a question of emphasis.

Those who argue that one or the other is the correct model in my view fail to recognise the substantially different ideologies and social systems from which these nations spring. What is interesting is the international community today attaches far greater significance to human rights than it has ever done in the past. The subject of human rights frequently forms part of exchanges when national leaders meet their counterparts in other countries. It would be unfortunate if in these exchanges, greater recognition were not always given to the diverse stages of economic development of nations, their diverse cultural traditions and the variety of social systems from which they arise. While there is almost global acceptance of the content of the *Universal Declaration of Human Rights*, promulgated in 1948, it is important that we recognize individual nations approach the subject of human rights with differing values, understandings, priorities and pressures from within their own societies. It would be remarkable if nations reflecting as they do the diversity of humanity, should approach all human rights issues identically.

In the UK this issue has arisen recently in public debate. There has been in one example considerable criticism of human rights judgements on the argument that such law derives from the European Court of Human Rights, certain of whose judges have little appreciation of the particular history and policy of the UK. While the European Court allows a 'margin of appreciation' to permit an element of national difference, this has been criticised as insufficient. The argument develops to the effect that the imposition of standards that do not reflect British society serves to erode the sovereignty of the UK.

One of the major contributors to the argument was Lord Hoffmann a very senior UK judge. He criticised the imposition by the European Court of 'uniform rules' on states such as the UK. He stated decisions in his view should be made by British institutions which 'are integral with our own society and respected as such'. He referred to the UK as 'an



independent nation with its own legal system evolved over centuries of constitutional struggle and pragmatic change'. This is a powerful argument to British ears in favour of respect for diversity.

How much more significant this argument is when it is placed on a global context. The failure to appreciate that different nations in the exercise of their sovereignty require adapting to their national conditions, employing their own policies and processes is a failure to respect the diversity of nations. One of the lessons of human history is the strength humanity has gained from the diversity of civilisations. Diversity can enrich the jurisprudence of human rights and provide different ways in which to apply human rights in practice. Where one nation issues a set of criticisms of another nation's human rights record it may run several risks – it may only create barriers to discussion; it may be uninformed of the conditions of the other nation; it may be perceived as treating the other nation unequally; it may simply invite criticisms of its own record for no nation is perfect. What it is unlikely to do is to contribute to mutual understanding and cooperation.

To conclude and to go back to a point I made earlier – without mutual respect between nations, discussion on human rights risks being merely a sterile exchange of entrenched argument. I suggest diversity should encourage cooperation between peoples, not conflict.

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Re-affirming the Traditional Democratic Values of Public Service in Aid of Mainstreaming Human Rights within the (Philippine) Government

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Philippines

Nowadays, it is quite common to hear about, or read about, human rights in the realm of officialdom. Like gossip, human rights have acquired a great deal of currency; in fact, they are now a staple of daily political discourse and in most cases, are claimed to be important considerations embedded in the activities and processes of government. But recent studies show that while the Philippines is arguably substantially compliant with many of the core human rights conventions to which it has acceded, it still has a long way to go before it can effect thorough institutional learning throughout the various agencies of government.

Understandably, the full incorporation of the human rights paradigm into the operations of government is necessarily a long, tedious, and difficult process, and progress should be expected to proceed only in an incremental fashion (And quite unfortunately, this is a reality that many civil society organizations of the more militant variety are too impatient to appreciate or acknowledge). Be that as it may, there's no harm in re-examining the effectiveness of the modalities employed in infusing the public sector organizations with a human rights perspective; after all, the pace of institutional learning is, to a considerable extent, a function of proper instruction.

It can be argued that such infusion fails to achieve its intended impact because the human rights paradigm is just one of many recent paradigms to be imposed as a learning requirement on the public sector organizations. As it is, the public sector organizations are already overwhelmed – and perhaps, ‘punch-drunk’ – with a multiplicity of paradigms with which they have to familiarize themselves as a matter of expediency, and for this reason, they are having difficulty absorbing more and integrating everything.

And making matters more complicated for them is the fact that the infusion is administered alongside an unrelentingly vicious propaganda by certain quarters that portrays them as deplorably inadequate or deficient in the performance of their respective mandates. In short, the public sector organizations find themselves in an unenviable situation: they are expected to ensure the successful mainstreaming of human rights with bewildering speed, and at the same time, they are expected to behave as passively as a voodoo doll whenever



they are repeatedly pierced with the needles of undeserved trenchant criticism. In the face of such unrealistic expectations, how are the public sector organizations supposed to react?

That the public sector organizations have to deal with such expectations is bad enough. But then, much of the recent research tends to focus less on the struggles that the public sector organizations have to go through and even far less on the differing contexts and capacities thereof. Indeed, there's little concern about what exactly the Kuhnian paradigm shift entails in actual practice. And when things are viewed in this light, demonizing the public sector organizations for whatever ideological or political purpose becomes utterly convenient for certain firebrands, who unfailingly make their 'outrage' appear justifiable. It is as though the public sector organizations are weighed down by inertia and are, thus, resistant to changing for the better. And this unflattering characterization finds reinforcement in much of the aforementioned research, which magnifies the learning impediments that allegedly afflict the public sector organizations (such as the persistent misconception thereof of human rights as unnecessary complications or as trendy government-bashing platforms).

And so, at this point, it would be fair to ask: What's to be done to effect the accelerated entrenchment of the human rights paradigm within the psyche of the public sector organizations? What alternative modality of infusion could be used?

Contrary to conventional wisdom, the human rights paradigm need not be introduced as a new-fangled framework that can be unilaterally imposed on the public sector organizations. An effective infusion could be induced by getting the public sector organizations to see human rights through the 'old' prism of public administration – that is, by getting them to see their respective mandates, if and when performed conformably enough to the traditional democratic values of public service, as being intrinsically consistent with, and supportive of, human rights.

The whole idea behind this suggestion is that institutional learning is greatly facilitated when the introduction of the human rights paradigm is leached of coercion and negativism and when this paradigm is presented as a necessary adjunct perspective that enriches the normative content of public service delivery. Come to think of it, the core issue will always be about the traditional democratic values of public service – and concomitantly, about the level of commitment earnestly shown by the public sector organizations thereto especially with respect to the plight of the marginalized and the vulnerable; by implication, human rights are, arguably, only of secondary importance, for they matter only to the extent that they stipulate explicitly non-negotiable state obligations to pre-identified victims of social exclusion.

Essentially, there's nothing wrong with the traditional democratic values of public service – equity, access, accountability, inclusiveness, and high-quality service, just to name a few – and quite frankly, they remain the eternal verities of public administration, and as



already suggested, they have been given additional potency – not supplanted, mind you – by the human rights paradigm. With this consideration in mind, it would, thus, make perfect sense to consider assessing the current modalities of human rights education (HRE) and human-rights-based approaches (HRBAs) primarily in terms of how well they have been packaged to re-affirm, and dovetail with, the public service ethos to which the public sector organizations subscribe. Any element of radicalism that may inhere in such modalities will likely alienate the public sector organizations. No wonder why recent Implementation Research has shown that excepting several showcases of best practices, the general uptake of a great many agencies of government of HRE and HRBAs remains low.

Of course, there will be those who will vehemently oppose the idea of introducing the human rights paradigm as a mere enhancement of the public service ethos. To them, the idea is patently heretical: the human rights paradigm, as far as they are concerned, constitutes a revolutionary, novel way of pursuing human-centered development, and as such, it should be viewed as representing a break with the past and treated as a fresh start. This opposition is understandable. But as already pointed out, the human rights paradigm will become more appealing to the public sector organizations only when it is chiefly marketed as a high-water mark in the evolution of public administration and viewed as a device that helps give greater accent and sharper focus to the social dimension of public service delivery.

To insist otherwise is to ignore the ideological and philosophical sensitivities of the public sector organizations. To insist otherwise is to invalidate virtually everything good, right, and beautiful that the public sector organizations have done but have yet to couch in terms of human rights. To insist otherwise is to subordinate to human rights the traditional democratic values of public service that the public sector organizations have always stood for.

Should the modality of infusion be changed in accordance with the foregoing suggestion, then it would be realistic to expect certain changes in the response of the public sector organizations. No longer would they remain skeptical about, or resistant to, human rights. No longer would they find compliance with human rights imperatives an oppressive drudgery. No longer would they be reluctant to take on their roles as ‘duty-bearers’ as they are referred to in human rights parlance. Consequently, institutional learning would proceed apace, breathing more life to the principle of ‘progressive realization’ and deepening the incorporation of the human rights paradigm in the policy and practice of public administration with tangible and palpable results.

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Human Rights-Reflections of the East and Perceptions of the West

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Introduction

There is a time and tide for everything. This is a season in which the global quest for human rights is at its peak. Freedom is on the march. Throughout Asia and Africa, the ardour for liberty is spreading. The quest for the inalienable rights of human beings has gained universal appeal. It is now recognized that state sovereignty is a shield against external aggression. It cannot be used as a sword against one's own nationals. Human rights abuses in any land deserve world-wide condemnation because "injustice anywhere is a threat to justice everywhere."

Most constitutions including Malaysia's seek to secure the liberties of citizens. In most countries non-governmental organizations raise their voice of concern whenever liberty is trampled upon. The triumphs of technology enable them to network and mobilize on a global scale. A large body of international human rights law has blossomed. In international relations, the human rights agenda is a precondition for trade and aid, though on a selective and discriminatory basis.

Political and Moral Theory of Human Rights

Given the centrality of human rights to modern political discourse, it is necessary to understand the nature and characteristics of the human rights idea and to recognize the main political and moral assumptions on which it rests. These assumptions are as follows:

- Human rights are inherent. They belong to an individual by virtue of his or her humanity.
- Human rights do not depend on the existence of a state or a constitution. They enjoy an authority superior to and independent of government.
- They belong to human beings not because of the charity or generosity of the state but because they are derived from a source superior to human law. There is no universal agreement, however, on what this superior source is. All religious theories trace human rights to the will of God or to a divine world order. The Greek and Roman Stoics traced them to the "law of nature." Spinozza and Wolff attributed them to "pure reason." Rousseau and Kant



invoked the “General Will.” Locke derived them from social contract. Finnis treats them as self-evident. Ronald Dworkin bases them on intuitions about justice and fairness and on the dimension of morality.

- Human rights transcend time and territory. They represent universal standards for evaluating national laws and institutions.

- Human rights are ancient in origin and are part of an evolutionary process that has been going on for centuries. When in 442 BC, Sophocles’ *Antigone* said to King Creon: “*But all your strength is weakness itself against the immortal unrecorded laws of God,*” she was invoking the ‘higher law’, the ‘law of nature’, and the ‘natural rights of human beings’. In fact, all the ancient religions of the world promote an ethic of humanity. Though there is some difference of emphasis in their doctrines, the belief in the dignity of human beings and in social justice are common concerns of most religious traditions.

- Human rights belong to human beings as individuals as well as to human groups as collective entities.

- Human rights are essential requirements for the fulfillment of important human needs.

- Human rights are essential conditions for a free and democratic society. They are principles of liberty and justice without which a fair and enlightened system of government would be impossible.

- Human rights have a threshold weight against community goals and cannot be sacrificed because of utilitarian calculations of general public interest.

- Human rights represent legal and moral limits on the power of government.

East is East and West is West. Can the Twain Meet?

Despite broad agreement on the above theoretical premises, the question remains: are human rights universal? Is there a high, common ground of shared ideals in the universal quest for justice and equality? Or is it true that “East is East and West is West and never the twain shall meet”? The debate is inconclusive because neither the East nor the West is homogeneous zones.

Further, in an age of globalization, there is a two-way (but grossly unequal) exchange of values and lifestyles. A distinct homogenization (i.e. a Westernisation) is taking place.

Nevertheless many differences remain. Recognition of many core rights has not wiped away discord on a number of issues on which the reflections of the East (the orient, the South) and the perceptions of West (the occident, the North) differ considerably.

Fourteen such areas can be highlighted:

1. Are socio-economic rights more important than civil and political liberties?
2. Is the “Asian values” argument a camouflage for authoritarianism?
3. Is the instrumentality of electoral democracy suitable for bringing fundamental,



structural changes to unjust socio-economic structures?

4. Is free market capitalism compatible with social justice?
5. Were human rights born in the crucible of Western civilisation?
6. Can human rights be reconciled with religion?
7. Can individual rights be balanced with communitarian and family value?
8. Must duties go hand in hand with rights?
9. Is human dignity more important than human rights?
10. Do threats to human rights emanate from private centres of power as from the state?
11. Must attention be turned to Western global dominance as a cause of the suppression of human dignity in Asia and Africa?
12. Is the moral superiority of the West a myth or reality?
13. Is globalisation a danger to justice, democracy and socio-economic rights in Asia?
14. Should human rights be subordinated to the “war against terrorism”?

1. Socio-Economic Rights versus Civil and Political Liberties

Are socio-economic rights entitled to the same protection as civil and political liberties? Western theory on human rights is deeply influenced by market capitalism, political liberalism and individualism. It puts great premium on civil and political entitlements but there is insufficient recognition of the need for socio-economic entitlements. The latter are seen as mere offshoots of political liberties.

In contrast, Asian scholars argue that food is as important as freedom and bread as important as the ballot box. There can be no meaningful enjoyment of human rights if poverty is pervasive and hunger and disease stalk the land. Socio-economic rights to basic necessities and to development are entitled to the same protection as civil and political liberties.

International law recognizes the connection between human rights and poverty alleviation in the following documents:

- Article 11 of the International Covenant on Economic, Social and Cultural Rights (1976).
- Article 14 of the Vienna Declaration.
- The United Nations Declaration on Eradication of Hunger.

Unfortunately the Western-dominated human rights dialogue tends to concentrate on civil and political liberties and sees these liberties as the foundation on which socio-economic justice can be built.

At the other extreme is the argument of some “developmentalists” that political freedoms must wait till a certain level of economic development is attained.

It is submitted that such sequencing or prioritization is self-defeating. Bread and ballot must go hand in hand. Human rights are indivisible, interdependent and interrelated. Political



and civil liberties cannot be separated from socio-economic protections because political and legal principles alone cannot ensure a regime of human rights. At the same time democracy and development must go hand in hand because democracy offers a potent framework for equitable development.

2. Absolutism versus Relativism: the “Asian Values” Debate

Is there one universal concept of human rights or are there many conceptions? The universalist perspective is supported by most Western nations and by the Western-educated elite of Asia which holds that:

- Human rights values are universal.
- Impulses of human rights are recognized in a large number of international treaties.
- The ‘Asian values’ argument is a crude attempt to avoid compliance with international standards.
- Asian values, if they exist at all, are inferior to Western values.

On the other hand proponents of Asian values draw on the *volksgeist* theory of historicism to submit that value pluralism is an undeniable fact. Relativists point to the teaching of sociology that context must determine content. The relativists also submit that the claim that ‘human rights values are universal’ is a thinly disguised neo-colonial argument for perpetuation of cultural and economic hegemony by a civilization that is used to domination.

It is submitted that the truth lies somewhere in between. Our thinking on human rights cannot be insulated from our religious, cultural, economic and historical insights. The argument that there are no Asian values is a racist and ethnocentric argument. At the same time it must be conceded that Asian values, have sometimes been used to douse the flame of freedom. Equally, American and European pontifications are used to promote a narrow Westcentric view of human civilization and to secure unfair advantages for Europe and America in the post cold war era. Along with China and Singapore, Malaysia has been quite articulate in arguing for value pluralism and relativism. The country’s social context should determine the content of its laws.

A middle path between these two extremes can be blazed. A human rights law with a settled core and a variable penumbra is a distinct possibility.

3. The Instrumentality of Democracy

To most American and European observers, electoral democracy is the surest catalyst for the evolution of a regime of human rights.

While this is largely true, it is submitted that majoritarian democracy is not always conducive to the protection of minority rights. “Free and fair” elections can return racists and fascists to power. Elections may actually increase ethnic and religious tensions. They may give rise to Frankenstein-type of regimes.

Electoral democracy’s ability to bring fundamental, structural changes is open to doubt.



Democracy is good for incremental movements. But its ability to bring about unpopular adjustments to the basic framework is open to doubt. The connection between democracy and socio-economic development is by no means a necessary one.

Electoral democracy institutionalizes corruption. It grants disproportionate power to pressure groups and unfair advantages to parties and candidates with funds to mount expensive campaigns.

Nevertheless, a trade-off between democracy and development is not justified. The prioritisation or sequencing argument must be rejected.

4. The Instrumentality of a Free Market Economy

A free market economy is often seen as a pre-requisite to the promotion of a range of creative activities and entrepreneurship which are conducive to the gradual strengthening of human rights. Western thinking is deeply influenced by market capitalism, individualism and commercial, civil and political rights.

However, there is insufficient recognition of the need for socio-economic entitlements (or 'positive rights').

Western theory does not emphasize the need for structural changes and social restructuring. It rejects limits on the right to property and limits on the right to trade freely in the capitalist market.

The Asian position is that free markets can accentuate problems of socio-economic injustice. Free market capitalism resists structural changes. It fosters an environment in which strong enterprises flourish and the weak die unless there is state control and paternalism to protect the weak against the strong.

The ruthless manner in which currency speculators impoverished the economies of much of Southeast Asia indicates that the connection between human rights and a free market is by no means an entirely beneficial one.

5. The Fountains of Freedom

In our times human rights have thrived best in the West. But historically speaking human rights were not born in the crucible of Western civilization. Concern with the dignity of human beings was common to the religious traditions of the East.

America and Europe, after centuries of human rights violations, adopted this ethic only in the last half-century.

The widely held belief that the human rights movement is a product of Anglo-Saxon, Protestant culture is historically unsupportable and is based on a biased, ethnocentric world-view.

In fact, all the ancient religions of the world promoted an ethic of humanity.

6. Human Rights and Religious Restraints

Many nations of the west are motivated by a militant brand of secularism that denies



any significant place for religious considerations in the human rights discourse. Most Western legal systems hold it as a cardinal principle of political faith that law and morality, the state and religion must be clearly demarcated. This brand of 'militant secularism' denies any significant place for religious considerations in the human rights discourse.

In most Asian and African societies the religious basis of human rights is recognized and the political demand for personal liberties is subjected to religious, conventional and moral considerations.

Modern secular discourse on human rights should not ignore the religious underpinnings of the theory of the inalienable rights of human beings.

7. Individual Rights versus Collective Welfare

The Western version of human rights tends to emphasize the individual and his rights against society. Asian societies on the other hand subject individual rights to collective welfare and communitarian and family values to a much larger extent than in the West. *Satanic Verses* by Salman Rushdie is a case in point.

In Asian legal systems, the legislature and the courts view it as one of their essential functions to superintend the moral life of the community. In Western societies the demands of personal autonomy have gone so far that "it is immoral to enforce morals."

In Asia, considerations of social stability, peace and harmony are allowed to override the individual's right to express himself freely. Community interests trump individual rights in a far larger area than in the West.

8. Rights and Duties

Western political theory is rights based. The dominant Western liberal philosophy emphasizes an individual's rights but not his/her duties.

Asian thinking is that rights must go hand in hand with duties to ones family, to ones community and to the society at large. Freedom per se is not an end in itself. It is what freedom is for. It is the use to which it is put. It is the sense of responsibility and restraint with which it is exercised. Freedom requires a shared understanding of limits and entails assumption of responsibility for the consequence of ones actions. Responsibility is the inevitable consequence of freedom.

Asian scholars argue that rights must go hand in hand with duties. In India, the chapter on fundamental rights is accompanied by a chapter on fundamental duties.

Asian scholars also argue that there is no need to adopt an all or nothing approach as with free speech in America.

9. Human Rights or Human Dignity?

Western theory places emphasis on 'human rights'. Asian scholars prefer to use the term 'protection of human dignity' as the primary aim of the law. The vocabulary of 'rights' is shunned on the ground that the assertion of some rights is often incompatible with the



preservation of human dignity. The concept of dignity generates duties both to others and to oneself. Thus if a person by his or her own volition chooses to lead the life of a beggar and to sleep on the pavements or to become a sex worker or to misuse his wealth to gamble and to consume drugs and intoxicants, or if a dwarf were to agree to participate in a dwarf throwing contest, it is justifiable for the law to intervene even if such intervention subordinates the individual's personal liberty to the broader need to preserve the worth and dignity of the human personality.

Human dignity is understood to generate both duties to others and duties to oneself.

Another reason for preferring the vocabulary of 'dignity' over 'rights' is that in some circumstances, assertion of individual rights can lead to the diminishing of collective welfare and dignity.

10. Human Rights and Private Centres of Power

In Western theory the state is seen as the main violator of the rights of the citizens. There is, therefore emphasis on protection of the individual against the power of the state, and formulation of principles, methods and institutions for the protection of the individual against the naked power of the state.

In Asian societies there is realization that the threat to human dignity comes as much as from private centres of power as from wielders of public authority. In Asian societies the threats to the rule of law are believed to emanate as much from private centres of power as from the state. It is for this reason that there is a more tolerant attitude towards state power and a near-total reliance on the machinery of the government for social engineering.

11. Human Rights and International Centres of Power

Much has been written about the danger to human rights from "the dominant power of oppressive, authoritarian ruling elites within nation-states" but "very little attention is given in contemporary human rights discourse to Western global dominance as a major cause of the suppression of human dignity."

12. Moral Superiority of the West: a Popular Imported Myth

Human rights violations have been committed in all ages and in all territories. No nation has a clean record. Asia and Africa have much to be ashamed of. But anyone who knows history will testify that the nations of Europe and North America have a similarly horrendous record of human right abuses stretching back a thousand years. For the most part Western civilization has neither acknowledged its brutal past nor apologized for it.

13. Globalization and Human Rights

Many people in the fields of education, economy, human rights and mass media are euphoric about globalization and see in it much glory and hope. Others are skeptical and concerned about globalization's ability to secure a just world order.

In some respects, globalization is a form of colonialism that has anointed itself with a



new name. Asians and Africans are being made to sacrifice their culture and heritage to the juggernaut of globalization which is becoming the vehicle of monoculture and the means of commercial domination.

In the process of globalization, the state ceases to play the traditional dominant role. Instead, the market rules supreme.

The globalization of the audio-visual media has increased the domination of American perspectives, tastes, practices and values.

Globalization is permitting mighty global players to make huge, quick profits at crippling social and economic cost to citizens of the 'host state'.

Untamed, the beast of globalization is a danger to democracy in the sense that in a world as a single market, the money dealers rule. Economics is devouring politics. Commerce has become culture. State power has been handed over to financial oligarchs from abroad.

Globalization has very serious authoritarian and oligarchic tendencies. It weakens the nation state and compels it to submit to the dictates of the international market. Transnational corporations, international bodies like the IMF and credit-rating institutions like Moody's Investors' Services have now emerged as the principal sites of economic, social and political power.

Social welfare policies are in peril. Globalization is intolerant of state regulation of the economy.

The juggernaut of globalization is leading to a uniform mode of thought, life-styles and preferences. This is resulting in a civilization crisis. Non-Western cultures are in danger of annihilation or assimilation.

14. Human Rights and the "War Against Terrorism"

The savagery involved in the killing, maiming and beheading of innocent civilians by terrorists and militants is a crime against humanity. On this, there is probably very little disagreement. But the "bigger picture" is seen rather differently.

First, terrorism is not new.

Second, state terrorism is no less despicable than terrorism by non-state actors. What the world today is witnessing is not a war against terrorists but a war between terrorists. In the words of Noam Chomsky, September Eleven was the first time in history that the West received the kind of attack that it carries out routinely in the rest of the world.

Third, some nations like the USA and Israel are tailoring the concept of terrorism to suit their strategic purposes.

Fourth, liberation struggles for self determination are a basic right under international law. These struggles must, however, be waged in accordance with international rules of engagement.

Fifth, there is much hype about September Eleven as having changed the world. In fact



many other “September Elevens” of greater savagery – many of them perpetrated by Europe and America – have gone unrecognized and unmourned.

Sixth, there is global fixation with “Islamic terrorism.” This has jeopardized the life and liberty of Muslims everywhere. They are being reviled in the same way Jews were before World War II. Human rights activists are beginning to distinguish between “political detainees” and “Islamic extremists.” Islam-bashing and racial profiling have gained acceptability.

Seventh, the root causes of terrorism need to be addressed. The UN, the US and nations like Israel, the UK, France, Spain and Australia need to remember that no nation can ever become so powerful as to snuff out the flame of freedom and the yearning for justice. There will always be people who will be prepared to die on their feet than live on their knees.

Conclusion

The Western concept of human rights stands out for its individualism, its support for freedom of contract, its emphasis on the right to property and its preference for civil and political liberties over economic rights. The West sees human rights as consisting largely of limitations on the power of the government. It proceeds on the assumption that human rights are transcendental. Western theory is, however, marked by one great contradiction. It deifies human rights at home and persistently and blatantly violates them abroad. For example Europe and the United States have a racist and condescending attitude towards the rights of suppressed people in Palestine, Iraq and Afghanistan.

Unlike Western formulations, Asian formulations place individual rights in the backdrop of communitarian goals, argue strongly in favour of re-distribution of property and place emphasis on economic rights side by side with political liberties.

There is increasing recognition that not only the structure of the state but also private centres of power within the national state as well as multifarious international institutions and forces pose threats to human rights in Asia.

There is appeal to relativistic and pluralistic values as opposed to monistic and universal values.

These differences should not, however, be exaggerated. A large core of shared values also exists between the East and the West and between national and international formulations of the rights of human beings.



The Connotations of Human Rights under the Socialist Core Value System

FANG Guangshun
China

The socialist core value system is an important strategic thought proposed on the basis of Marxist principles and summarization of experience in constructing socialism with Chinese characteristics. “Socialist core value system is the embodiment of the essence of the socialist ideology.”¹ It is the internal substance and soul of the socialist system with Chinese characteristics, laying down the requirements and direction for its construction, and guiding human rights development under it. The socialist theory system with Chinese characteristics should be abided by in promoting and developing human rights courses in China.

1. Socialist core value system holds Marxism as the guiding ideology and theoretical basis, formulates the guiding ideology for theory and practice of human rights in China, and takes people-orientation as its core philosophy and theoretical guidance.

The establishment and development of Marxism brings about qualitative change and rapid development of human rights theory. Marxist guiding ideology is the soul of socialist core value system, whose central content of construction is arming people’s mind with Marxism. The establishment of Marxism is a great revolution in development of human thoughts, as well as a great revolution in cognition and comprehension of human rights. Previous thinkers proposed human concepts, laws and practices on the basis of apparently nonexistent natural state and natural law from the perspective of “rationalization.” Marxism drove mentalism from its last haven, historicism to wit, and applied the propositions and methods of dialectical materialism and historical materialism to approach human’s rights, pointing out that, “The nature of man is not the innate abstract material of an individual. In reality, it is the summed total of all social relations.”² In no means should rights exceed the economic structure of a society and the cultural development dependent on the economic

1 Hu Jintao, *Hold High the Great Banner of Socialism with Chinese Characteristics and Strive for New Victories in Building a Moderately Prosperous Society in all Respects*. The People’s Publishing House, 2007, p. 34.

2 *Selected Works of Marx and Engels*: Book 1. The People’s Publishing House, 1995, p. 56.



structure.¹ This established the theory and concept of human rights and brought forth human rights laws and practices in accordance with historical law for safeguarding the interest of human race.

The Scientific Development Outlook is the latest result of Marxist human rights theory in contemporary China. The Scientific Development Outlook is the embodiment of Marxism on world view and methodology, and the important strategy ideology to be abided by and implemented in developing socialism with Chinese characteristics. Its essence and core is people orientation, thus its endowment of profound human rights thoughts and connotations. It sticks to people orientation, drawing on the substantial essence of thoughts on people and human rights at home and abroad, while elaborating the connotation and development of people from the height of the nature and tenet of the Marxist ruling party. The thought emphasizes “people orientation, government for the people, [it] is the concentrated embodiment of the nature and tenet of our party, and the supreme criterion for guiding, assessing and examining all our activities.”² The Scientific Development Outlook upholds people orientation, aligns respecting and safeguarding the interest, rights, dignity and value of the vast majority with development “the first and foremost connotation” and “the first and foremost task,” safeguards and protects human rights on the basis of developing socialist economic, political, culture, social, ecological causes with Chinese characteristics, and underpins the consistency between individual and social development and human rights development.

Develop a human right cause with Chinese characteristics under the philosophy of people orientation. While abiding by the philosophy of people orientation, efforts should be made to facilitate theoretical innovation, to integrate Marxist human rights theory with the circumstances of modern China, and to step up the construction of human rights theory system with Chinese characteristics,³ so as to lay a Marxist foundation for the human rights cause in China. To abide by the concept of people orientation, the first and foremost task is to arm the masses with the latest results of Marxism, i.e., the socialist theory system with Chinese characteristics. Marxist human rights education should be launched, and education in human rights law and practice with Chinese characteristics implemented. And Marxism should be used to consolidate people’s thoughts and to guide human rights development and practice. To abide by the concept of people orientation, efforts should be doubled on development, and the right to subsistence and development should be the first priority of maintaining and protecting human rights. Meanwhile, the results of socialist construction

1 *Selected Works of Marx and Engels*: Book 3. The People’s Publishing House, 1995, p. 305.

2 Hu Jintao, Lecture Delivered at the 90th Anniversary of the Foundation of CPC. *People’s Daily*, 2011-07-02.

3 Liu Hainian, “Several Issues Concerning Establishment of a Socialist Theory System with Chinese Characteristics,” journal *Human Rights*, 2011(2).



should be used to satisfy the ever growing material and cultural needs of the people, thus maximizing people's interest and rights.

2. The socialist core value system determines the historicity and concreteness of the human rights concept in China, that is: to be based on the common ideal of socialism with Chinese characteristics, to conform with spirit of the Chinese nation and the era, embody the centuries-old Chinese human rights culture and requirements of modern human rights and develop socialist human rights theory and practice with Chinese characteristics.

The human rights concept with Chinese characteristics is historical and concrete. The basic content of socialist core value system consists of four aspects, which are the essence summarized from the rich ideological and culture results accumulated over long-term practice of the people under the leadership of the Chinese Communist Party. Adhering to the steering position of Marxism, it has demonstrated that the stance, viewpoints and methodology are scientific. It emphasizes the common ideal of socialism with Chinese characteristics, and the sustaining essence of the Chinese nation and the era, while showing the practicality and realism of the starting point and the destination. Its ideology is historical and concrete, not abstract and perpetual. As the soul of ideology, its significance lies in that it stipulates the historicity and concreteness of the human rights concept, i.e., the concept is appropriate for the characteristics of initial stage of socialism and the tasks of constructing socialism with Chinese characteristics, requiring maintaining and protection of human rights on the basis of the reality of modern world and modern China.

Safeguard and Development of human rights should adhere to the common ideal of socialism with Chinese characteristics. Socialism with Chinese characteristics is the only right path established by the Communist Party of China while leading its people in practice and exploration over a long period of time, and the common ideological foundation and objective of all peoples in China. In modern China, the historicity and concreteness of the human rights concept is materialized as the objective reality and common ideal of socialism with Chinese characteristics to form human rights theory and practice that is accepted by people from all walks of life and worthy of their endeavor. In view of the common ideal of socialism with Chinese characteristics, maintenance and protection of human rights should be based on the reality that China is in the initial stage of socialism and will remain so for a long time. Therefore, unrealistic objectives and requirements beyond the stage should not be proposed. The central task of economic construction should be guaranteed so as to forge a solid material foundation for national prosperity and people's well being. To maintain, protect and develop of human rights based on the common ideal of socialism with Chinese characteristics, efforts should be made to internally link the sublime ideal of human rights



and the development rules of the human society, and make it a connection and impetus for consolidating the spiritual and material forces of all peoples in China, so as to form a composite force for developing human rights cause under the common ideal of socialism with Chinese characteristics.

Maintenance and Development of human rights should reflect the spirit of the Chinese nation and the era. The spirit of the Chinese nation and the era is the essence of the socialist value system, and its basic embodiment of the stipulation on the historicity and concreteness of human rights concept. Diversity is the objective reality of human rights concept and practice and the impetus of human rights development.¹ Spirit of the Chinese nation is the concrete materialization of the nationality of the human rights concept under socialism with Chinese characteristics. The excellent tradition of people orientation formed over the long-term development of the Chinese nation should be upheld and the excellent tradition in human rights and the actual circumstances of modern China should be integrated to maintain and protect human rights in accordance with China's path of development. The spirit of the era embodies the advancement of human rights concept with the times, and the objective demands of historicity and concreteness. The developing times and changing situations promote the evolution of human rights and enrich its connotations and practice. Maintenance and development of human rights reflects the spirit of the Chinese nation and the era, and its own path to human rights development should be followed while holding fast to the theory system, the path and the regime of socialism with Chinese characteristics.

3. The socialist core value system stipulates that the basic way out for maintaining and protecting human rights is development of socialist cause with Chinese characteristics. Only by linking individual interest of the masses with that of the country, the nation and the entire human race and by adhering to the path of scientific, peaceful and harmonious development can human rights be maximally realized and protected.

Development is the ultimate way out for maintaining and protecting human rights in modern China. The right to development is the foremost basic human rights for people in China. Development is the substantial guarantee for realizing basic human rights for the Chinese people. History has proven that without development of economic, political, cultural and social causes there would be no human rights for them. Since the opening-up and reform, China has held fast to the guideline of awarding overriding importance to development, and stuck to the principle of economic construction as the central task, laying

¹ Fang Guangshun, "Respect and Trust Your Choice of Human Rights," *Guangming Daily*, 2010-10-28.



a solid material foundation for protecting and developing human rights. Evaluation Report of *National Human Rights Action Plan (2009-2010)* demonstrates that the plan has been fully implemented on the basis of developing socialist causes with Chinese characteristics, and that the economic, social and cultural rights, civil and political rights, and the rights of the ethnic minorities, women, children, the elderly and the physically challenged have all witnessed unprecedented development. China has abided by the principle of people orientation in steadfastly promoting human rights causes, artfully braving the challenges from enormous impact of international financial crisis and serious natural disasters. It has held fast to integration of respecting and protecting human rights and strengthening rule of law, proactively and steadily promoted political system reform and protected the civil and political rights of its people in accordance with law.¹ This is a significant result of sticking to socialist core value system.

Organically integrate the rights of individuals and that of the nation, the country and even the entire human race. Socialist core value system reflects the perfect unification of humanity's interest, national awareness and individual rights. Marxism takes liberation of the human race as its supreme value, and proposes an advancement path for the cause, namely, to eliminate bourgeoisie and realize socialism and communism. Taking Marxism as the guiding ideology means not only adherence to Marxist worldview and methodology but also adherence to Marxist values, i.e., taking emancipation of the human race as the supreme value of developing socialism with Chinese characteristics. The spirits of the Chinese nation and the era underpin the common interest and ideal of the Chinese nation. The great national spirit of solidarity, love for peace, diligence and bravery, and constantly striving to become stronger, is the inexhaustible source for uniting peoples across China, and also the sustaining spirit for the Chinese nation. Realization and development of human rights, entitlement of the fruits of development to the vast masses, constant improvement of material and cultural living standards – none of those can be achieved without sufficient realization and development of the interest of the Chinese nation and the entire human race.

Development of human rights causes should take a scientific, harmonious and peaceful path. Development of human rights for the Chinese people under the guidance of socialist core value system requires that the general rules of socioeconomic development be followed, i.e., human rights cause should be promoted in accordance with the rules governing development of the human society and socialist construction. “Abiding by the principle that development is of overriding importance essentially requires holding fast to scientific development.”² Scientific development means adhering to people orientation and coordinated

¹ State Council Information Office, Assessment Report on *National Human Rights Action Plan (2009-2010)*, *Guangming Daily*, 2011-07-15.

² Hu Jintao, Lecture Delivered at the 90th Anniversary of the Foundation of CPC, *People's Daily*, 2011-07-02.



and sustainable development of all socialist causes while making overall plans and taking all factors into consideration. It requires that realization, safeguarding and development of the fundamental interest of the vast majority of the people be taken as the starting point and destination of all tasks undertaken by the Party and the country, and that the people be taken as the beneficiary of and contributor to development, i.e., the results of development be entitled to the people. Harmonious development is organic unification of various causes. It means solidarity and harmony among members of the society. Harmonious development expresses such a dream of development: attention to interpersonal relation and coordinated harmony between different classes so as to facilitate harmony within the individual, cultivate harmoniously developed people and create harmoniously developing social relations. Peaceful development expresses the wish to promote the peace and development of the world with the development of China, proper handling of the dialectic relation between peace and development via following a path of peaceful development, driving democratization process in international relations, and amelioration of human rights status in the world and new success in international human rights on the basis of respecting the independence and development model of all the countries.

4. The socialist core value system establishes the standards of socialist concept of honor and disgrace in protecting human rights, human value and dignity, and determines the basic requirements for properly handling the relation between individuals, and that between individuals and the society in accordance with the socialist concept of honor and disgrace, which should be used to regulate each and every individual in protecting and developing human rights.

The socialist concept of honor and disgrace is the highest standard for human rights, value and dignity. Featuring “eight honors and eight disgraces,” it is the summarization of socialist spiritual civilization construction and scientific condensation and rational elevation of consciousness common to the entire human race. It boasts the same characteristics as the essence of respecting and protecting human rights as advocated in the *Charters of the United Nations*. Featuring “eight honors and eight disgraces,” the socialist concept of honor and disgrace requires that unequivocal stance should be taken as to what to abide by, what to oppose, what to advocate and what to boycott, and that confusion between right and wrong, good and evil, virtuous and ugly, honor and disgrace should be avoided. Respecting and protecting human rights, and satisfying the fundamental interest of the greatest majority means that clear attitude and standards should be available in thought, political system and practice, and that differentiation between the virtuous and the ugly, and right and wrong should be exercised. “Human rights are the free and equal rights entitled to people based on the dignity and nature of people. Legally, it is reflected



as a free and equal right and morally as a free and equal value and credible and benevolent behaviors.”¹ The socialist concept of honor and disgrace reflects the requirements of socialist human rights view, full respect for people’s dignity and value from the level of morality and freedom and equality, and sufficient realization of human rights, wellbeing and fully free development.

Free development of each individual is the supreme objective of human rights development and the condition for free development of all sorts of people. The socialist concept of honor and disgrace emphasizes and adheres to a principle that respect for others and the society be taken as an important precondition to obtain respect from others. Individual qualities and virtues are promoted via self-discipline and independence so as to reach the objective that other’s values are voluntarily respected and public morality abided by. Here it can be seen that the socialist concept of honor and disgrace transcends the narrow rights consciousness of individualistic human rights to establish a higher level of human rights awareness and pursuit organically integrating the rights of individuals, of other people and the society. The socialist core value system underpins and abides by socialist concept of honors and disgraces, and thus is the same as the tenet and requirements for human rights defined in the *Charters of the United Nations*, and is a heritage of the Marxist human rights concept. One of the tenet of *Charters of the United Nations* is “promote and encourage respect of human rights and fundamental freedom of all human beings,” advocating “develop international friendly relations on the basis of respecting equal rights of the people and self-determination.”² This puts the respect for and protection of fundamental human rights, dignity and values on the basis of friendly exchanges and mutual advancement, underpinning respect for others and the human race on the issue of human rights. Marxism offers scientific interpretation to freedom, equality, human rights and other important concepts from the perspective of historical materialism, and proposes the objective and path of development for human rights. *Communist Manifesto* proposes the ultimate objective of human rights development on the basis analyzing the hypocritical nature of the bourgeoisie concept of human rights and elaborating the pursuit for human rights by the working class and the working people: “Free development of each individual is the supreme objective of human rights development and the condition for free development of all sorts of people.”³ This transcends the individualistic concept of human rights, witnessing its qualitative leap and rational sublimation, and generalization and overall advancement of different understandings of

1 China Society for Human Rights Studies, *Human Rights and a Harmonious World*. Tuanjie Press, 2007, p. 17.

2 *Charters of the United Nations*, in *An Overview of World Human Rights Conventions and Laws*, Sichuan People’s Press, 1990, p. 929.

3 *Selected Works of Marx and Engels*: Book 1. The People’s Publishing House, 1995, p. 294.



human values and rights against the multi-cultural background. The socialist concept of honors and disgraces harbors all the philosophies of human rights acknowledged by the entire human race, elevating the development of human rights concept and thoughts to a new stage.

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Human Rights and Values

Harkristuti Harkrisnowo
Indonesia

On this forum, we will embark on a fruitful and resourceful discussion with friends coming from all over the world to discuss this very important issue, human rights. Especially since Minister Wang Chen has underlined that China's development is people centered, for the people, by the people, upholding civil political as well as social, economic and cultural rights. This was enhanced by Mr. Luo Haocai, who eloquently starting his speech by underlining the very objectives of human rights, i.e. mankind happiness and dignity, hence the importance of building a solid foundation to protect human rights.

As Minister Wang Chen and Mr. Luo Haocai also emphasized, the international standard of human rights embodied originally in *the Universal Declaration of Human Rights*, is indeed claimed to establish a powerful framework for progressive change in our collective cause, both at the national and international spheres. Hence today human rights constitute one of the key issues in the world, while its implementation being one of the most scrutinized issues. This is understandable since human rights are a set of basic rights and fundamental freedom, inherent in the existence of each individual on the face of the earth, based on an individual's dignity as a human being.

Whenever we talk about human rights, we would undeniably talking also about its universality and indivisibility, which has been progressively promoted all over the world, indicating that all of us here, and many others beyond this room, believe that human rights are in the interests of none others but ourselves as human beings. At this outset, I believe that all of us agree and recognize that the theme chosen by the organizing committee for this event "Cultural Traditions, Values, and Human Rights" is undeniably an important theme for all of us, not only for those who are preesent today, but for every single human being in this world.

Such is the importance, that on its seventh session in Geneva last August 2011, the Human Rights Council Advisory Committee considered a request derived from the Human Rights Council Resolution No. 16/3 for 'Promoting human rights and fundamental freedoms through a better understanding of traditional values of humankind.' Hence the Committee is requested to conduct a study on how a better understanding and appreciation of traditional vauaes of freedom, dignity and responsibility can contribute to the promotion and protection



of human rights.

This is not the first time when the Human Rights Council addressing such issue. Two years ago, in September 2009, the Council requested the High Commissioner for Human Rights to deal with this issue through workshop in order to explore how a better understanding of traditional values can promote human rights and fundamental freedom. The workshop was then conducted one year later, and as predicted, there were a variety of thoughts and opinions expressed in the forum. Basically everybody accepts and understands that traditional values shall be addressed when human rights are discussed; however, value systems must also be under scrutiny when they are incompatible with international human rights values and norms. Judging from the facts that most International Human Rights Instruments have been accepted and also ratified or acceded to by most of UN Member States, apparently these international standards have gained credence in the part of countries all over the world.

The issue was also put on the table during Vienna Declaration drafting process, resulting in the recognition and significance of national and regional particularities, as well as various historical, cultural and religious backgrounds. Nonetheless, it was agreed that each Member State remains to be accorded with the duty to promote and protect human rights and fundamental freedom.

At this juncture, I do believe you are aware that today ASEAN is transforming itself into an ASEAN Community borne by three pillars: the ASEAN Security Community, the ASEAN Economic Community and the ASEAN Socio-cultural Community. The promotion of human rights is an activity under the political development thrust of the ASEAN Security Community. Recognizing the very issues of human rights and recognizing the national particularities and different historical, cultural and other backgrounds, the newly established Asean Inter-governmental Commission on Human Rights or AICHR that I reported to this forum two years ago, has started drafting the ASEAN Declaration on Human Rights. This undertaking of the AICHR has been mandated by the ASEAN Charter, and it is going to be followed by the establishment of human rights conventions and mechanism in ASEAN.

The drafting is of course a dynamic and constructive process among competent representatives from all 10 Asean Member States. Further more, the Term of Reference provided for the drafting group shall take into account several guidelines such as that *first*, the Declaration should uphold the international standards prescribed by *the Charter of Human Rights, The Universal Declaration of Human Rights, the Vienna Declaration and Programme of Action* and the International Instrument of Human Rights that ASEAN Member States are parties. *Secondly*, the draft should take into account the regional and national particularities and differing social cultural and political background of ASEAN countries. *Third*, the Declaration should have an added value due to its position as a political



document that provides a direction and roadmap for promoting and protection of human rights by all Asean Members States. As a measure to ensure stakeholder's participation, national consultation is recommended where all government agencies, national commissions and non-governmental agencies could express and discuss their ideas and hopes for this future Regional Instrument on Human Rights. The drafting process is still undergoing until the end of this year, and hopefully after further discussion in AICHR, it would be adopted by ASEAN Heads of State in 2012.

As you could surmise from my brief report, undeniably the task given to the drafting group is far from simple nor easy, in particular since the AICHR representatives have also requested the drafters to come up with a 'unique' declaration, instead of merely copying all articles from the existing International Bill of Rights. We welcome your contribution in the drafting process which attempt to amalgamate the international human rights standards with the existing cultural traditions and values in the nations and regions.

It would be incomplete if I do not mention human rights in my country in a nutshell. Indonesia is currently embarking on its third generation of National Action Plan on Human Rights, as mandate by the Vienna Declaration and Program of Action. We have to admit that the report on the implementation of the second generation Plan (2004-2009) is far from perfection. However, this is considered as a noteworthy accomplishment since Indonesia has 240 million population, consisting of more than 400 ethnic groups spread out over an archipelago of more than 13,000 islands! As you can see, the differences in cultural and traditional values also pose as a challenge for Indonesia's Government. Fortunately, human rights standards have been stipulated in our Constitution through the second Amendment in 2001, which added 10 new articles on human rights in addition to the existing provisions.

It is worth noting that our achievements have also been characterized by strengthening system of check and balance among our branches of government, vibrant and active media as well as a vigilant civil society.

Lastly, I fervently hope that through this Forum, our countries and our people will benefit in terms of a deeper understanding of each other's accomplishments and constraints in the promotion and protection of human rights. Amid our gap, there should be some potential areas of cooperation which would enable the strengthening bridges among our countries. Of course, we should involve all the stakeholders in our respective countries, so that our human rights cooperation would be more effective and comprehensive in order to attain our common goals to better promote and protect human rights.

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The International Criminal Court and the Politicisation of Human Rights

David HOILE *
UK

The International Criminal Court was embraced with enthusiasm by a wide range of people, non-governmental organisations and governments when it came into being on 1 July 2002. The International Criminal Court presents itself as a permanent, independent, international court to try individuals who commit the world's most serious crimes: genocide, war crimes and crimes against humanity. The ICC was established by the Rome Statute, which was adopted after the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of a Permanent International Criminal Court in Rome on 17 July 1998. The Court came into being in 2002.

Despite an auspicious start, however, the ICC ran into considerable controversy within months of its establishment. The Court has become caught up in allegations that it is a clear example of the politicisation of human rights.

With hindsight, it can be seen that the Court clearly contained the seeds of its own destruction from the start. The ICC has turned out to be one of the most dangerous manifestations of globalisation with what appears to be an almost exclusive focus on Africa.

Even the ICC's most avid supporters such as Professor William Schabas have admitted that the 1998 Rome Statute establishing the International Criminal Court was itself seriously flawed from the start. And it is not hard to see the fault lines. Good law evolves over decades: the ICC Statute was rushed through in four weeks, by European-funded Western non-governmental organisations, not lawyers, on a take-it or leave-it basis.

Many of those who initially welcomed the ICC were African. Forty-one states in Africa signed the ICC Treaty: of these, 21 states went on to ratify the treaty and become state parties

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of the ICC. What is the position now of the African Union with regard to the ICC? It is clear. It is opposed to it and especially the ICC's focus on Africa and particularly its attempt to criminalise President Omar al-Bashir of Sudan: the AU have also been very critical of the ICC's actions against Libya. It has a policy of non-cooperation with the ICC. This is for the simple reason that the African Union and its member states see the ICC as a political rather than a legal institution.

In July 2010, for example, at the 15th Summit of AU Heads of State and Government held in Kampala, the AU "Reiterated its Decision that AU Member States shall not cooperate with the ICC in the arrest and surrender of President El-Bashir of The Sudan."¹ It called for the ICC's attempt to prosecute Sudanese President to be deferred, as well as for Article 16 of the Rome Statute to be amended in order to enable other UN bodies to request the suspension of the ICC prosecutions in case of inaction by the Security Council. The AU also rejected the establishment of an ICC liaison office at the AU in Addis Ababa. The AU Commission Chairperson Jean Ping stated: "The ICC has no office outside of its headquarters. The issue is why they are only interested in opening an office in Africa, why not in Europe or Asia." The AU also threatened to sanction African States Parties to the Rome Statute should they depart from AU's decisions.

With regards to the ICC's actions on the Libyan situation, the Court has come to be seen by many as the "legal" wing of the illegal NATO military intervention in that country.

The simple fact is that the ICC has been shown to be heavily politicised, European-driven, Africa-focused and irretrievably flawed. The ICC's claims to international jurisdiction and judicial independence are institutionally flawed and that the Court's approach has been marred by blatant double-standards and serious judicial irregularities. The Hague-based ICC is increasingly being seen as the European equivalent of the US tribunal at Guantánamo Bay, which similarly claims universal international jurisdiction.

What is the Reality of the ICC?

To those who live in the West, in the United States and Europe for example, the ICC is unknown and has negligible impact or recognition. It is one amongst thousands of acronyms, or sets of initials. In the west and Europe especially, the ICC is relevant to a few hundred European and North American lawyers and legal bureaucrats for whom it is a source of well-paid employment and a few thousand Non-governmental organisation activists within what one can term the western human rights industry.

While the ICC may mean nothing in Europe or to Europeans it means everything to Africa and Africans. Millions of ordinary Africans up and down the continent know of the

¹ African Union, Assembly/AU/Dec. 296 (XV).



ICC and know of its activities. For many of them the ICC has resulted in the prolonging and continuation of war and conflict. Its very existence encourages rebel movements and governments to pause before entering into or concluding peace. If you ask the occupants of displacement camps in northern Uganda they will tell you that the ICC has destroyed a peace process that could have ended the decades long war in that country. Many Sudanese will similarly point out that the ICC's blundering in Sudan endangers not one but two peace processes. The ICC has indirectly caused the deaths of tens of thousands of Africans by prolonging conflict on the continent

That is the reality of the ICC.

The Independence of the ICC

Far from being an independent and impartial court, the ICC is as independent as the United Nations Security Council will let it be. Articles 13(b) and 16 of the ICC's own statute grant special "prosecutorial" rights, to refer or defer an ICC investigation or prosecution, to the UN Security Council, or more specifically the five permanent members of the Security Council. There can be little doubt that the UN Security Council is perhaps the most politicized body in the world. Even the International Court of Justice – perhaps the only truly international court – has ruled that the Security Council is a political body. Political interference in the ICC and what it claims to be its legal process was thus made part of the Court's founding terms of reference. What is even more troubling is that three of the five permanent members are not even members of the ICC.

And we have seen the politicisation clearly in action in the case of the Security Council's referrals of Sudan and Libya to the ICC. We have the situation where the UN Security Council of which three out of the five permanent members are not members of the ICC referred countries that were also not ICC members to the ICC. These referrals also saw the Security Council being used as a political tool by the United States which had hitherto vetoed ICC moves to refer a situation to the ICC but in the case of the Sudan and Libya, the US deliberately abstained in order to see the Sudan referral go through.

The ICC and the Supreme Crime of Wars of Aggression

Let us ask ourselves what is the key test of any authentic international court and its independence? What is the key crime it is expected to address? The answer is clear: wars of aggression. The ICC is desperately keen to present itself as the successor to the Nuremberg criminal tribunal. It has failed most fundamentally regarding the crime which was front and centre at Nuremberg, the crime of waging wars of aggression. The Nuremberg court referred to the crime of aggression as the supreme crime or harm committed against humanity: the



other charges of war crimes and genocide followed the crime of waging wars of aggression.¹ While accepting aggression to be a major crime subject to its jurisdiction, the ICC has deliberately avoiding addressing it by choosing not to define “aggression.” This was itself the first clear demonstration that the Court lacked independence as in so doing it bowed from the outset to Western political pressure.

The 1998 Rome Statute specifically provides that the ICC will not exercise jurisdiction over the crime of aggression until the Assembly of States Parties develops a suitable definition and appropriate conditions. As Philippe Kirsch, the former president of the International Criminal Court, stated, this is “[i]n accordance with the principle *nullum crimen sine lege* [no crime without law] ... The definition must be consistent with the UN Charter.”² That is to say as early as 1998 it was clear that only the Security Council would be able to define aggression for the ICC. It was agreed in Rome that no amendment regarding the crime of aggression will be considered until seven years after the treaty’s entry into force; and even then “[t]he definition must be accepted by 7/8 of States Parties, and... will bind only those who accept it.” Therefore even if western countries did not approve of the definition of aggression ratified by 7/8 of the states, they still would not be subject to the Court for aggression if they opted out: they would be *immune* from prosecution for that crime. This opt-out for aggression was written into the statute solely to accommodate the concerns of the USA and Europe.

The ICC’s deferral on the crime of aggression is all the more shallow given that a clear definition of aggression had been adopted by the UN General Assembly in 1974.³ It is obvious that there was considerable pressure on the Rome conference by permanent members of the UN Security Council not to include the term. ICC supporter Professor William Schabas notes that the reference, in Article 5(2) of the Rome Statute, to the fact that the definition of aggression “shall be consistent with the relevant provisions of the Charter of the

1 While there is a clear attempt on the part of ICC adherents to claim descent from Nuremberg let us not forget that while few can argue against the conviction of Nazi war criminals, Nuremberg was a blatant example of politicised justice. Leaving aside the controversy of the allied bombing of cities in Germany resulting in the deaths of hundreds of thousands of civilians, the simple fact is that the leadership of the Soviet Union should also have been on trial in Nuremberg. In respect of the supreme crime of waging a war of aggression, it must be remembered that Poland was invaded and divided in 1939 by both Nazi Germany and the Soviet Union. Justice Robert Jackson, a member of the US Supreme Court, was seconded to head up the US prosecution team at Nuremberg. It is worth noting the comment of his superior on the Supreme Court, Chief Justice Harlan Stone: “Jackson is away conducting his high-grade lynching party in Nuremberg. I don’t mind what he does to the Nazis but I hate to see the pretence that he is running a court and proceeding according to the Common Law. This is a little too sanctimonious a fraud to meet my old-fashioned ideas.” There has always been scepticism about the concept and practicality of international criminal justice and the notion of trying alleged war criminals for their violations of international law. Chief Justice Harlan Stone articulated a view that has been reiterated by many others since – even if the particular words used have varied.

2 Philippe Kirsch, “The Rome Conference on the International Criminal Court: A Comment,” *American Society of International Law Newsletter*, November-December 1998.

3 See, for example, UN General Assembly Resolution 3314, 14 December 1974.



United Nations” was a “carefully constructed phrase” that was “understood as a reference to the role the Council may or should play.” He points out that the underlying issue is the fact that Article 39 of the Charter of the UN declares that determining situations of aggression is a prerogative of the Security Council: “If the Security Council is the arbiter of situations of aggression, would this mean that the Court can only prosecute aggression once the Council has pronounced on the subject. Such a view seems an incredible encroachment upon the independence of the Court, and would mean, for starters, that no permanent member of the Security Council would ever be subject to prosecution for aggression.”

The ICC finds it difficult to define a war of aggression. May I suggest one – the definition which applied at Nuremberg. A war of aggression is the planning, preparation, initiation or execution of an act of aggression which is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another state. It is clear that the wars in Afghanistan and Iraq and other places waged by North American and European states would probably qualify as wars of aggression.

The 2010 ICC Review Conference concluded that only the UN Security Council can determine what constitutes a war of aggression and that no ICC prosecution can proceed without Security Council approval. We must of course bear in mind that any veto on prosecution of wars of aggression will apply not only to permanent members of the Security Council but also to those states coming under the political protection of permanent members.

There are additional concerns which have validated African Union concerns about the ICC and its politicisation.

The Court is not International

The ICC may be many things but it is not truly international. It presents itself as an international court this is quite simply not the case. Its members represent just over one quarter of the world’s population: China, Russia, the United States, India, Pakistan and Indonesia are just some of the many countries that have remained outside of the Court’s jurisdiction.

A European Court

The ICC can perhaps most accurately be described as a European court for Africa. The truth is that in addition to bowing to the UN Security Council the ICC is additionally tied to the European Union. The Court is umbilically tied to the European Union which provides over 60 percent of its funding. The English expression, “He who pays the piper calls the tune,” could not be more accurate. It is a self-evident principle that the independence and hence impartiality of a court is only as sure as the independence of its financing. The ICC states that it is financed by contributions from its member states. The maximum amount a single country can pay in any year is limited to 22% of the Court’s budget. Its budget is about 100 million Euros.

Here we have one of the obvious contradictions within the ICC. While the ICC



theoretically sets a cap on funding at 22% of its budget from any one country, well over 60 percent and close to two-thirds of its budget comes from member countries of the European Union, which is to all intents and purposes one state, especially after the ratification of the Lisbon Treaty in November 2009. The EU has a President, a single currency, a parliament, a common passport, an anthem and a navy. It is a state with a legal personality and a common defence and foreign policy. As the English expression goes, if it looks like a duck, walks like a duck and talks like a duck, the chances are it is a duck. The European Union is a state.

The European Union therefore clearly, and probably unconstitutionally, financially dominates the ICC.¹

The biggest contributors to the ICC in 2009 were Germany, Britain, Italy, France and Spain. The five dominant EU countries alone pay close to half of the ICC budget. It would be very naïve not to recognise the direct relationship between levels of payment and control. It perhaps is unnecessary at this forum to add that the five European states that dominate the European Union and also dominate and direct the ICC were also the dominant colonial powers in Africa.

It is a matter of record that the ICC has ignored all European or Western human rights abuses in conflicts such as those in Afghanistan and Iraq or human rights abuses by European and western client states. As of July 2009, the ICC chief prosecutor, Moreno Ocampo, reported that his office had received over 8,137 reported cases of human rights abuses from more than 139 countries.² One would have thought the ICC might have been interested in examining events in Iraq. In 2008, however, the chief prosecutor stated that there was insufficient evidence for proceeding with an investigation of the complaints in connection with targeting of civilians or clearly excessive attacks in Iraq. He concluded that

1 The European Union is of course also caught in its own contradictions with regard to the ICC. At least the American government is open in its hypocrisy. The United States has opposed the ICC from the start. One of its early moves to damage the ICC was to seek to sign Bilateral Immunity Agreements with those countries – especially African countries – that had joined the ICC. This would seek to confer immunity from extradition of American personnel from those countries that were members of the ICC. The American government also made it clear that those African countries who refused to sign the Bilateral Immunity Agreements would not receive hundreds of millions of dollars in US government assistance. The European Union – as one would expect – were outraged by this action on the part of the Bush Administration and called it blackmail. Yet the EU is itself guilty of precisely the sort of economic blackmail of which it accuses the US government. Any trade or political agreement that the EU signs with African, Caribbean or Pacific nations party to the Continou Agreement or any new agreement with other countries contains a clause binding that country to support for the ICC. Not to do so endangers EU economic assistance to developing countries. Sudan, for example, has had several hundred million Euros withheld from it for opposing the ICC. It is difficult to see any real difference between the American and European economic blackmail of African states.

2 See, for example, American Society of International Law, Independent Task Force, “U.S. Policy Toward the International Criminal Court: Furthering Positive Engagement,” March 2009, p. 18, at <http://www.asil.org/files/ASIL-08-DiscPaper2.pdf> (July 31, 2009), and International Criminal Court, Office of the Prosecutor, “Communications, Referrals and Preliminary Analysis,” at <http://www2.icc-cpi.int/Menus/ICC/Structure+of+the+Court/Office+of+the+Prosecutor/Comm+and+Ref> (July 31, 2009).



the situation in Iraq did not appear to meet the “gravity” threshold necessary to initiate any such investigation. Ocampo stated that there was a reasonable basis for believing that there had been an estimated 4 to 12 victim of willful killing and a limited number of victims of inhuman treatment, totaling in all less than 20 persons.¹

Despite over 8,000 complaints about alleged crimes over 130 countries, the Europeans have chosen instead to focus the ICC exclusively on Africa, investigating allegations in six African countries. It would seem that only black Africans are capable of involvement in alleged human rights abuses and war crimes. North Americans, Europeans or any governments friendly to them do not appear to be capable of committing any war crimes or human rights abuse – or more accurately they appear to be immune from any ICC investigation. This has self-evidently been a political decision on the part of the Court.

Given Africa’s previous traumatic experience with the very same colonial powers that now in effect direct the ICC, this must create an alarming déjà vu for those who live on the continent.

And even in the seven African countries Ocampo has selected for action, the Prosecutor has been politically selective as to which human rights abuses he chooses to pursue. He has made a mockery of the ICC’s claims to bring about an end to impunity. Most recently, in the case of Libya, the Prosecutor has focused exclusively on alleged abuses by the Gaddafi government while ignoring blatant war crimes and crimes against humanity committed by the Libyan rebels. Ocampo’s meeting with the Libyan rebel leader during the conflict was all the more jarring given that rebel forces have been accused of using child soldiers, a clear war crime.² Weeks before his meeting with the Libyan rebel leader, *The New York Times*

1 Even the American lawyer Alan Dershowitz, an apologist for American involvement in Iraq, has stated that the armed forces of the United States and United Kingdom have “caused the deaths of thousands of civilians in Iraq and Afghanistan.” See, Alan Dershowitz, “For the International Criminal Court to Work, The Worst Must Come First,” *The Huffington Post*, 10 February 2009, available at http://www.huffingtonpost.com/alan-dershowitz/for-the-international-criminal-court-to-work-the-worst-must-come-first_165714.html?view=print.

2 Ocampo is the Chief Prosecutor of the International Criminal Court. The International Criminal Court’s own statute defines as a war crime “conscripting or enlisting children under the age of fifteen years into national armed forces or using them to participate actively in hostilities” (Article 8(2)(b)(xxvi)); and in the case of an internal armed conflict, “conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities” (Article 8(2)(e)(vii)). The Additional Protocols to the four Geneva Conventions of 1949 (1977) set 15 as the minimum age for recruitment or use in armed conflict. This minimum standard applies to all parties, both governmental and non-governmental, in both international and internal armed conflict. Article 4(3)(c) of the Additional Protocol II, applicable to non-international armed conflicts, states: Children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities. *The Convention on the Rights of the Child* (1989) generally defines a child as any person under the age of 18, Article 38 uses the lower age of 15 as the minimum for recruitment or participation in armed conflict. *The Protocol to the Convention on the Rights of the Child* on the involvement of children in armed conflict, adopted by the UN General Assembly on 25 May 2000 and which entered into force on 12 February 2002, sets 18 as the minimum age for direct participation in hostilities, for recruitment into armed groups, and for compulsory recruitment by governments. Additional Protocols to the four Geneva Conventions of 1949.



had reported child soldiers, including 13-year-olds, with rebel forces.¹ The *Daily Mail* has subsequently documented seven-year-old children being trained by the rebels to fight against government forces.² Photographs of Libyan rebel child soldiers have been seen in several western newspapers, including *The Los Angeles Times*, *The New York Times* and *The Daily Telegraph*.³ It is ironic that the ICC's premier case – which has been underway for several years – has been against a rebel leader in the Democratic Republic of Congo for using child soldiers.⁴

The ICC's selectivity – in other words politicisation – regarding cases has drawn criticism from even its keenest supporters. Human Rights Watch has warned that “There’s a concern that the ICC is biased, or at least applying justice selectively.”⁵ Human Rights Watch have summed up one of the central issues affecting the Court’s credibility: “When officials from or supported by powerful states have been able to avoid international prosecutions, the legitimacy of international justice, and, in turn, the ICC as its flagship institution, is called into question.”

Human Rights Watch has been candid in admitting the criticisms of the ICC regarding its African focus. In 2007 it noted that “the court’s exclusive focus on Africa at present has led to criticism among some African states and ICC observers that the continent is the court’s main target, with the prosecution strategy being intentionally geographically-based. Underlying this criticism is the perception that the ICC is a European court designed to try African perpetrators because they are believed to be politically and economically ‘weak’. Among these critics, the ICC is perceived as a biased institution.” And that is a friend of the ICC speaking.

It is difficult not to agree with the comments made in this respect by the Rwandan President Paul Kagame. He has dismissed the International Criminal Court as a new form of imperialism created by the West and “put in place only for African countries, only for poor countries.” He said that the ICC reflected “colonialism, slavery and imperialism.”

1 “Inferior Arms Hobble Rebels in Libya War,” *The New York Times*, 20 April 2011.

2 “Rebels-in-waiting: The children as young as SEVEN being trained to fight on the front lines against Gaddafi,” *The Daily Mail*, 13 July 2011, available at <http://www.dailymail.co.uk/news/article-2014236/Libya-Children-young-7-trained-fight-Gaddafi.html#>.

3 See, for example, *The New York Times* at <http://www.nytimes.com/interactive/world/africa/2011-july-libya-slide-show.html#166>, *The Los Angeles Times* at <http://latimesblogs.latimes.com/washington/2011/05/ticket-pic-of-the-week-libya-rebels.html>, *The Daily Telegraph* at <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/libya/8414542/Wests-fears-over-spectre-of-al-Qaeda-among-rebels.html>, and Google at <https://sites.google.com/site/libyacivilcrisis1134/photos-from-libya-p>.

4 See, for example, “Congo militia leader ‘trained child soldiers to kill,’” *The Guardian*, 26 January 2011, available at <http://www.guardian.co.uk/world/2009/jan/26/thomas-lubanga-international-criminal-court>.

5 Stephanie Hanes, “ICC path to justice tested in Congo. Investigations for the International Criminal Court’s first trial face serious logistical and security obstacles as well as charges of selective justice,” *Christian Science Monitor*, 24 May 2007, available at <http://www.csmonitor.com/2007/0524/p06s02-woaf.html>.



The Institutional Failure of the ICC

Leaving the ICC's genesis and orientation aside, the day to day functioning of the Court has also often been questionable where not farcical. This is seen at its most obvious in any examination of some of the judges at the heart of the Court. In presenting itself as the world's premier international court, dealing with the most serious of crimes, genocide and crimes against humanity, one would have expected the ICC to have attracted and employed the best legal minds available to mankind. The reality could not be more different.

In the ICC, one has a Court whose judges are appointed not because they are the best legal minds in the world, but because of back-room political vote-trading among member states. Some ICC judges are appointed because it is a cosy retirement job: some ICC judges are failed or washed-up politicians, some are diplomats and others are appointed because their governments pay the ICC a lot of money. We have ICC judges making critical rulings who have never been lawyers, let alone judges. We have ICC judges who have pressed for legal indictments on the basis of what they have seen on CNN. We have ICC judges who cite classical Greek mythology to justify prolonging Africa's civil wars rather than to put peace before selectively retributive European law.

The reality is that some of its judges have never been lawyers, let alone judges. In December 2007, for example, the ICC appointed a Japanese diplomat, Fumiko Saiga, Japan's then ambassador in charge of human rights and a non-lawyer, a full ICC judge. Interestingly enough, this closely followed Japan becoming a member of the ICC in July 2007 and its contribution that year of 22 % of the ICC's budget – the maximum amount allowed. She was subsequently reappointed in 2009.

This raises the issue of political vote-trading. The age-old UN tradition of vote-trading for high office produces mediocrity: the ICC, its Judges and its chief prosecutor are living proof of this. The appointment of a Japanese non-lawyer as an ICC judge is the most blatant example of political vote-trading at the expense of legal integrity. There are many more examples and they have been pointed out by avid supporters of the ICC.

Amnesty International, for example, has been very blunt with regard to the quality of ICC judges. In 2009, Amnesty International publicly stated that it "is once again concerned that states parties are failing to meet their responsibility to ensure the nomination of highly qualified candidates." Amnesty noted in October 2009 that with regard to the election of two replacement judges at the eighth session of the Assembly of States Parties only five of the 110 states parties had nominated candidates and that this made it difficult to identify the highest qualified candidates from the 110 states parties and may also "impact on the overall expertise ... of the 18 Court judges." What Amnesty was describing is very clear "vote trading."

What was even more disturbing was that Amnesty International had to admit that

with regard to the election facing the ninth session “only one of the five nominated judges has established competence in criminal law and procedure, and the necessary experience, whether as a judge, prosecutor, advocate or in other similar capacity, in criminal proceedings.”

Another enthusiastic supporter of the ICC, Human Rights Watch, has been equally candid. It has also repeatedly voiced concern at the quality of judges being appointed to the ICC. In its November 2009 memorandum to the ICC Assembly of States Parties, Human Rights Watch stated that: “we have advocated in previous judicial elections [that] states parties should resist the practice of ‘vote-trading’... vote-trading over ICC positions could lead to the election of poorly qualified judges, and hence to a bench that will not be the most skilled and representative. Human Rights Watch urges states parties to put aside narrow interests and vote only for the most highly qualified judges.” This was all the more important, Human Rights Watch stated, because of “the growing visibility of the work of the pre-trial, trial, and appeals divisions.” That is to say, as the work of the ICC was becoming more public the incompetence of the Court was becoming more obvious.

Yet the results of this vote trading are the same people who are tasked with making complex decisions about some of the most complex situations in the world, decisions which quite literally affect life and death in Africa. With very few exceptions they are quite clearly not up to the task.

Procedural Irregularities

This incompetence shows itself from top to bottom within the ICC. Let us look at the conduct of the first – and almost only – ICC trial to date, that against Thomas Lubanga, a national of the Democratic Republic of Congo, who is accused of enlisting and conscripting children under 15 into his military forces.

Ocampo is actually very lucky that this trial ever started. In an extraordinary development in June 2008 the ICC trial judge stopped Lubanga’s trial because of the Prosecutor’s failure to disclose exculpatory evidence (or in normal language evidence which showed that the accused was innocent), to the defense. Ocampo had admitted to the court that he had withheld 204 such items not just from the defense, but also from the judges themselves. The judges correctly stated that Ocampo’s behavior, “constitutes a wholesale and serious abuse” of process and that “the trial process has been ruptured to such a degree that it is now impossible to piece together the constituent elements of a fair trial.”¹ On 2 July 2008, the lead judge in that case, who unusually for the ICC was a real judge, an English judge, declared the trial to be at an end and ordered Lubanga’s release, on the grounds that “a

1 “Decision on the consequences of non-disclosure of exculpatory materials covered by Article 54(3)(e) agreements and the application to stay the prosecution of the accused, together with certain other issues raised at the Status Conference on 10 June 2008,” International Criminal Court, 13 June 2008.



fair trial of the accused is impossible, and the entire justification for his detention has been removed.”¹ All this was a result of Ocampo’s misconduct as a lawyer. Ocampo desperately appealed against the trial judges’ decision, requesting that Lubanga did not go free. Lubanga remained in custody until 18 November 2008, when the trial judges, despite having previously declared that a fair trial was “impossible,” then reversed its decision and ordered that the trial could go ahead.² This was a cripplingly embarrassing moment for the ICC, Ocampo and the Court’s supporters. Even the President of the ICC Assembly of State Parties Ambassador Christian Wenaweser noted that the exculpatory evidence affair was being cited by some as evidence that Moreno-Ocampo “is incompetent and doesn’t know how to write an indictment.”³ In any Anglo-Saxon judicial system Ocampo may well have been disbarred and even prosecuted for such behaviour. The Lubanga case eventually began in January 2009.

And when the case actually came to court, the ICC’s first trial stalled because of bizarre judicial decisions to add new charges half-way through proceedings. Adding new charges once a case has begun is a clear abuse of any legal process. The trial stopped for several months while an appeal was considered and the attempt to add new charges was thrown out.

Despite the public exposure of his previous legal misconduct in 2008 Ocampo continued to engage in improper and dishonest behaviour. In July 2010, the trial judges once again ordered an immediate halt to the Lubanga trial because of Ocampo’s behaviour, even raising the possibility of punishing the prosecutor for misconduct. The three judges stated that “no criminal court can operate on the basis that whenever it makes an order in a particular area, it is for the prosecutor to elect whether or not to implement it.” Simply put, Ocampo continued to withhold exculpatory evidence from the defence. The trial judges stated: “Whilst these circumstances endure, the fair trial of the accused is no longer possible, and justice cannot be done, not least because the judges will have lost control of a significant aspect of the trial proceedings as provided under the Rome Statute framework.

As the leading British legal commentator, Joshua Rosenberg, put it: “After seven years at the Hague and with two miserable years left to serve, he understands less about the role of a prosecutor than a first-year law student. Let me spell it out for him: prosecutors prosecute,

1 See, “Decision on the release of Thomas Lubanga Dyilo,” International Criminal Court, 2 July 2008, and “Trial Chamber I ordered the release of Thomas Lubanga Dyilo – Implementation of the decision is pending,” International Criminal Court, 16 June 2008.

2 See, “Stay of proceedings in the Lubanga case is lifted – trial provisionally scheduled for 26 January 2009,” International Criminal Court, 18 November 2008; “Road cleared for start of ICC’s long-delayed first trial,” Agence France-Presse, 18 November 2008; “Allegations Against Prosecutor May Harm Bashir Genocide Case,” *New York Sun*, available at <http://www.nysun.com/foreign/allegations-against-prosecutor-may-harm-bashir/82165/>; “The Controversial Actions of the ICC Prosecutor: a Crisis of Maturity?” available at <http://www.haguejusticeportal.net/eCache/DEF/9/763.TGFuZz1FTg.html>.

3 “At UN, Doubts Grow of ICC’s Moreno-Ocampo, on Lubanga and Uganda Abuses,” 16 September 2008, available at <http://www.innerecitypress.com/icc3ocampo091608.html>.



judges judge. When courts make orders, everyone else has to obey them. It's called the rule of law... Moreno-Ocampo is simply too arrogant to accept responsibility for his own failings. In his mind, it is always someone else's fault."

The trial judges ordered the release of Lubanga on 15 July pending Ocampo's inevitable appeal. Perhaps unsurprisingly, the appeals division again overturned the decision to release Lubanga, claiming that the trial judges should have tried to punish Ocampo in order to make him comply with court orders.

Simply put, in example after example, the Court has been making things up as it goes along.

With regard to the Lubanga trial, Professor Schabas has stated that: "The whole trial has been a nightmare since the disputes between judges and the prosecutor began in 2008." He says that relations between the bench and the prosecution have become "ugly and unhealthy: There appears almost a breakdown between the two sides." Observers from another institutional supporter of the ICC, the International Bar Association, have stated with regard to the Lubanga case: "It's still not clear to me if this is a strong case, if all this time and effort was worthwhile. The substance of the case got lost in the procedural tangle; even the record is not clear because transcripts are missing or blacked out."

In addition to the above issues, there have been numerous other legal irregularities and examples of dishonesty.

"Africa made me do it"

Ocampo has shown remarkable dishonesty – not least of which in his claims about why he has chosen to focus on Africa to the exclusion of any other situations. When pressed on the fact that all his cases and investigations have been in Africa and nowhere else, Ocampo has always claimed that they were all "self-referrals" by the African countries themselves, or in the case of Sudan, a referral from the UN Security Council: "Why focus on cases in Africa? Because ... the leaders requested our intervention."¹ This is deceit on the behalf of the prosecutor. The ICC brought considerable pressure to bear on both Uganda and DRC to refer themselves to the court.

The US Congressional Research Service, for example, has confirmed that "According to an Office of the Prosecutor official, referrals by the governments of Uganda and DRC followed moves by the Office of the Prosecutor to open investigations under its discretionary power."² Human Rights Watch baldly confirmed that "the Office of the Prosecutor actively

1 "Interview: Luis Moreno-Ocampo," *The Africa Report*, 21 September 2009, available at http://www.theafricareport.com/index.php?option=com_content&view=article&id=3281793&catid=54.

2 "International Criminal Court Cases in Africa: Status and Policy Issues," Congressional Research Service, Washington D.C., 12 September 2008, note 85, p. 20, available at https://www.policyarchive.org/bitstream/handle/10207/20071/RL34665_20080912.pdf?sequence=2.



sought the referrals in the DRC and Uganda.”¹ On 17 July 2008, the ICC Chief Prosecutor admitted that he had invited Uganda and DRC to refer their situations to the ICC. As the American newspaper, the *Inner City Press*, which closely monitors the UN and ICC, subsequently noted: “After this admission, to argue that Moreno-Ocampo is only responding to requests is no longer tenable.”² Quite simply, Ocampo made it clear to the governments in DRC and Uganda, refer your situations to the ICC and he will focus on rebel and not the government abuses: if not he might go after the governments. President Museveni was forced to “refer” the situation in his country to the ICC in December 2003. Under similar pressure, the DRC government “welcomed” the ICC involvement, and in March 2004 the DRC “referred” the situation in the country to the Court.³ Even Ocampo admits: “I invited them to refer the case to me and they did it.”⁴

The Lubanga trial continues to be mired in controversy. The Court, for example, has produced witnesses who recanted their testimony the moment they got into the witness box, admitting that they were coached by non-governmental organisations as to what false statements to make.

A number of other claims made by the ICC have also proved to be dishonest. The ICC claims to be “economical,” yet it has cost half a billion Euros to put on one deeply flawed trial, which as we have seen subsequently ground to a halt for months on several occasions.

The ICC claims to be victim-centred yet Human Rights Watch has publicly criticised the ICC’s ambivalence towards victim communities.

The ICC claims to bring “swift justice” but it has taken several years to bring its first defendant to trial for allegedly using child soldiers. The Nuremberg trial commenced in November 1945, and dealt with the most serious of crimes, waging wars of aggression, crimes against humanity, war crimes and genocide. Judgment was delivered in October 1946: it took eleven months to try twenty-two defendants. A single defendant, Lubanga has now been under ICC investigation for several years and in ICC custody since March 2006.

The ICC claims to be fighting impunity, yet it has afforded *de facto* immunity and impunity to several serial abusers of human rights who happen to be western governments or friends of the European Union and United States.

The ICC has all too obviously ignored crystal-clear cases of superpower abuses

1 “Courting History: The Landmark International Criminal Court’s First Years,” Human Rights Watch, New York, July 2008, available at <http://www.hrw.org/en/reports/2008/07/10/courting-history>, p. 41.

2 “War Crimes Are Everywhere, UK Uses Karadzic to Say, African Focus of Ocampo’s ICC Defended,” *Inner City Press*, 22 July 2008, available at <http://www.innercitypress.com/uk1karadzic072208.html>.

3 “The Office of the Prosecutor of the International Criminal Court opens its first investigation,” Press Release, ICC-OTP-20040623-59, International Criminal Court, 23 June 2004, available at <http://www.icc-cpi.int/menus/icc/press%20and%20media/press%20releases/2004/the%20office%20of%20the%20prosecutor%20of%20the%20international%20criminal%20court%20opens%20its%20first%20investigation?lan=en-GB>.

4 “Farmers and Chickens: An Interview with Luis Moreno Ocampo,” *Guernica*, March 2009.



of human rights and human rights abuses by their client states. The ICC and its chief Prosecutor have courageously gone after only those people they have seen as being weak and unprotected by the UN Security Council. The ICC, for example, has turned a blind eye to self-evident human rights abuses in Iraq and Afghanistan. Ocampo has chosen instead to indict two dozen black Africans. This would be bad enough except for the fact that the ICC actions in Africa are prolonging war, conflict and suffering on the African continent.

The ICC's double-standards and autistic legal blundering in Africa has derailed delicate peace processes – thereby prolonging devastating civil wars. There is a clear lesson for countries in Africa and elsewhere: do not join the ICC and do not refer your country to the ICC. It is the equivalent of inviting a cancer into your system. The ICC does not have Africa's welfare at heart, only the furtherance of Western, and especially European, foreign policy and its own bureaucratic imperative – to exist, to employ more Europeans and North Americans and where possible to continue to increase its budget.

In its disregard for international justice and its deeply questionable procedures and actions the ICC can increasingly being seen as the European equivalent of the US tribunal at Guantánamo Bay. It is the duty of all Africans to expose and oppose this organisation and its contradictions. We must commend and support the stance taken by the African Union.

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European Values and Human Rights in a Globalizing World

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The importance of cooperation based on human rights has long been recognised by many European governments. Conceptually, the European Union has always been more than a mere economic union; the European Union is understood as a community based on common values.¹ The Lisbon Treaty on European Union (Article 6(2) TEU) lists the principles common to the Member States which must be respected and promoted. It stated: *“The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, nondiscrimination, tolerance, justice, solidarity and equality between women and men prevail.”* The Preamble to the Lisbon Treaty also confirmed the attachment of the member States to fundamental social rights as defined in *the European Social Charter* signed in Turin on 18 October 1961² and in the 1989 *Community Charter of the Fundamental Social Rights of Workers*.³ The document underlined the desire to deepen the solidarity between their peoples while respecting their history, their culture and their traditions.⁴ Particular attention needed to be given to these values, which are fundamental, not only to the European Union, but also for building mutual trust between the Union and its Member States and for reinforcing the cooperation among them. In addition, the Lisbon Treaty guarantees the enforcement of *the Charter of Fundamental Rights of the European*

1 Common European values and identity task force 1 Lisbon executive summary, URL: <http://tt.europeanideasnetwork.com/index>.

2 *The European Social Charter*, signed in Turin on 18 October 1961, came into force on 26 February 1966. European Social Charter was revised in Strasbourg, in 1996.

3 *The Community Charter of the Fundamental Social Rights of Workers*, adopted on 9 December 1989 by a declaration of all Member States with the exception of the United Kingdom, established the major principles on which the European labour law model is based and shaped the development of the so-called European social model. The fundamental social rights declared in the Community Charter are further developed in *the Charter of Fundamental Rights* that became legally binding with the ratification of *the Treaty of Lisbon* on 1 December 2009.

4 *Treaty of Lisbon* amending *the Treaty on European Union* and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007, came into force 1st December of 2009. Consolidated text of the two core Treaties, 2007/C 306/01. URL: <http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2007:306:SOM:EN:HTML>.



Union.¹ The Charter of Fundamental Rights is not a text setting out abstract values, but it is an instrument to enable people to enjoy the rights enshrined within it when they are in a situation governed by Union law. The Union therefore acquires for itself a catalogue of civil, political, economic and social rights, which are legally binding not only on the Union and its institutions, but also on the Member States as regards the implementation of European Community law.

The Lisbon Treaty provides that any European country upholding the values on which the Union is based may ask to become member of the Union. The respect for common values is one of the conditions for any State wishing to join the European Union. The so-called Copenhagen Criteria (1993) are governing which country can become a member of the European Union; define whether a country is eligible to join the European Union. For a country to become a member of the European Union, it must meet the Copenhagen political criteria which require the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities.² During the negotiations with each candidate country, progress towards meeting the Copenhagen criteria is regularly monitored. If necessary, on the result of monitoring reports, the European Union is revealing the actions needed to be taken before joining the EU.

Conformity with fundamental rights – as guaranteed by *the European Convention for Human Rights* (ECHR)³ and as they result from the common constitutional traditions of the Member States – shall constitute general principles of the Union's law as well. The Treaty establishing the European Community equipped the Union institutions with the means of ensuring that all Member States respect the common values. First, the Amsterdam Treaty (1997) allowed a remedial action after that the serious and persistent breach of human rights had already occurred, but than the Nice Treaty (2001) gave the Union the capacity to act preventively in the event of a clear threat of a serious breach of the common values, thus greatly enhancing the operational character of the means already available to the Union.⁴ In fact, the Treaty of Lisbon states that any serious and persistent breach of the European values may lead to the imposition of the penalties referred to in Article 2 of the Treaty. It

1 The Charter lists all the fundamental rights under six major headings: Dignity, Freedom, Equality, Solidarity, Citizenship and Justice. The European Parliament, the Council and the Commission solemnly proclaimed *the Charter of Fundamental Rights of the European Union* in Strasbourg on 14 December 2007. Official Journal of the European Union, C 303/1.

2 Conclusions of the Presidency – Copenhagen, June 21-22, 1993.

3 The first expression of the new Europe's commitment to the international protection of human rights was *the European Convention on Human Rights* (ECHR), signed in Rome on November 4, 1950.

4 Communication from the Commission to the Council and the European Parliament of 15 October 2003 on Article 7 of *the Treaty on European Union: Respect for and promotion of values on which the Union is based*. [COM(2003) 606 final]



cannot be emphasised too strongly that the Union looks to its Member States to take active steps to safeguard the Union's shared values and states. However, the European Union has confidence in the democratic and constitutional order of its Member States and in the ability and determination of their institutions to avert risks to common values. The Union attaches great importance to the authority of the European Court of Justice (Luxembourg) and of the European Court of Human Rights¹ (Council of Europe, Strasbourg²) in order to protect human rights and fundamental freedoms. Respect for fundamental rights has always been an obligation subject to scrutiny by the European Court of Justice and an essential component in the construction of the European Union. The European Court of Human Rights of the Council of Europe considers cases brought by individuals, organisations and states against the countries which are bound by the convention; namely, all European nations except Belarus.³ These cases have many forms; they include allegations of human rights abuses, discrimination, the improper conduct of trials and the mistreatment of prisoners. Member States must comply with the court's verdicts, although the court cannot directly enforce this. This particular system for the protection of the human rights is one of the main ways of ensuring the protection of fundamental values included in the human rights as described above and the independence and dignity of European citizens. Another point worth making at this juncture concerns the European Union accession to *the European Convention on Human Rights* (ECHR) of the Council of Europe which was made obligatory by the Lisbon Treaty (Article 6(2) TEU) and will complement the system to protect fundamental rights by making the European Court of Human Rights competent to review Union acts.⁴

The European Commission Communication of 2006 stated that the preservation of the common values should always be at the core of every action of the Union in order to promote peace and the well-being of its people.⁵ European values thus must be at the core of

1 The European Court of Human Rights should not be confused with the European Court of Justice – the EU's highest court.

2 Objectives of the Council of Europe are: Defending Human Rights, multi-party democracy and the rule of law; Raising consciousness about and developing the European cultural identity; Searching for solutions to social issues (minorities' rights, racism, intolerance, environment, bioethics, AIDS, drugs, etc.); Developing political partnerships with the new democratic nations of Europe; Helping central and East European countries in their political legislative and constitutional reform programmes.

3 Plaintiffs must show that they have been a direct victim of an alleged violation and they cannot bring cases against individuals or private bodies.

4 The legal basis for the accession of the EU is provided for by Article 59, paragraph 2 ECHR ("the European Union may accede to this Convention"), as amended by Protocol No. 14 to the ECHR which entered into force on 1 June 2010. All member states of the EU, as parties to the Convention, have an obligation to respect the ECHR even when they are applying or implementing EU law. This divergence may be rectified by the EU, as such, becoming a party to the Convention. More information: <http://www.coe.int/lportal/web/coe-portal/whatwe-do/human-rights/eu-accession-to-the-convention>.

5 "Respect for and promotion of values on which the Union is based," COM(2003) 606.



common European foreign and security policy.¹ European values which are based on human rights are central element in the external relations of the Union with third countries and the Community and the Member States shall foster cooperation with third countries and the competent international organisations in every sphere to promote the protection for human rights, human dignity and fundamental freedoms. This cooperation should be strengthened with a view of better assessing past cooperation and the achievements and needs of the future concourse, and should be based on respect of human rights and fundamental freedoms.

The EU's internal policies must be uniform and consistent with those applying to third countries; therefore, all double standard should be eschewed. In all fields of international relations of the European Union it has to safeguard its values, fundamental interests, security, independence and integrity, consolidate and support democracy, the rule of law, human rights and the principles of international law. In the words of the European Parliament report the "*EU needs to move towards a coherent and consistent policy of upholding and promoting human rights around the world. It stresses the need to conduct such a policy more effectively. It reiterates its conviction that, in order to effect an improvement in the promotion of human rights, the EU's common foreign and security policy (CFSP) needs to be strengthened.*"²

The European Parliament's resolution of 7 May 2009 on *the Annual Report on Human Rights in the World 2008* and the European Union's policy on the matter underlined that the protection of human rights relies on recognition of the dignity of the human person and it should be recalled in this connection that the opening words of *the Universal Declaration of Human Rights* read: "*recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.*"³ It also stressed that justice, freedom, democracy and the rule of law arise out of an authentic recognition of the dignity of the human person, and whereas such recognition is the foundation of all human rights.

The Lisbon Treaty is a major step forward in that it has confirmed the place of human rights at the heart of the Union's external action. In Article 3(5) of the Lisbon Treaty this aim is defined as follows: "*In its relations with the wider world, the Union shall uphold and promote*

1 BARBARA BRANDTNER and ALLAN ROSAS: "Human Rights and the External Relations of the European Community: An Analysis of Doctrine and Practice," Oxford Journals *European Journal of International Law*, Volume 9, Issue 3, pp. 468-490.

"From a conceptual perspective, the EC's human rights policy seems governed by the principles of universality and indivisibility. However, the specific weight to be attributed to economic, social or minority rights, the EC's capacity to adhere to international human rights conventions and the interplay between 'First Pillar' (EC) and 'Second Pillar' (CFSP/EU) activities all await future clarification."

2 *Annual Report on Human Rights in the World 2008* and the European Union's policy on the matter, Thursday, 7 May 2009 – Strasbourg.

3 The European Parliament's resolution of 7 May 2009 on *the Annual Report on Human Rights in the World 2008* and the European Union's policy on the matter, 2008/2336(INI).



its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter.”

This paper argues that the European Union believes that democracy and human rights are universal values that should be vigorously promoted around in a globalizing world. The globalization¹ can have implications on the enjoyment of various human rights, positive and negative as well. The European Union does not consider that globalization has an impact on all human rights, because many human rights and fundamental freedoms – such as the freedom from torture, the right to a fair trial, the right to recognition as a person before the law, and the freedom of religion and expression – are not affected by globalization. The globalization affected most notably the economic and social rights. The extreme poverty is a major challenge within the process of globalization. It persists in each country of the world, and the extent and manifestations of extreme poverty, such as hunger, trafficking in human beings, disease, lack of adequate shelter, illiteracy and hopelessness, are particularly severe in developing countries.² The European Union believes that extreme poverty and social exclusion constitute a violation of human dignity and that urgent action is therefore required to eliminate them. The 2010 European Year for Combating Poverty and Social Exclusion was dedicated to draw the attention of all social classes to fight against widespread financial hardship. The reports showed that the economic crisis had deepened the problem of poverty and social exclusion for people already living on low incomes and affecting people who had previously been in secure or stable employment, but who are now facing increasing amounts of personal debt.³ The European Union and its member states’ task is clear; they need to unite in their ambition to find a working solution to current social affairs and financial challenges to ensure the protection of all human rights.

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1 The globalization means that the flows of goods, services, capital, technologies and people are spreading worldwide, as countries everywhere open up to wider contact with each other.

2 Human rights questions: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms. Report of the Third Committee, Rapporteur: Mr. Carlos Enrique García González (El Salvador), A/59/503/Add.2.

3 Final Report: Quick Survey on European Platform Against Poverty. URL: <http://portal.cor.europa.eu/europe2020/news/Pages/SurveyEuropeanPlatformAgainstPoverty.aspx>.

Human Rights, Values and the Media

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Abstract

This study examines the human rights concept used in three western daily newspapers, in order to discover the underlying values system. Special attention is paid to the implications for the relation between the west and China. A close speech act analysis of more than three hundred articles reveals that the human rights concept outlined in these newspapers shows some significant differences with the one elaborated by the international community within the framework of the United Nations: in the western media, the economic, social and cultural rights are universally marginalized. On the other hand, the civil and political rights tend to be described as absolute, which is again in contradiction to the UN texts. This points to an underlying values system which is essentially liberal, where the state has no other responsibility than to keep its hand off from the liberties of the citizens (the “negative rights” in the UN terminology). However, this human rights concept does not necessarily correspond to the expectations of the people, who need the state to provide fundamental services (“positive rights”). This gap between the priorities of western media and the expectations of the public opinion, especially in China, has never been investigated up to now.

Part 1: Introduction

Since the elaboration of the human rights concept within the United Nations in the wake of the Second World War, the Western media have claimed to be strong advocates of this concept and of its realization across the world: the human rights seem to be part of their most fundamental values. However, the western media campaign surrounding the 2008 Olympic Games in Beijing has revealed a conflict between their human rights concept and the expectations of the Chinese authorities and public opinion. Many Chinese accused the western media of using a concept which excludes the economic and social rights, ranking high in the priority of most Chinese people.

However, the western media seem not to be aware of this problem. There is no ongoing discussion about which rights are included into the human rights and which are not. Recently published research projects about the western media reporting about China do not address



the problem either¹. This article therefore tries to provide some data in order to promote a fact-based discussion on the topic.

Part 2: The Values of the Western Media in Relation to Human Rights

The concept of human rights has gone through a constant evolution since its birth which is situated by some authors as far back as the 6th century BC in Persia or the 5th century BC in Greece. Its formalization in various internationally or regionally binding texts has been the object of intense political pressure from the various involved governments on each single aspect; every word was fiercely fought over. The result is not a coherent law system, but a compromise of various conflicting interests. The whole question is how this system is represented in the western media.

2.1. The sources used by the western media in relation to human rights

One of the key factors shaping the western media discourse about human rights is the knowledge of the journalist about this topic. Therefore, a brief overview of the main sources available to the journalists is necessary to understand how they will talk about human rights in their reporting.

2.1.a. The UN human rights texts

The instruments elaborated by the international community within the framework of the United Nations are considered to be one of the bases of international relations; the promotion of human rights is explicitly mentioned in the UN charter as one of the objectives of this organization. The content of the various UN human rights texts can be classified into four categories:

- General principles: general rights like right to life, equality, freedom and security, prohibition of discrimination, limitations of the rights (e.g. can be limited by the law under certain conditions), etc.²
- Civil and political rights: prohibition of slavery and torture, rule of law, freedom of expression and religion, right to democracy, etc.
- Economic, social and cultural rights: right to work, to a decent standard of living, to education, healthcare, social security, to take part in the cultural life, etc.
- Collective rights: right to self-government, right to development, etc.

1 See Kai Hafez, Thomas Heberer, Carola Richter, Sebastian Gebauer, "Die China-Berichterstattung in den deutschen Medien ["The coverage of China in the German media," translation mine]," Heinrich Böll Stiftung, 2010; "Encoding the Olympics," an international research project commissioned by the Olympics Studies Centre which is part of the International Olympic Committee, results published in *the International Journal of the History of Sport*, vol. 27, nos. 9-10, June-July 2010; Winnie Cheng and Phoenix Lam, "Media discourses in Hong Kong: change in representation of human rights," in *Text & Talk* 30-5 (2010), pp. 507-527.

2 Some authors classify some of these principles under the civil and political rights; however, it is quite obvious that they apply to the same extent to the ESC rights. Therefore, they are put into a specific category here.



In all the UN texts and declarations relating to human rights, the equal importance and indivisibility of the civil and political rights on one hand and of the economic, social and cultural rights on the other hand has always been stressed. The limitations mentioned in the first list item are also an important topic, as we will see later on.

The most well-known human rights text in the world is *the Universal Declaration of Human Rights* (UDHR)¹, voted in 1948 by the UN General Assembly. It is quite short (it can be printed on one single two-sided A4 format paper) and has been intensively publicized by the UN, many NGOs and by the media themselves. Therefore, I was very surprised to realize that some reporters and journalists have got a quite incomplete knowledge of its content.

For example, a senior reporter working for a public radio station in a European country told me that the problem with the economic, social and cultural rights (ESC rights) is that they are not mentioned in the UDHR. I told him that they are. The next time I met him, he conceded that I was right; he had checked it out meantime. This episode and other similar ones show that there is no bad intention in the often imprecise reporting of the western media about the human rights, but rather a lack of information.

The UDHR in itself can not easily be applied in concrete situations. The rights are formulated in very general terms, and all of them can be limited by national laws. There are no mechanisms of ratification, monitoring or enforcement. Already when this declaration was elaborated, it was obvious that it would be later on completed by more binding texts. Now, five fundamental texts form together the International Bill of Human Rights: *The UDHR*, *the International Covenant on Economic, Social and Cultural Rights* (CESCR), *the International Covenant on Civil and Political Rights* (CCPR) and two optional protocols². They are considered to be the most fundamental human rights instrument, and are the basis of the present research to investigate the human rights concept used by the Western media. Several dozens additional texts provide a more detailed elaboration of specific aspects of rights mentioned in *the International Bill of Human Rights*, or new rights which have been made necessary by the evolution by society (e.g. the rights to a sound environment).

2.1.b. Regional human rights texts

The progress in the elaboration of UN human rights texts and in their implementation and enforcement was (and still is) quite slow. This is certainly due to the fact that action within the UN must be negotiated between governments from all over the world, ruling countries with extremely diverse cultural backgrounds and levels of development. Therefore, some regions created their own regional human rights tools adapted to the local conditions³.

1 <http://www.un.org/en/documents/udhr/index.shtml>, last access July 16th, 2011.

2 All UN human rights texts except for the UDHR, see <http://www2.ohchr.org/english/law/index.htm>, last access July 16th, 2011.

3 See Dinah Shelton, *Regional Protection of Human Rights*, Oxford University Press, 2008.



However, these regional institutions were not intended to replace the UN efforts in this field. The huge majority of their members also ratified the UN agreements. In the case of intercontinental contacts, the regional instruments are of course irrelevant.

The regional organization with the greatest influence on the western media in the field of human rights is without any doubt the Council of Europe (CoE). It was founded by a group of Western European countries in 1949, at the very beginning of the Cold War. One of its objectives was to promote human rights, probably with regards not only to the internal situation, but also in reaction to the situation in communist Eastern Europe.

In 1946-1948, when the UDHR was elaborated, the communist block lead by the USSR was most vocal in advocating the ESC rights to be considered as equal to the civil and political rights, together with some Latin American countries and to a lesser extent France. The latter pleaded for an inclusion of the ESC rights into the UDHR, but in a subordinate role.

Probably in reaction to this discourse, the Council of Europe agreed in 1950 on a *European Convention on Human Rights* (ECHR) which includes only the civil and political rights¹. The ratification of this convention is compulsory for all the member states of the CoE, and their compliance is monitored by the European Court of Human Rights.

The ESC rights are dealt with in *the European Social Charter*. In its first version of 1961, the ESC rights were not even explicitly included into the human rights. This was corrected in a second revised version of 1996. However, decades of political and media discourse where only the civil and political rights were called “human rights” have left a legacy which is not easy to overcome.

Another problem is the individual or collective nature of human rights, a problem which is related to their enforceability. A good example is the right to health. In the UDHR, this right is only indirect:

Article 25.1: Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services [...].

It is difficult to derive a direct right to healthcare from this. In the International Covenant on ESC rights (CESCR), the right to health is much more detailed:

Article 12

1. The States Parties to the present Covenant recognize **the right of everyone** to

¹ For all the CoE human rights texts, see <http://www.conventions.coe.int/Default.asp>, last access July 16th, 2011.



the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

(b) The improvement of all aspects of environmental and industrial hygiene;

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness. [Emphasis mine]

The right to health is formulated two times (§1 and §2d) as an individual right. This text must of course be read against the background of the following general principle, applicable to all the rights:

Article 2

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures. [Emphasis mine]

It is difficult to ask developing countries to put a doctor and all the necessary treatment at the disposal of each person who gets ill, but this could certainly be required from fully industrialized countries.

Unlike the civil and political rights, the ESC rights tend to be formulated as collective rights in European Social Charter elaborated by the CoE:

The Parties accept as the aim of their policy, to be pursued by all appropriate means both national and international in character, the attainment of conditions in which the following rights and principles may be effectively realised: [...]

11 Everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable. [...]

Article 11 – The right to protection of health

With a view to ensuring the effective exercise of the right to protection of health, the Parties undertake, either directly or in co-operation with public or



private organisations, to take appropriate measures designed inter alia:

1. to remove as far as possible the causes of ill health;
2. to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health;
3. to prevent as far as possible epidemic, endemic and other diseases, as well as accidents. [Emphasis mine]

In opposition to the formulation in the UN text CESCR, this text does not mention one single individual right. There is no “right of everyone to the enjoyment of the highest attainable standard of physical and mental health,” but just a “right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable.” However, nobody can claim that the state does not take the necessary measure so that he or she can actually “enjoy the highest possible standard of health attainable.”

Another feature of the CoE text accentuates the problem. In all the human rights texts, there is an article prohibiting any kind of discrimination. Here is the relevant article in the UDHR:

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. [Emphasis mine]

It can be safely assumed that the term “property” refers not only to discrimination against people who are “too rich” (as it happened sometimes under radical communist regimes), but also against poor people. In the ECHR, there is the same prohibition of discrimination because of “property,” but not so in *the European Social Charter*, neither in the first nor in the second version. We can safely assume that there was a predominant political will to avoid law suits against the state because somebody can not benefit from his or her right to education or health care for financial reasons. On the other side, the CoE is very active in fighting all other forms of discrimination, i.e. based on gender, on ethnicity, on sexual orientation, etc.

In one word, the human rights tools of the CoE are much more demanding towards its member states with regards to the civil and political rights than the UN texts. This was achieved in particular through the European Court of Human Rights. However, with regards to the ESC rights, the CoE is much less demanding. Rights which were formulated as individual rights in the UN texts have become collective, unenforceable rights, and the



prohibition of discrimination for financial reasons has been dropped. We will see later on that this has probably had a decisive influence on the human rights concept of the Western media.

On the American continent, the Organization of American States has also elaborated regional human rights tools. However, the USA and Canada did not get much involved in these activities. The corresponding texts are hardly ever quoted by the western media; therefore they will not be analyzed in detail here.

2.1.c. Academic human rights literature

It is of course difficult to decide to which extent the academic literature influenced the human rights texts mentioned above, and to which extent the latter influenced the first. However, it is quite certain that the academic literature about human rights has got a decisive influence on the media. There are certainly few journalists who read specialized treatises about human rights (since many of them do not even read the UDHR). However, many journalists writing about the human rights have got a bachelor, master or even PhD in law, and human rights are generally an important topic in this curriculum. Students in bachelor or master courses in journalism will also get at least some training in the various aspects of human rights, which is often given by law teachers.

In general, the discourse of jurists is heavily biased towards the civil and political rights¹. Freedom of expression is of course important for journalists, and jurists work the whole day on improving the rule of law. However, even academic authors who according to their biography would be expected to lean towards the ESC rights “accept” the “inferiority” of the ESC rights as compared to the civil and political rights². However, they do not give text-based arguments in order to justify this opinion.

Within the framework of this project, it was impossible to perform a systematic analysis of the very extensive Western academic literature on human rights. This might be a topic for future research.

2.1.d. NGOs active in the field of human rights

In western countries, there are innumerable NGOs working in fields which are part of the UN concept of human rights. However, not all of them do their work explicitly in the name of human rights. Quite often, journalists don’t have their own human rights discourse; they generally rely on other actors, e.g. NGOs, whose discourse they relay.

Most NGOs working in the field of ESC rights (poverty reduction, right to health, right

1 See for example Yves Madiot, *Droits de l’homme* [“Human Rights,” translation mine], Masson, 1991. Yves Madiot is considered to be one of the most eminent human rights experts in the French speaking regions. This book is often used as an introduction to the topic for students in law.

2 See Roger Normand and Sarah Zaidi, *Human rights at the UN*, Indiana University Press, 2008. The authors were co-founders of the Center for Economic and Social Rights (CESR), an NGO dedicated to promoting ESC rights in the world.



to education) have got a discourse centered on “humanitarian aid” and “charity.” This is probably the kind of discourse which allows them to get the donations which they need to do their job. But as a consequence, these fields tend not to be included into the concept of “human rights” in our media.

Many other NGOs have centered their discourse entirely on human rights, some of them are extensively quoted by the Western media. However, until recently, all of them cared only about civil and political rights. Recently, some of them have decided to include the ESC rights into their work. However, in this field, they focus primarily on questions of discrimination.

To sum it up, all the sources on which the western media rely for information about the human rights lean heavily towards the civil and political rights. When they deal with the ESC rights, it is generally in a context of discrimination or natural disaster. The ESC rights (e.g. right to a decent standard of living, to housing, healthcare or education) as a general right of the population are treated very marginally at best.

2.2. The human rights concept used by the western media

All the recent western research projects about the western media coverage of China work with data which is exclusively gained through the analysis of some media, or in some cases with data about western media consumers¹. The content of the media is never compared to outside sources in order to check how “reality” is represented (i.e. the “truth value” of the media reporting).

The “reality” is of course often difficult to grasp. In the case of human rights concepts however, the reality is made of the different human rights texts and institutions. The purpose was to analyze the human rights concept used by the western media by quantifying the mentions of the different rights and general principles. The results can then be compared to the different human rights texts.

2.2.a. Data

More than 100 articles of each of the following three daily newspapers were analyzed:

1. *The New York Times* (“NYT”), an American daily newspaper with a cosmopolitan, rather international orientation. Within the American political system value, it is considered to be quite liberal.

2. *The Independent* (“Indep”), a British daily newspaper which was initially quite liberal, with sometimes a left-leaning editorial line on some issues.

¹ See Peter Hays Gries, H. Michael Crowson, Todd Sandel, ‘The Olympic Effect on American Attitudes towards China: beyond personality, ideology, and media exposure’, *Journal of Contemporary China*, 19: 64, pp. 213-231; Luo Qing, Chwen Chwen Chen, Cinzia Colapinto, Hiroyoshi Akihiko, Hwang Yun’il and Kodama Miiko, ‘Attitudes Towards China Before and After the Beijing Olympics,’ in *the International Journal of the History of Sport*, vol. 27, nos. 9-10, June-July 2010, pp. 1419-1432.

3. *Libération* (“Libé”), a French daily newspaper with a moderate left-leaning editorial line.

The analysis of these articles is only the first project of a whole series destined to investigate the western media coverage of non-western countries. In order to manage the analysis of articles across a whole range of topics which will often overlap, all the articles of the afore-mentioned newspapers were downloaded from their archive website into a database.

From that database, article series can be output into MS Word files according to various criteria. After manual analysis where tags are inserted into the text, the articles are put back into the database for quantitative treatment.

Having all the articles of a newspaper in a database allows for much more elaborate search queries than what archive website offer. In addition, the articles can be automatically tagged, in order to compare manual and automatic tagging. The program has been written in Java using the MyEclipse environment and the Wamp server package for the MySQL database¹. It is available on demand for free from the author under GNU open source license.

2.2.b. Analysis criteria

The working hypothesis for the analysis is that the reader does not know anything about human rights, while having a good general knowledge about the topics of the different articles. The articles were selected according to the following criteria:

1. They contain the keywords “human rights” (English language) or “droits de l’homme” or “droits humains” (French language) in their title or text.
2. They are written by one author and cover one topic (excluding for example articles reprinting several letters to the editor or weekly news summaries).
3. Their length is between 500 and 8,000 signs.
4. The articles were spread evenly at random over the time span from January 1st to December 31st, 2010.

Each time an issue was directly or indirectly related to human rights, the corresponding information was encoded in the form of a proposition with between 4 and 7 elements. Typically, a first proposition describes which right is included into the human rights (definition). A second proposition specifies what is said about this right (evaluation). A definition is made of between 5 and 7 elements:

1. Which right is addressed
2. Agent, i.e. who speaks (with nationality)
3. Which speech act is performed (the right is included into the human rights, excluded from the human rights; it is defined as universal or as having limits, etc.)
4. Relatively to which category the right is defined (included into the human rights, the

¹ See www.myeclipseide.com and www.wampserver.com for further information.



civil rights, etc.)

5. Through which device the definition is performed (e.g. directly included into the human rights, indirectly through the qualification of the agent, etc.)

6. (optional) Which basis is used (e.g. human rights text, institution)

7. (optional) Modality (e.g. “is included,” “should be included,” etc.)

An evaluation is made of 4 to 6 elements:

1. Which right is addressed

2. Agent, i.e. who speaks (with nationality)

3. Which speech act is performed (e.g. denouncing a violation, reporting an improvement, reporting an enforceable institutional condemnation, etc.)

4. Who is targeted (e.g. who violates a certain right)

5. (optional) Which basis is used

6. (optional) Modality (e.g. “has violated,” “may have violated,” “would have violated if...,” etc.)

Here is an example of such an annotation:

[...] human rights groups now believe the British heeded the Americans’ concerns by allowing [British army personnel] to conduct coercive and unlawful interrogations. {fd05cus-angounk-hincl-chr-rqualact, fd05cus-angounk-hviol-pmilgbr-mmay} (*The Independent*, Jan. 1, 2010)

The codes in braces have got the following meaning:

fd05cus	the right to freedom from torture and inhuman treatment (article 5 of the UDHR, “05”) in custody (“cus”)
angounk	the agent (“a”) is an NGO (“ngo”) of unknown nationality (“unk”)
Hincl	speech act (“h”): include...
Chr	... into the category (“c”) human rights...
rqualact	... through the device (“r”) that the agent is qualified as “human rights groups”
Hviol	speech act: this right was violated...
pmilgbr	... by the British (“gbr”) military (“mil”)...
Mmay	...or rather: may have been violated (“believe”)

The human rights were subdivided into more than 100 categories. As shown above, they were classified primarily according to the article in the UDHR where this right is described: the prohibition of torture and inhumane treatment is explained in article 5 of the UDHR. However, this right was further subdivided into torture or mistreatment in custody, inhumane treatment in public (e.g. police brutality or rape in the public domain) and the rights of the



prisoners (apart from the right not to be tortured).

In addition to this encoding of all the information related to human rights, the general topic(s) of the articles and the countries involved were separately encoded with other codes.

2.2.c. Results

The result of the analysis outlined is quite surprising: the human rights concept of the three newspapers is almost identical, even though there are significant differences in the way this concept is applied.

The table below summarizes the rights which are included into the human rights or excluded from them.

Table 1: Percentage of the articles talking about human rights where a right belonging to a category is included into / excluded from the human rights / limited in their application								
	NYT	Indep	Libé	12 13 23	NYT	Indep	Libé	12 13 23
n →	129/96	107/95	103/93		129/96	107/95	103/93	
Right ↓	Included into the human rights				Excluded from HR (limited)			
Not HR	4	2	3	.../.../...	0 (0)	0 (0)	0 (0)	
HR not i. Bill	1	2	1	.../.../...	1 (0)	1 (0)	0 (0)	.../.../...
HR all	89	84	84	.../.../...	11 (0)	9 (0)	3 (2)	.../*/...
HR general	35	26	38	.../.../...	2 (0)	0 (0)	1 (0)	.../.../...
CP rights	73	69	65	.../.../...	6 (0)	4 (0)	3 (2)	.../.../...
ESC rights	9	5	10	.../.../...	3 (0)	4 (0)	0 (0)	.../.../*
Notes:								
N	Number of articles analyzed/number of articles where some information was given about the human rights.							
12 13 23	Significance of the difference between proportions, comparison columns 1-2, 1-3, 2-3. *= $p<0.05$, **= $p<0.01$, ***= $p<0.001$							
Not HR	Rights which are not included in any of the UN human rights tools							
HR not i. Bill	Rights which are included in some of the UN human rights tools, but not in <i>the International Bill of Human Rights</i> (e.g. the right to a sound environment)							
HR all	All the rights contained in <i>the International Bill of Human Rights</i>							
HR general	General principles (e.g. non-discrimination, right to life, etc.)							
CP rights	Civil and political rights							
ESC rights	Economic, social and cultural rights							
(limited)	Discussion about the limits of some human rights, e.g. limits to the freedom of expression							

With regards to the evaluation of the situation relating to the different rights, similar results were obtained (data not shown here).

The first conclusion we can draw from the table above is that the human rights in the media are not an “exact science.” In a notable percentage of the articles (between 2 and 4%),



rights are included into the human rights which are actually not part of it. In an even larger percentage (3-11%), rights which are part of the human rights are mentioned as if they were not part. In this field, we have got the only significant difference between the newspapers: in *Libération*, this happens significantly less often than in the other two newspapers. However, the difference for all the human rights is at the limit of the applicability of the method calculating the significance of the difference: all the values should normally be above 5 cases, this condition is not satisfied here (only 3 cases for *Libération*).

The most striking result is certainly the fact that the proportion between general considerations, the CP rights and the ESC rights is almost identical in all the three newspapers, with not even one single statistically significant difference. The ESC rights are very much marginalized as compared to the CP rights. This is especially true for *The Independent*. In five percent of the articles, some of the ESC rights are mentioned as being part of the human rights; in four percent, they are excluded from the human rights.

A closer reading of the articles talking about the ESC rights reveals another feature of the media discourse: in most cases, these rights are only mentioned in relation to discrimination or in conflict or natural disaster situations. In only one of the more than 300 articles which were analyzed here, one of the ESC rights (in this case the right to education) is presented as being universally applicable to the whole population:

The “World’s Biggest Lesson,” which will take place in more than 100 countries, will concentrate on the provision of quality public education as a human right and highlight the financial problems preventing many children getting even basic schooling. {fd26.1-aautgbr-hviol-pvgenwld, fd26.1-aautgbr-hincl-chr-rdirect} (*The Independent*, Apr. 18, 2010)

Here, the right to education is directly included into the human rights (“incl-chr-rdirect”). However, the paragraph quoted here is at the end of an article about the preparations for the Soccer World Cup in South Africa 2010 and has certainly attracted more people interested in sports than people interested in human rights and social progress.

Here is an example of an article where the right to health is quite clearly excluded from the human rights:

We know that where there are laws protecting human rights, women and others living with HIV are better able to gain access to prevention, treatment, care and support programmes without fear of arrest or prosecution. Protecting public health and promoting human rights are mutually reinforcing strategies. {fd25hea-aautgbr-hexcl-chr-rjuxt} (*The Independent*, Dec. 1, 2010)

Apart from the marginalization of the ESC rights, another feature of the media discourse is the fact that the limitations on the human rights are hardly ever mentioned. Only in *Libération*, two articles mention the possibility that some of the human rights can be limited in their applicability, once in relation to the freedom of expression, once in relation to the right of the journalists to protect their sources. This is in stark contrast to all the human rights texts, where most of the rights are limited to some extent.

This clear difference between the human rights concept outlined in the UN texts and the western media can be explained by three factors: the basis which is used in the discourse, the countries which are targeted and the historical reasons which pushed the various countries to adhere to international human rights tools.

In *the New York Times*, the human rights discourse is based primarily on the action of NGOs (data not presented here). International human rights texts are mentioned only in two percent of the articles, the UDHR once and *the European Convention on Human Rights* once. The reluctance of the US government to ratify international agreements is well-known. It seems that the American media share this attitude.

In *the Independent* and *Libération*, mentions of human rights texts or international institutions are significantly more frequent (14% of the articles for *the Independent*, 19% for *Libération*; difference NYT-Indep $p < 0.01$, NYT-Libé $p < 0.001$). However, only one tenth respectively one sixth of the mentions relate to UN texts or institutions (e.g. three references to the Council of Human Rights in *Libération*). All the other references point to tools of the Council of Europe like the European Court of Human Rights (between one third and one half of the references) or the European Convention on Human Rights. The UN Covenants CCPR and CESCR are never mentioned.

Another significant difference between the newspapers relates to the countries which are targeted in negative mentions about human rights (reports about regression, problems, violations or institutional condemnations). In *the New York Times*, in only 7% of the articles, US actors (government, private companies, NGOs etc.) are criticized for their human rights record. In *the Independent*, 42% of the articles target the own country; in *Libération*, the figure is 40%.

During the elaboration of the human rights tools within the UN, many observers commented that the US government was mainly interested in getting a foreign policy tool which could be used against the communist countries and other states which were not US strategic allies¹. However, the US government wanted to make sure that these tools could not be used against the US, in particular against their apartheid policy against Afro-Americans

¹ See Normand and Zaidi, op. cit.



which was still in place in the southern states, or against US troops or secret services in foreign countries. Therefore, only “toothless” declarations and conventions or covenants without enforcement mechanisms were acceptable. Until now, the USA have only signed, but not ratified *the International Covenant on Economic, Social and Cultural Rights*, *the American Convention on Human Rights* and *the UN Convention on the Rights of the Child*. The latter has been ratified by all the countries on earth except the USA and Somalia.

On the contrary, many European countries were more interested in setting up institutions which could effectively enforce a common human rights standard at least in Europe, in order to prevent a repetition of the horrors of World War II. This can explain why the European media work much more with the enforceable European human rights texts and quote extensively the decisions taken by the European Court of Human Rights.

With all these differences in the way the human rights are used by *the New York Times*, *the Independent* and *Libération*, it is all the more surprising that their core human rights concept, i.e. which rights are included and which are not, and which rights are talked about and which are silenced, are so similar that there is not even one significant difference.

Unfortunately, this presents to the reader a human rights concept which does not correspond to the one elaborated within the framework of the United Nations. In particular, the ESC rights are almost absent, and when they are mentioned, they are generally linked to either various forms of discrimination or to exceptional situations like natural disasters or conflict and war.

2.3. The reaction of the western media and scientists to the “Chinese human rights concept”

In the west, the media are considered to be an important countervailing power to the governments all over the world. The human rights are considered an important tool for this, since they are supposed to impose limits to what the governments can do.

With this image of themselves, the western media were totally unprepared for the criticism they were facing not only from the Chinese government, but also from the huge majority of the Chinese people. Their first reflex was to ascribe the problem to the “propaganda of the Chinese government”: the Chinese people could not understand that the western media only wanted to help them because they were brainwashed by the Chinese communist regime.

Then came the “cultural explanations”: in the Chinese culture, criticism is not easily accepted; human rights are in conflict with the Chinese tradition (see section 2.5); nationalism was also said to play an important role.

Some people started to realize that the “human rights concept” was one of the keys to the problem. However, to my knowledge, this has never led to a questioning of the “western” human rights concept. Georg Blume was for more than 10 years the China correspondent for two major German newspapers before he wrote a book in 2008 in which he strongly criticizes

the negative attitude of German politicians and media towards China¹. About the topic of human rights, he writes: “Today, China does not reject the human rights, she just interprets them in a different way.” [translation mine]

Another illustration is the conceptual gap between Kai Hafez, a media researcher, and Thomas Heberer, a sinologist. In the same book about the German media coverage of China², each of them uses a different human rights concept. Kai Hafez uses a concept which includes only the civil and political rights. Thomas Heberer also includes the right to a decent standard of living into his concept, but leaves the question of the right to health and to education open. As a conclusion, he advocates an acceptance of alternative “ways of reading” the human rights texts. However, this conceptual gap between the two authors who worked on the same project is not reflected by either of them.

None of these authors has tried to understand the gap between the “western” and the “Chinese” human rights concepts using a comparison with the UN human rights texts.

2.4. The reaction of the Chinese public opinion to the human rights concept of the western media

This is exactly what many Chinese reacted against, in particular in 2008 in the run-up to the Olympic Games in Beijing. Many (I could even say, all) of the Chinese I knew were upset by what they perceived as a contradiction in the western media discourse. This reaction was actually what pushed me to start investigating this topic.

China is the most prominent “target” of the western media with regards to criticism of her human rights record. In the case of *Libération*, it ranks second after France (10% of the articles); in *the New York Times*, it ranks first (18% of the articles); in the case of *the Independent*, it ranks third after Great Britain and the USA (12%). However, the second rank of the USA is probably due to the torture scandal in the British military in Iraq and therefore specific to 2010; in most articles on this topic, it is at least implied that US policy and pressure were to blame in part for this scandal.

Some westerners, especially among western sinologists, but also among some journalists and reporters, try to understand why many Chinese got upset by the western human rights discourse directed at China. Quite often, the explanation they give is that in the Chinese culture, the community is considered more important than the individual; therefore, the human rights which are centered on the rights of each individual person can be of no significance to the Chinese people³.

I came across such arguments only in a small fraction of my conversations with Chinese

1 Georg Blume, “China ist kein Reich des Bösen. Trotz Tibet muss Berlin auf Peking setzen [“China is not an empire of evil; despite Tibet, Berlin must play the Beijing card,” translation mine],” Körber-Stiftung, 2008.

2 Kai Hafez et al., op. cit.

3 See Winnie Cheng and Phoenix Lam, op. cit.



people on this topic. On the contrary, many of them, especially educated young Chinese, tend to consider the rights of each individual as very important. However, the ESC rights, especially the rights to education, to healthcare, to housing and to a decent standard of living, rank very high on their agenda.

This is probably the reason why they can not get any positive relationship with the western human rights discourse: these are precisely the rights which are largely marginalized by the west. If they are mentioned, it is in relation to discrimination or natural disasters; however, these are exactly the fields where the communist regime in China has achieved the most obvious successes. Even the western media acknowledge that the reaction to the Sichuan earthquake in 2008 was impressive.

However, the general access to education, health care and housing is still a constant struggle for many people, as in every other country too. Here too, the P. R. China has achieved a spectacular improvement over the last 62 years. However, it takes more time than that to take a country which was among the poorest countries on earth in 1949 to a state of development where these rights are granted to everybody. This is illustrated by the fact that these rights are still problematic in many of the most industrialized nations.

Unfortunately, these are exactly the rights which were made “collective” in the European human rights tools. Therefore they became totally “toothless” and unfit for any kind of enforcement. The western media and academics lost interest, and they became unattractive for people who are looking for support in their everyday struggle for what they consider their most fundamental rights.

At the same time, virtually all the Chinese I know considered the western criticism of China totally unfair, mainly for two reasons. First of all, this criticism was linked to the organization of the Olympic Games. All my contacts wanted a continuation of the opening process in China. The Olympic Games were seen as a unique chance to get a closer relationship with the world, which was seen as benefiting both sides. The fact that many voices in the western media pushed openly for a boycott discredit them right from the start.

Second, most Chinese are aware of the fact that for example in terms of media freedom or influence of the voters on the policy of the country through elections, the situation in China is less advanced than in most other countries in the world. On the other hand, they have witnessed the spectacular successes in the field of the ESC rights, as well as steady progress in the CP rights. The fact that the western media simply left out the ESC rights in their evaluation of China’s human rights record made their discourse highly questionable.

2.5. The conflict between the western and Chinese human rights concepts: cultural difference or different values?

When reading about the history of human rights, the reader might get the impression that this topic has always been a core concept of the western culture. However, this was not

the case, as some authors point out.

In Great-Britain, some of its core ideas played an important role in the transition from absolute to constitutional monarchy in the 17th century. In France, these ideas were formulated into a coherent human rights concept in the decades before and during the French revolution (second half of the 18th century). However, during much of the 19th century, this concept did not play a very important role. It became prominent after the suffering caused by World War I, but disappeared again and was replaced by the ideology of fascism and Nazism.

Only after the horrors of World War II, the ideal of human rights resurfaced as a possible tool to prevent such events from happening again. Since then, it has become one of the core concepts in almost all spheres of western thinking.

However, we have seen before that the western media use a human rights concept which does not correspond to the UN texts; it is mainly characterized by a marginalization of the ESC rights. Can this be considered to be part of the western culture? Many arguments speak against this hypothesis.

Most British and American voices have always had problems with the ESC rights. However, this was not the case in France. For example, in the French Constitution of 1946, the ESC rights were put on a same footing with the CP rights, and to some extent went even further than the UN texts which were elaborated a few years later. The recent “enforceable right to housing” is also an interesting French initiative in the field of ESC rights.

Given these cultural differences in the field of human rights, it is all the more surprising that the French newspaper *Libération* shows such a strikingly similar human rights concept to the two English language newspapers. Did the French culture become “anglicized” within the last decades, or is there a gap between the French culture and the French media?

It is not easy to measure the importance of the ESC rights in the general “culture” of a country. More research is needed, for example through systematic opinion polls, but Google might give us a first indication. Here is the number of results found by this search engine in English and in French for the following expressions:

The French phrases are listed in the same order of appearance as the corresponding English phrases. There are significant differences between the two languages. The first numbers column gives the number of occurrences on the whole worldwide web. Of course, especially the English language searches do not represent only US and British Internet users. There are also many French speaking Internet users outside of France, notably in other European countries, French speaking Africa and Canada. On the other hand, the newspapers analyzed here are also read beyond the borders of their country of origin. In order to get a clearer picture, the results are also listed for the national territory of the three newspapers.

It is obvious that on Internet, we don’t have the same neglect of the ESC rights as in the media, especially on the French speaking web: the right to health is even the most frequent



Table 2: Number of occurrences of various phrases relating to human rights, in English and in French (accessed July 14th, 2011)

Field	Search criteria	Number of results (in thousands)		
		www	US	UK
CP rights	"human rights" "freedom of speech"	17,800	12,700	2,640
	"human rights" "freedom of expression"	11,500	6,000	1,570
	"human rights" "rule of law"	72,400	47,300	9,820
	"human rights" "presumption of innocence"	5,180	2,630	721
ESC rights	"human rights" "poverty"	39,100	26,900	6,090
	"human rights" "right to health"	8,770	4,870	692
	"human rights" "right to education"	5,610	3,140	448
		www	France	
CP rights	"droits de l'homme" "liberté d'expression"	4,820	2,780	
	"droits de l'homme" "liberté de parole"	1,050	733	
	"droits de l'homme" "Etat de droit"	8,850	4,710	
	"droits de l'homme" "présomption d'innocence"	360	233	
ESC rights	"droits de l'homme" "pauvreté"	5,200	2,530	
	"droits de l'homme" "droit à la santé"	20,200	10,800	
	"droits de l'homme" "droit à l'éducation"	520	204	

of all the rights listed. This indicated that their marginalization in the western media is not a feature of the western culture. It seems rather to be part of a shared value system of the western media, politicians and academics. Within the latter category, especially the jurists seem to have a major influence.

On the other hand, we might ask whether the importance given to the ESC rights in China is part of the culture of this country. Again, the answer is probably no. Caring about health and education has of course always been part of the Chinese culture. However, the ESC rights imply a certain responsibility in these fields for the government. None of the political regimes before 1949 got much involved in providing the population in general with poverty relief, housing, healthcare and education. Therefore, their relative prominence on the agenda of the CCP seems to be more like a part of the set of values of this political party. From there, they spilled over into the population, probably because the Chinese people saw the concrete benefits of having a state which provides a certain number of basic services.

Not all the differences we observe between the (or some) western countries and China can be retraced to some features of the respective cultures, and we should be careful before we make sweeping statements about fundamental cultural differences between East and West. Maybe a more differentiated approach can make a good relation between the west and China much easier, in the field of human rights and elsewhere.



Conclusion

There are many problematic aspects in the western media discourse about human rights. Only three newspapers were included into this study, but extensive experience of the author indicates that the other media have got a very similar discourse. The most striking feature is an almost universal neglect of the ESC rights, especially in their general application to the whole population. Only cases of discrimination and their application to emergency situations are mentioned from time to time.

Much more research is needed into this topic. Only a tight collaboration between researchers in the various fields of human rights and media scientists can analyze and maybe bridge the gap which has opened up between the Chinese public opinion and the western media.

The problem with western media science is that especially when investigating the reporting about non-western countries, the researchers will never step out into the field. They never try to do any research about the relation between media reports and the reality on the ground, or about the reaction of non-western readers to the western media coverage. As a consequence, tensions like the one mentioned above will go unnoticed for years.

Without the precious information I got through years of intense communication with Chinese people and people from other regions all over the globe, I would never have realized that the human rights discourse of the western media is problematic. However, becoming aware of an issue is one thing; collecting solid data and analyzing it with a sound scientific methodology is much more time-consuming.

In particular, the data presented here has got several shortcomings. The analysis criteria do not allow the distinction between mentions of ESC rights in general or in specific situations. This necessity appeared only after the first results came out. In the same register, a distinction between detail criticism and global condemnation of the human rights record of a country should be made, in order get a better evaluation of the hypothetical impact on the readers. More newspapers and other media types should be analyzed, with the corpus taken from several years.

On a much more general level, I have got anecdotic and unsystematic data about many more issues which also deserve investigating. For obvious reasons, it is not easy to get support for this kind of research in western countries. Western universities need the support of the media; therefore projects which might come up with critical results regarding the media are highly unpopular and tend to be shunned by most researchers.

However, this research must be done. The emergence of a multipolar world makes the relations between the different continents and cultures more and more important. This includes not only diplomatic relations, but also the media and the public opinions of the different countries. All tensions which might build up must therefore be analyzed and dealt



with in an appropriate way.

Especially in the field of human rights, it is extremely damageable to everybody if some actors try to impose their specific set of values to the whole world, even though it is obviously in contradiction to the human rights concept which has been worked out by the international community within the framework of the United Nations.

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Values and Human Rights

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Values and views of human rights are the concepts in superstructure which belongs to morality category. The so called values refer to people's attitude towards the choice between material wealth and spiritual wealth. Specifically speaking, it reflects the interest, demands, psychological and behavior orientation of certain subjects. It is the inward rule which is used by people to measure the value of matters, judge whether the matters are good or not and determine their attitude towards them. As for individuals, it is the most important aggregation of belief, faith and ideals at the bottom of one's heart; as for a country and the society, it is the essence and core content of ideology.¹ The value will determine the view of human rights. There is no the same value and view of human rights in the world.

It is believed in Marxism that the category of value is not abstract. Instead, it is the concept with certain social attributes. All the existing values, in the final analysis, are all the outcome of the social and economic conditions at that time. In different stage of social development, people will absorb their own value from the practical social relations consciously or unconsciously.²

It is also believed in Marxism that bourgeois view of human rights is determined by their values. Bourgeois value is the concept to defend private ownership and private property and individual value. Therefore, bourgeois view of human right also belongs to individualism. In terms of that why bourgeois value is private while bourgeois view of human rights is of individualism, Marx once made incisive statement about it. Marx stated that the basic right in bourgeois human rights is right of private ownership which is the right of individuals. Marx also straightly and peculiarly pointed out that bourgeois rights are "selfish and self-serving" which also form "the foundation of civil society."³

Western individual values and view of human rights are not produced without foundation, or fall down from the heaven and do not exist since ancient times. They are

1 Liu Haitao, *Contention of Socialism of Chinese Characteristics*. People's Publishing House, 2010, p. 222.

2 Marx, Engels: *Die Heilige Familie* (1884), *The Complete Works of Marx and Engels: book 2*, People's Publishing House, 1957, pp. 144-145.

3 Marx: *On the Jewish Question* (1843), *The Complete Works of Marx and Engels: book 3*, People's Publishing House, 2002, p. 184.



not constant but form with the western social and economic development. In the period of ancient Greece and Rome, value of individualism was not dominant. Greece and Rome were agricultural societies which called for collective force then people could survive. What's more, because of the demands of city-state system and slavery, in order to make aggression and expansion, slave-owner class needed to get together to fight against the outside world. Therefore, the value orientation of individualism reflected in the value and view of human rights of Greek slave owners and Roman slave owners is not outstanding. On the contrary, Greek and Roman value and view of human rights had certain hint of "collectivism." However, this "collectivism" was just slave-owner class's collectivism.

After Germans invaded Western Roman Empire, it was a completely different story. Germans were agricultural and nomadic people who were not like agricultural people that could only survive by collective force. They can survive by individual efforts. Germans grazed on the broad grasslands which called for individual energy, enthusiasm and ability of getting used to the natural environment and survival in such environment. Therefore, they stressed single face off and individualism was quite obvious. After Germans conquered Western Roman Empire, they brought individualism to western mainstream society and the value orientation of western individualism was formed.

After Europe entered feudal society, value of individualism began to develop. For instance, chivalry in feudal western society advocated individualism. The so called chivalry is individualism oriented and to protect the feudal system by the individual force of the chivalry. In western feudal society, feudal lords had massive lands and privileges which then became the criteria for value measurement. The people who have lands and privileges, they are valued and have human rights. The more lands and privileges a person has, the more value and privileges he will have.

Individualism in feudal Europe was quite prevailed in order to obtain individual interest and protect the interest of the family, clan and the empire. Driven by individualism, feudal lords exploited serfs cruelly and launched realm battles everywhere as well as merger lands while serfs in feudal Europe struggled to survive which made it impossible for them to have the same value and view of human rights as that of feudal lords. Therefore, in European feudal society, there was no value shared by feudal lords and serfs. Serfs could not enjoy the "human rights" of feudal lords. There was no "universal value" or "universal human rights."

After entering capitalist society, western bourgeois value was individualism and money worship. Individualism focused on individual interest while money worship took money as value criteria. As for bourgeoisie, if the individual had money, he would have value. Engels stated that because of bourgeois rule, "money would determine people' value."¹ Affected

1 Engels: *Condition of the Working Class in England* (1844), *The Complete Works of Marx and Engels: book 2*, People's Publishing House, 1957, pp. 565-566.



by value of money, bourgeois view of human rights was featured by money. If people had money, then he would have “human rights.” “Money rights” determine human rights. In this case, human rights were changed into “money rights.”

When discussing this issue, Marx and Engels wrote: “in the area where Bourgeoisies have controlled, all feudal, patriarchal clan and idyll relationships had been destroyed. It ruthlessly chopped off various restraints from the elders and betters which made there was no more other relations between than bare stake and marble ‘cash trade’. The holy expression of religion enthusiasm, cavaliers zeal, urban petty bourgeois’ sentiment was swallowed in the ice water of selfishness. Personal dignity was changed into exchange value.”¹ Marx also took bourgeois rights of private ownership as “the right that is selfish and self-interested,”² which fully showed the value of money-worship and features of individualism.

Because of different values, different classes will have different criteria when measuring value and judging the right and the wrong. They will also be happy, angry, sad and delighted because of different matters. Lu Xun once said that how could petroleum king experience the misery of the old man who picked up coal cinder in Beijing, which vividly illustrated that values and view of human rights are featured by class nature, and people from different social classes and status will never have the same values or the common view of human rights.

It is clear that bourgeois moralists and human rights scholars are aware of the truth. Why do they advocate “universal value” and “universal human rights”? The answer is clear that they are for the interest of western bourgeoisies.

In fact, it is not whenever that western bourgeoisies will advocate “universal value” and “universal human rights.” There are cases that they do not act like this. It depends on whether to advocate or not. “Universal value” and “universal human rights” are at rest sometimes. For instance, during World War I and World War II, each capitalist country advocated hatred, revenge and nationalism and chauvinism was prevailing. As for bourgeoisies, at this moment, “universal value” and “universal human rights” should not be advocated. Otherwise, how could they launch a war and to call on people to kill others? Therefore, bourgeoisies put away “universal value” and “universal human rights.”

However, after World War II, especially after Cold War, in order to overturn and destroy countries with different ideologies and to expand to the outside world, the west held the magic weapons of “democracy,” “freedom” and “human rights” to attack the countries and regimes which have different values and implement different polices of human rights from

1 Marx, Engels: *The Communist Manifesto* (December 1847-January 1848), *Selected Works of Marx and Engels*, volume 1, People’s Publishing House, 1995, pp. 274-275.

2 Marx, Engels: *The Communist Manifesto* (December 1847-January 1848), *Selected Works of Marx and Engels*, volume 1, People’s Publishing House, 1995, pp. 274-275.



them. Bourgeois “universal value” and “universal human rights” had taken enough rest and it was time for them to get out of the cage. In the name of protecting “human rights,” America carried out human rights diplomacy and sang loudly that “human rights are prior to sovereignty.” It made “humanitarian intervention” and took human rights as a tool of executing its invading policy. Clearly, in this case, “human rights” have lost its holy and sacred features, which have turned to be the ugly broom held in the hand of a witched.

From this perspective, it is not difficult to find that “universal value” and “universal human rights” have the obvious features of aggressiveness and utilitarian. That the west deliberately plans to advocate “universal value” and “universal human rights” are cursed above all cattle. “Universal value” and “universal human rights” are not only an issue simply spreading the criteria of morality and value, but also an issue dealing with western politics and economic interests. China can never accept western values and view of human rights.

Western values and view of human rights are different from that of China at heart. Deng Xiaoping once made a incisive statement on this topic. In his illustration of different views of human rights between China and the West, he straightly pointed out: “what are human rights? It is enjoyed by the minority or the majority or the whole country? Human rights in the western world are totally different in itself from that in China. We have different viewpoints.”¹ According to viewpoints of Deng Xiaoping, the answer to what is China’s human rights is that it is socialism human rights. This kind of human rights is collective, enjoyed by the majority and shared by people all over the country.

Some people have such an idea that western values and human rights are not good, then how about the view of human rights in ancient China? The value in ancient China is collective which shall be inherited, shouldn’t it? However, this idea is wrong too. The value in ancient China is not “collective” but held by the ruling class. The “collective” value in ancient China believes that “the comprehensive interest of the ruling group is prior to that of individuals. Individuals are insignificant for a country or the state.”² Therefore, in feudal society, feudal “monarchs and officials, father and son” and principle of feudal moral conducts are the core of value in ancient China so as to be subject to the interest of court and clan and serve as the basic principles of value. In this case, China’s view of human rights is featured by feudalism. People in ancient China are classified into various grades and ranks and the classes and grades are clear. Rights enjoyed by different classes and grades are different. Human rights in ancient China are the collective human rights enjoyed by the ruling class instead of by the laboring people.

Since the foundation of Chinese Communist Party, it has been striving to realize the value of Chinese people and for the human rights of Chinese people. In old China, as the

1 Deng Xiaoping *Anthology*, volume 3, People’s Publishing House, 1993, p. 125.

2 Liu Haitao, *Contention of Socialism of Chinese Characteristics*. People’s Publishing House, 2010, p. 222.



people were oppressed and exploited by imperialism, feudalism and bureaucrat capitalism, they had no value or human rights. Therefore, Chinese Communist Party led its people to revolve, overthrow the three big mountains, realize the value of the broad masses of the people and fight for human rights of the people who are oppressed and exploited. After liberation, Chinese Communist Party spares more efforts on this.

At the early of liberation, the human rights obtained by people shall be consolidated. As the existence of exploiting class, the overturned reactionary ruling class is not reconciled to failure and they still fight against the newborn people's political power, and the revolt of the exploiting class shall be suppressed and socialist system shall be consolidated. It is the indispensable measure that shall be taken to realize the human rights of the broad masses of people.

It is certain that after reform and opening to the outside world, huge changes have taken place. China's value and view of human rights have also changed. But all changes remain essentially the same despite all apparent. In the new situation, these changes focus on serving people and how to further improve and perfect human rights. Therefore, the changes in China's values and view of human rights are not reversion of that in ancient China. Instead, they are the new development which is in accordance with superstructure of socialism with Chinese characteristics.

At present, China is at the stage of establishing socialism with Chinese characteristics. Therefore, human rights development at this stage in China shall be guided by the current value systems. The current value system in China is socialism core value system. It includes four aspects: Marxism guiding ideology, common ideals of the socialism of Chinese characteristics, nationalism which has the core of patriotism and spirit of the time which focuses on reform and creativity and socialist concept of honor and disgrace. These four aspects are interlinked, interpenetrated and uniform, which are an organically connected unity.

China's socialism core value system is the scientific and energetic value system which is proposed by Chinese Communist Party. It is after a long term practice of socialism revolution and socialism construction and according to China's situation that Chinese Communist Party proposed the value system by combining Marxism and demands of China's revolution practices. It is necessary to learn China's socialism core value system carefully and well if we want to form correct value and human rights and make a good job of China's human rights.

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Reflections on “Human Rights” and “Sense of Wellbeing”

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Introduction

Since the conceptual germination of “human rights” in modern ages, the controversy over it and its connotations have been constant. Scholars at home and abroad either attempt to interpret the connotations of human rights by emphasizing its real social foundations from a political and economical perspective, or to elaborate its essence by focusing on traditional values and dignity from the angle of cultural and moral traditions. However, because of differences in system and culture in different countries, the more the efforts, the greater the controversy. Even the people standing in the position of ecumenicalism¹, for instance, Stoics of the ancient Greek and Roman period, identification with natural law and civil law in ancient Roman period, Dante’s “World Government” and “World Peace” in middle ages, Rousseau’s “confederacy” in modern ages, Kant’s “Perpetual Peace,” Wilson’s “Fourteen Points” – with various theories cannot interpret the connotations of human rights in a unified manner. One of the major reasons for this phenomenon is that people almost forget a latent impersonal fact: “emphasizing and safeguarding human rights” aims at securing and realizing “human wellbeing.” The pursuit of “human rights” is nothing but one of the approach to realizing “human wellbeing.”

The Reasons for “Wellbeing” Neglected as the Aim of Human Rights

The “people foremost” philosophy of scientific development requires that promotion of “people’s wellbeing” as the ultimate objective of socioeconomic development and human rights protection and development. However, surprisingly, neither fighters nor scholars of human rights have statistics or definitions for wellbeing. In other words, it is seldom clarified that the objective for safeguarding human rights is to pursue “people’s wellbeing.” The reasons are: 1) “Wellbeing” or “sense of wellbeing” is a subjective concept and difficult

1 Normally, Ecumenicalism refers to the state that the entire human society ends dividedness and confrontation for the new era of economic globalization, political internationalization and culture integration. It is a global view representing the full awakening to “species” consciousness of the human race. It is a new value of human civilization characterized by ecumenicalism or humanism formed via promoting liberty, democracy, equality and human rights by neo-liberalism in the process of integrating different political and economic cultures.



to comprehend or evaluate objectively; 2) “Wellbeing” is a dynamic term in that it varies according to people, circumstances and time; 3) “Wellbeing” is a relative term in that it varies in accordance with reference body.

In fact, there have been scientific evaluation principles in statistics and assessment of wellbeing, either from the angle of psychology, sociology or economics, which takes wellbeing as the foundation for evaluation. For instance, modern psychological and sociological research adopts modern statistics and analysis approach, primarily for quantitative measurement of subjective wellbeing. Sociological research focuses on collective wellbeing, usually adopting “life quality index” and “satisfaction measurement” to determine social wellbeing. In economical research, wellbeing is always connected to concepts like “usefulness” and “preference,” which are the conceptual foundation for the mansion of economics. However, “usefulness” and “preference” are difficult to measure, so economists are gradually opting out of their quantitative measurement, for concepts like “indifference curve” and “consumption bundle,” so as to avoid quantitative analysis of wellbeing and establish a modern economic system. In addition, modern psychology, sociology and statistics are increasingly using various indexes (including wellbeing index) in a comprehensive manner to project on “people’s wellbeing,” so as to outline “people’s wellbeing” scientifically and systemically. This is usually seen in integration of the two measurement models of cognition and emotion, of subjective wellbeing (SWB) and psychological wellbeing (PWB), and transition from data-oriented comprehensive evaluation to theory-driven assessment. All those concepts and assessment indexes can be used as important means for investigating and judging wellbeing – the objective of human rights.

“Sense of Wellbeing” Varies According to the Development of Human Rights Concept

Although “Wellbeing can be defined as the ultimate objective of all desires since their impetus is not unlimited,”¹ the pursuit for wellbeing and realization of self value (human rights) take different forms in different eras.² For instance, the advent of private ownership made possible getting rich by looting, which in turn made use of force prevalent in ancient

1 Thomas Aquinas. 1982. *Thomas Aquinas Selected Political Writings*. Tr. Ma Qinghuai. Commercial Press, p. 66.

2 Considering the fact that “human rights” originates from the West, the present thesis will not deal with “people-oriented thought,” but takes “sense of wellbeing” and “human rights” as the central theme. However, according to Mr. Jin Yaoji from China Taiwan, in ancient China, there were 3 schools of thought, namely, people-oriented, non people-oriented and anti-people-oriented. “People-oriented thought” stems from *Shangshu*, which stated “people are the foundation of a nation.” And the thought was carried forward by Confucian School. “Non people-oriented thought” was succeeded by Lao Tzu, Zhuang Zi, Yang Zhu, and had profound influence in philosophy but limited influence on the politics of various dynasties. “Anti-people-oriented thought, represented by Shen Han and Li Si, gained influence in Qin Dynasty, but became obscure in the 1,000-odd years that followed. Cf. Jin Yaoji, *People-oriented Thought in China*. Commercial Press, 1993, p. 1.



Greece. At that time, battle achievements are the major approach for people to pursue wellbeing and realize self values. Since Heraclitus, along with the development of social civilization, “wisdom” became the paramount morality for the society of ancient Greece, and naturally a significant part of wellbeing. Democritus believed that wisdom could align people’s thought, words and deeds with benevolence, making them ethical and happy.¹ Aristotle once remarked that adequate property, healthy physique and a benevolent heart are basic elements of human morality and happiness, with benevolent heart at the core, since “The noblest soul is irrefutably more valuable than richest property and healthiest physique.”² Epicurean also noted that, “A pleasant life is inseverable from various virtues.”³

When the Dark Ages come, the sense of wellbeing is somewhat colored with religion theology. However, the philosophy that virtue and wisdom are at the core of happiness merits identification. Thomas Aquinas pointed out, “The reward of virtue is happiness,” and “Actually we owe a happy life to our virtues.”⁴ Augustine also held that wisdom is belief and the source of all virtues and well beings.

During the Renaissance, the assessment criteria were degraded from heaven to this world. For instance, Petrarch believed that, “I’m a mortal and shall request wellbeing for the mortal.” This heralded the modern humanitarianism and human rights concept. Boccaccio remarked in a comprehensive manner that wisdom makes one smart, virtuous, and capable of pleasure; a perfectly happy person should be of high virtues, wisdom and strong physique, i.e., people should develop their benevolence, virtue, wisdom and physique. This is a rational interpretation and proposition of human rights on the basis of reflecting and critiquing theocracy.

From the angle of avoiding evil and approaching kindness and self consciousness in people’s nature, Martin Luther and Rabelais expressed the eagerness of the emerging bourgeoisie to achieve freedom in property disposal and personal emancipation. Then, personal interest became the major object and impetus of bourgeoisie’s pursuit. Therefore, reasonable equilibrium of personal interest and social interest was the central theme of people’s concept of wellbeing. In other words, the conflict between individual human rights and collective human rights existed all the time, and became the hotspot of controversy in the era. In view of the circumstances, Bacon proposed “complete wellbeing,” advocating coordinated harmony between individuals and the society, and achievement of personal development by attaining moral perfection through pursuing public good.

1 Cf. *Philosophy in Ancient Greece and Rome* by Teaching Research Office for Foreign Philosophy, Department of Philosophy, Peking University, published by Shenghuo-Dushu-Xinzhi Joint Publishing Company, 1957, p. 107.

2 Cf. Aristotle. *Politics*. Tr. Wu Pengshou. Commercial Press, 1965, pp. 541, 699.

3 Cf. Zhou Fucheng. *Selected Readings of Western Ethnic* (Book 1). Commercial Press, 1964, pp. 106-107.

4 Thomas Aquinas. *Selected Political Works of Thomas Aquinas*. Tr. Ma Qinghua. Commercial Press, 1982, pp. 66, 68.



In a similar vein, William Godwin pointed out from perspective of the relation between motive, impact and virtue that, behaviors are good deeds only when loaded with motives of pursuing welfare for the human race and with impacts beneficial to the common wellbeing of humanity. Integrity will bring about respective and good impression from others and then spiritual happiness, “and is the most reliable path to favorable circumstances and achievement.”¹ “Rational egoism” proposed by Rousseau and Helvétius and “complete rational egoism” by Feuerbach elicit love for others and public morality from the human nature of self-love. In their opinion, human’s nature of pursuing self-pleasure will inevitable interconnect, thus leading to love for others and realizing public interest, so as to better achieve self-love and wellbeing. For instance, Helvétius believed that proper handling of personal interest is two-faceted: first, “public welfare consists of all the individual wellbeings,” and promotion of the former will enhance the latter; second, in pursuit of individual wellbeing, care should be taken not to damage the rights of other individuals or the society. Based on this rational egoism, individual interest and social interest are one and the same. This is the objective of pursuit for morality and the paramount wellbeing for humanity. Feuerbach also advocated that individual wellbeing is possible only when other people’s call for wellbeing was satisfied. However, contradictions were inevitable; therefore, morality should be employed for coordination. “The principle of morality is wellbeing,” and “Morality knows nothing but comrade-like common weal.”²

Labor is a fundamental human rights, and a fundamental obligation. Winstanley believed that labor can give rise to peaceful wellbeing. Vilas believed that labor brings about health physically and mentally and high virtues; wellbeing consists in peace, and clean virtues must be maintained to safeguard peace.³ In view of the advanced social productivity and regime and on the basis of scientific historical materialism, Marx insightfully pointed out that the nature of human being is voluntary and free activities (labor). In societies based on public ownership, labor as the means of human emancipation, provides individuals with the opportunity to full development and display of their capabilities, and thus becomes a pleasure. Wellbeing and full development in the real sense of the word depend on growth of material wealth, prosperity of culture and arts, rationalization of social structure and improvement of human relations. Lenin believed that the main objective of socialist mass-production consists not only in satisfying the material needs of social members, but also in adequately ensuring their welfare and free development. Mao Zedong proposed that

1 Cf. William Godwin. *Enquiry Concerning Political Justice and Its Influence on Modern Morals and Happiness*, Book II and III. Tr. He Muli. Commercial Press, 1991, pp. 769, 775.

2 Cf. *Selected Readings in Philosophy of Feuerbach* (Book 1). Tr. Rong Zhenhua, Li Jinshan et al. Commercial Press, 1984, pp. 432, 575.

3 Cf. *Selected Works of Winstanley*. Tr. Ren Guodong. Commercial Press, 1982, p. 109.



communist thoughts should be used to educate the masses so as to make them “capable of enjoying civilization and happiness.” Deng Xiaoping, Jiang Zemin and Hu Jintao also furnished scientific interpretation of socialist new personality with Chinese characteristics, and proposed socialist human rights concept and wellbeing.

From the above, the rational core of human wellbeing and human rights concept can be summed up as: wisdom; high virtue; healthy physique; free development; consistency between individual rights and social rights; labor is the foundation of wellbeing; spiritual pleasure over sensual pleasure.

How should Wellbeing under Human Rights be Realized?

Pursuit of wellbeing is the ultimate objective of all human behavior and pursuit. Seen from the impact factors of individual's life, there is considerable difference in wellbeing. Numerous statistics demonstrate that external variables like economic status, cultural difference, social relation, health status and marital quality, and internal variables like characteristics, knowledge and cognitive model are all reflections of individual's wellbeing, which varies according to different individuals. From ancient times on, people at different eras have different understanding of wellbeing, whose content is also changing. However, the essence should be constant, i.e., seen from the internal values, the core values like freedom, democracy, equality and human rights, to which wellbeing owes its very existence, are acknowledged by people from all over the world. This is testified by *The Declaration of Independence* of the US, *Declaration of the Rights of Man and of the Citizen* of France, *European Convention of Human Rights* (*Convention for the Protection of Human Rights and Fundamental Freedoms*), *United Nations Charters*, *Universal Declaration of Human Rights*, *International Covenant on Economic, Social and Cultural Rights*, and *International Covenant on Civil and Political Rights*.

Pursuit of wellbeing is the fundamental drive of individual and humanity development, and the objective of full development for individuals. Locke said in *Human Understanding* “Pursuit true happiness is an inevitability, which is the foundation of all freedoms – the consummate beauty of the nature of wisdom. Now that we are discreetly and constantly pursuing the true and solid wellbeing, we should guard against doubt and the behavior of taking imagined wellbeing for real wellbeing, which is the foundation for our freedom. Wellbeing at large is benevolence at its maximum, as well as what all our desires are seeking for.”¹

Wellbeing belongs to the category of value, and stems from the relation between subjective demand and objective satisfaction, that is, a sense of pleasure acquired by the

1 Cf. Locke. *Human Understanding*. Tr. Guan Wenyun. Commercial Press, 1983, pp. 235-236.



subject when its needs are satisfied by the object. Different senses of wellbeing rise because of different culture, circumstances, experiences, habits, cultivation, hobbies, psychology and physiology of different classes, strata, and groups due to differences in era and political and economic environment. Those concrete impact factors are important aspects for safeguarding and developing human rights. It's safe to say that wellbeing based on common human rights will change in accordance with the development and realization of human rights. The fundamental protection and realization of human rights is certainly the realization of individual or collective wellbeing. In other words, as one of the core values for human being, human rights are the major path to wellbeing; advocacy and protection of human rights aims at pursuing wellbeing.

In sum, human thought experiences constant development and leaps and bounds, with the focus changing from the relation between man and nature (naturalist view) to the cognitive activities of man (epistemology), to the relation between human beings (historical view), and to man himself. Social productivity is the objective scale for measuring the progress and development of human society; while the degree of individual wellbeing and rights (human rights) is the main scale of the human race, with the latter as the starting point and destination of the former. The development and status quo of human society has once and again proven that mere material civilization (human rights in the sense of economic development) can not bring genuinely complete wellbeing and subjective development for the human race. Only when wellbeing is treated as inalienable human rights can true human rights be possible to each and every member of the human race. When countries touch upon human rights in the international community, they should hold pursuit of true wellbeing as the tenet and disregard the wrong tendency and practices of "politicization of human rights," regardless of their strength and size.

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On the Religious Roots of the United States to Export Its Liberty, Democracy and Human Rights Values

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American-style liberty, democracy and human rights are the core values of the United States. The United States has long been committed to export its liberty, democracy and human rights values. There are deep-rooted religious causes of such output. American religion has played an important role in the output of American liberty, democracy and human rights. It also has exerted a long-term and sustained impact on thinking and policy direction of American people. Moreover, it has been an essential motivation of the U.S. to export its liberty, democracy and human rights values.

It seems like that U.S. is a secular state, but it's actually a very religious-oriented state. Protestantism plays a key role in political life, social life and national psychology of the United States. According to the Gallup Survey, 95% people in the U.S. believe in God, of which 86% are Christians. Among all Christians, 60% are Protestants, 28% Catholics and 10% Orthodox Christians. Others believe in Judaism or Islam. 70% of American adults are subject to some church. It can be seen that American people are very religious, among which, Christian has an absolute advantage, Protestant being the main body.¹

I. Consciousness of Destiny and Strong Sense of Mission Originated from Religion

The consciousness of destiny and sense of mission of transforming the world by the U.S. has firstly demonstrated the influences exerted by religions on U.S. exporting its liberty, democracy and human rights values. This kind of consciousness of destiny and sense of mission is embodied in the Protestant belief for the first time. Those Protestants, who had arrived in the New World 10 years after the “May Flower,” established Massachusetts colony and made a declaration with the purpose of immigrating to the New World. This declaration cited from *Matthew*, stating “For we must consider that we shall be as a City upon a hill. The eyes of all people are upon us.” The so-called “a City upon a hill” refers to illuminate the world and become the light of the world. In *Matthew*, Jesus said to his disciples: “You are the

¹ Yu Ge: *The Essence of America*, Contemporary China Publishing House, 2006, Page 13-14.



light of the world. A city that is set on a hill cannot be hidden.” Here, light can bring bright and welfare to human beings, which is Jesus’ mission and request for his believers. The City upon a hill that Protestants wanted to build was going to become a city with the light of the world. In other words, Protestants wanted to build the New World into the light of the world that would guide the world toward a bright future.

After the Protestant Reformation and the formation of the various factions that were further divided among the Protestants, Protestants paid great attention to the consciousness of chosen people and sense of mission, as well as the transformation of the society made by Christians. Protestant ideology, which basically inherited the teachings of Calvin, believed that Christians are chosen by God to glorify God and light the world, as well as transform the society. Based on such ideology, Protestants have also accepted the ideology of Post-Millennarianism, that is, Christians should transform the society and the world, and establish a Millennium Kingdom of Christ to meet the second coming of Jesus Christ. This is the main origin of Americans’ consciousness of destiny.

Americans still hold the destiny consciousness and sense of mission of “God blessing the United States” and “Americans will guide the world to perform good deeds.” It is an American tradition inherited from their ancestors of colonial period. It originates from the consciousness of chosen people and salvation of Christian, and from Protestants’ consciousness of destiny to transform the society and the world.¹

Americans are keen to promote and safeguard the liberty, democracy and human rights values and systems, which seem like to be secular values and social systems, but originate from the values of Protestant and the Protestant Reformation. Those values have embodied the faith of the Protestant. Americans believe that in this world, liberty, democracy and human rights are the best social systems to serve for God’s will and the purpose of God’s creating this world. They also believe liberty, democracy and human rights are the most caring system, and the most conducive system to human growth and self-completion. Therefore, to help other people to achieve liberty and democracy is the mission and obligation of God’s believers.² As the American scholar Ralph Gabriel said, “American democracy will liberate the world from the oppression of dictators, which is a secular expression of a religious mission, i.e. Christian is bound to liberate the world from the rule of Satan.”³

The consciousness of destiny and sense of mission have always been the driving force for the U.S. to export its liberty, democracy, and human rights values, as well as foreign expansion. “Since the founding of the U.S., Americans have believed that their fates are to set an example to spread liberty and social justice to all people and guide human beings from the

1 Yu Ge: *The Essence of America*, Page 30-31.

2 Ibid, Page 102.

3 Ralph H. Cabriel, *The Course of American Democratic Thought*, New York, 1940, p. 37.



path of sin to the earthly 'New Jerusalem'.¹ When the U.S. was not strong enough, Adams referred the United States as "the beacon on the mountain so that people around the world can see its warm light of salvation."² When the U.S. became full-fledged, the thought of free beacon gave place to the Manifest Destiny, which believed that the U.S. must "expand on this continent assigned by the God," so that the U.S. would be far from the European impacts, and promote greater economic liberty and maintain its democratic system. When the continental expansion was completed, the mission of the U.S. focused more on the dissemination of republicanism and the output of American-style liberty, democracy and human rights values. At the early of 20th century, Wilson publicly declared that the flag of the United States was "not only the flag of U.S., but also the flag of all mankind." To a certain time, other countries around the world would "turn to the U.S. to seek for the moral forces that laid foundations for all liberty."³ During the Cold War, the sense of mission had been further strengthened. Truman declared that "the U.S. has born the task of leading this generation, which was previously arranged by God." He also said "the U.S. should always bear in mind the mission of guiding the world toward peace."⁴ After the Cold War, the United States clearly treated the establishment of dominance of capitalism and the leadership of the U.S. as its sacred mission; therefore, the U.S. stepped up exporting liberty, democracy and human rights values. Moreover, the U.S. believed that "an ideal world is that all countries have free economic and political system and are always faithful to social justice and human rights."⁵

II. "American Exceptionalism" Originated from Religion

"American exceptionalism" originated from the belief that Americans are the specially elected by God. The concept of "the chosen people" originated from the *Old Testament* of Christian, meaning that God had chosen Israelites as his chosen people to save them from the slavery of Egyptian Pharaoh. Later, the referring objects of "the chosen people" had become the Protestants who stood out from the Protestant Reformation in 16th century. Protestants believed that God made his choice among the common people by his absolute will. The chosen people are the chosen ones of God, and others are abandoned people.

"We Americans," wrote the youthful Herman Melville, "are the peculiar, chosen people – the Israel of our time; we bear the ark of the liberties of the world. God has

1 [U.S.] J. Spanier: *American Foreign Policy since the World War II* (translated by Duan Ruoshi), The Commercial Press, 1992, Page 10.

2 Kong Huarun: *The Cambridge History of American Diplomatic Relations* (Volume I), Xinhua Publishing House, 2004, Page 53.

3 William Taubman, ed., *Globalism and Its Critics: The American Foreign Policy Debate of the 1960s*, Lexington, 1973, p. 97.

4 M. B. Schnapper, ed., *The Truman Program*, Washington, 1948, pp. 31-32.

5 Requote from Zhu Majie: "American Culture: Characteristics and Its Mechanism on Diplomatic Behavior," *Forum of International Issues*, 2002, No. 3.



predestinated, mankind expects, great things from our race; and great things we feel in our souls. The rest of the nations must soon be in our rear. Long enough have we been skeptics with regard to ourselves, and doubted whether, indeed, the political Messiah had come. But he has come in us.”¹

Therefore, Americans have a peculiar self-awareness, and Americans are the chosen people of God. Americans bear a historical mission, which is to bring greater light and a better future to the world. Thus, Americans feel American exceptionalism in their souls. Moreover, American exceptionalism has formed the widely accepted role of the U.S. in the world, i.e., the United States, unlike other countries, is more moral, independent, generous and democratic. It also has a higher degree of ideology in all aspects. The United States is a brilliant example of integrity, and will lead people around the world to aspire American blessing and advantages, and ultimately make other countries adopt American values and institutions.² Under the guidance of such ideology, the U.S. has been always treating itself as an example of the whole world. The U.S. believes that it has the best values and institutions in the world and it is given a special mission to promote American values and institutions to the whole world. On his first presidential campaign in 1960, President Nixon claimed that “the U.S. was not created just for its own liberty in 180 years ago, but also for the liberty of the whole world.” The Former President of the United States George W. Bush also repeatedly said, “As the most powerful nation on earth, it’s our duty to spread liberty. For me, we are assigned to do so.”³ The current U.S. President Obama has also proclaimed clearly, “The United States will always speak for those who are voiceless, defend those who are oppressed, and bear witness to those who want nothing more than to exercise their universal human rights. Our Bill of Rights protects these fundamental values at home, and guides our actions as we stand with those who seek to exercise their universal rights, wherever they live... Part of the price of our own blessings of liberty is standing up for the liberty of others. As we observe Human Rights Day, Bill of Rights Day, and Human Rights Week, let us recommit to advancing human rights as our common cause and moral imperative.”⁴

III. Racial Superiority and the Derived Cultural and Institutional Superiority Originated from Religion

Americans have a strong racial superiority, which also originated from the religious

1 Arthur M. Schlesinger, Jr., *The Cycles of American History*, Boston: Houghton Mifflin, 1986, p. 15.

2 Zhou Qi: *American Human Rights Diplomacy*, Shanghai People’s Publishing House, 2001, Page 32-33.

3 Requote from Ding Yifan: *American Criticism: The Paradox of the Expansion of a Free Realm*, Peking University Press, 2006, Page 34.

4 U.S. President Obama’s proclamation on Human Rights Day, Bill of Rights Day and Human Rights Week on December 10th, 2010, see <http://www.america.gov/st/democracyhr-chinese/2010/December/20101210170145x0.921407.html> and <http://www.annian.net/show.aspx?id=25473&cid=21>.



concept of “Manifest Destiny” advocated by the Protestants in the early American communities. This kind of racial superiority was supported by the species evolution. In 1859, Charles Darwin published *The Origin of Species*, which was an epoch-making work. He thought that all species in nature are the victims of human killing each other for survival. Law of the jungle and the survival of the fittest are the objective rules of constraining the survival and evolution of species. At the end of 19th century, Darwin’s evolution theory of species came to the United States, so the “racial superiority” in U.S. formed a theory, that is, “Anglo-Saxon superiority.” John Fiske, American famous sociologist, historian, and professor of Harvard University, is the proponent of this theory. He proclaimed: “After the natural selection, the U.S. has won the battle, which means that Americans who are the fittest people for survival should rule other weak people who are not suitable for survival.”¹ Josiah Strong, the Director-General of American Evangelical Church Alliance, propagated racial superiority in a more blatant way cloaked by religion. He proclaimed in *Our Country* published in 1885, “Americans are the chosen people by God to lead those Christians from backward ethnic groups. This race possesses an ability that can not be exceeded. Behind this ability, the U.S. has countless wealth and power. We should expect it to become the preserver for great liberty, pure Christian and supreme civilization. This race has shown some extraordinary aggressive characteristics, which are enough to spread its system to the whole mankind and extend its rule to the entire earth. If I am not mistaken, this strong race will go southward to Mexico, Central America, and merge Sea Islands, as well as sweep Africa and elsewhere one day. Who can doubt that the result of this competition is not ‘the survival of the fittest’?”²

The American education model in the 19th century had popularized and strengthened “racial superiority”; thus cultural superiority was developed. At that time, education model was divided into three forms, namely formal education, religious experience and aided education.

In 1830s, William McGuffey, the famous American educator and humanist, compiled a set of materials for U.S. formal education, whose full name was *MaGuffey’s Readers*. In the books, McGuffey emphasized that a true American should be a Protestant but a Roman Catholic or a Judaist. This kind of formal education had propagated the thought of “American supremacy” and strengthened the ideology of “Anglo-Saxon supremacy.”³

In the 19th century, another education model – religious experience had socialized the “racial superiority” from the religious point of view. Since the 19th century, Protestantism had

1 Requote from Ding Zemin: *Civil War and the Golden Age*, People’s Publishing House, 1990, Page 356.

2 Requote from Liang Maoxin: *Study on American Immigration Policy*, The Northeast Normal University Press, 1996, Page 200-201.

3 Ding Zemin: “American Education in the 19th century and the American ‘xenophobia’,” *Journal of Anhui Normal University*, 1994, No. 4.



always been in a dominant position. Protestantism told people by means of religious form that “there is only black and white” in the world without a “gray” area. “Black” represents “evil,” “white” represents “pure” and the “gray” represents “moderate.” The religious culture in the 19th century used a subtle way to tell people that only the Anglo-Saxon culture of the U.S. is the “pure and supreme” culture. This kind of religious culture tended to simplify American thinking. Therefore, when they apply their cultural values to examine the outside world, there will be cultural conflicts.¹

Aided education was another form of American education from the late 19th century to early 20th century. The institution for aided education was called Chautauqua Summer Education Meeting.² From 1890 to 1920, “Chautauqua” prepared education programs for remote areas in the U.S., which played once a week. These programs provided an opportunity for people in remote areas to observe the outside world, but the preparation of the programs and the contents of the broadcast did not faithfully reflect the real situation of the outside world. On the contrary, they focused on delivering the message that American social values are the most perfect values around the world. “Chautauqua” made Americans believe that Anglo-Saxon culture was the core American culture, and the American culture that extended from this culture was the most brilliant culture of the world.³

These forms of education have limited Americans’ mode of thinking and code of conducts, and made them believe that their culture is supreme. Meanwhile, they lack proper understanding of other cultures except for Anglo-Saxon culture, and tolerance for culture, values and religions of other nations.

In addition, Americans have a strong sense of institutional superiority. The United States is the world’s first republic capitalist country and has a complete set of American-style democracy, which has played a positive role on maintaining its political stability and social order. Since the founding of the United States, there has no large-scale social unrests and illegal regime changes; therefore, people’s democratic rights have been well maintained. As to its background, the U.S. political system is progressive. Compared to other contemporary capitalist countries, American-style democracy is more perfect.

The smooth and successful political experience has made Americans proud of their system. They think that American system is explored by mankind for a very long time. Meanwhile, they suppose American system is the only rational political form to maintain the democratic politics. Furthermore, it is also the best political form to maintain social order as

1 See Qian Hao: “Historical Perspective on the Debate of American Immigration,” *World History*, 2001, No. 1.

2 At the end of 19th century and the early of 20th century, Chautauqua was popular in the United States, like summer schools. Chautauqua was always held outdoor, combined with education and entertainment, and included colloquiums, acting and concerts etc. It’s names as Chautauqua because it was first held in Chautauqua, NY.

3 Qian Hao: “Historical Perspective on the Debate of American Immigration,” *World History*, 2001, No. 1.



well as take into account morality, justice, liberty, equality and fraternity. By relying on such system, the U.S. is bound to be prosperous and become a free empire. From the perspective of Americans, the U.S. is the best country in the world, and the U.S. political system is the world's most democratic system. They believe "practice and promote democracy and liberty is the unique root of the United States,"¹ and boast American Revolution as "the greatest political event in human history." And the U.S. is the natural agent of "political regeneration of the whole world." *Declaration of Independence* is "bound to cover the whole world, as it has overturned the legitimacy of all governments built on conquer and swept away the slavery that existed for centuries."² "Democracy is the most perfect form for a country" and the U.S. has a "just and solid republican government," which will be a live example for all people around the world.³ Clinton has also proclaimed that the United States is "a beacon of liberty and a bastion of democracy and a live example of achieving prospect and prosperity by liberty in the world."⁴ As the U.S. holds such arrogant political superiority, it tends to use its own values to measure other countries in the world. And the U.S. treats those countries that do not apply American-style political system as authoritarian and undemocratic. Moreover, the U.S. attempts to export American-style liberty, democracy and values to other countries, interferes with their internal affairs and forces them to transplant American-style democracy.

In summary, there have been deeply-rooted religious roots for the U.S. to export its liberty, democracy and human rights values. For the America's belief to export its liberty, democracy and human rights values, the consciousness of destiny and sense of mission originated from religion, deeply-rooted "American exceptionalism," the strong racial superiority and derived cultural and institutional superiority have all played important influences, and become the underlying causes why the U.S. has been long committed to export its liberty, democracy and human rights values.

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1 [U.S.] Henry Kissinger: *Diplomacy* (translated by Gu Shuxin and Lin Tiangui), Hainan Publishing House, 1998, Page 27.

2 Requote from Wang Xiaode: *Dream and Reality – Study on the Wilson's "Idealism" Diplomacy*, China Social Sciences Press, 1995, Page 5.

3 [U.S.] Henry Kissinger: *Diplomacy* (translated by Gu Shuxin and Lin Tiangui), Page 17.

4 Requote from Ji Rongren: *Who will Beat the United States*, Xinhua Publishing House, 2000, Page 64.



China's and European Human Rights-Similarities and Differences

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1. Differences between the Chinese and Western Tradition and Concepts of Human Rights

Human rights issues are indeed historical and cultural issues to a great extent. Every country's concepts of human rights are a reflection of its own tradition, culture, ideology and political system. As a result, Chinese and European concepts of human rights have distinctive value orientation and choices. The following provides an analysis of those different features.

The Chinese concepts of human rights are nurtured in the Rule of Rites/Li (in Chinese), while the European concepts are established when the Rule of Law came into power. Since Confucius, Chinese culture started to develop with focus on the interaction and harmonization among people and the whole society. China adopted the Rule of Rites to protect the patriarchal clan system of the feudal society, basically advocating that all ranks inside the feudal ruling class should be satisfied with their posts and obey the code system. They hold that people are genuinely good by nature, and encourage them to put other's interest on the first and to behave in a virtuous manner. On the other hand, the European culture is more concerned with the natural person concept. The classical liberalists like John Locke, contended that the reason why people formed the society and then the State and established the government is to protect their people's life, rights and property. Therefore, no matter what the State and political system is, the State and its organs should run under the law and be checked. Accordingly, Chinese tend to consider their basic rights through a moral angle, but the European people are more willing to realise their human rights by a legal method. Or we can say Chinese concepts of human rights emphasize on the transcendent life values and their fulfilment, while the European concepts focus on the practical effects and their realization.

The Chinese concepts of human rights are obligation-oriented, while the European concepts are right-oriented. The Chinese concepts consider that the rights and obligations are in the unity of opposites within individuals. An individual while enjoying his/her right is also bearing corresponding obligation, such as not to hinder other from enjoying their rights. The European concepts separate the rights and obligations of the human rights. The



subject of rights is individuals, but the subject of obligation is the State. Human rights are natural and inalienable to European people; they don't have extra obligation to substantiate their rights and their country has the obligation to not to interfere with the practice of human rights and protect those rights if any violation so committed.

The Chinese concepts of human rights pay more attention to the rights of the group while the European concepts more to the rights of individuals. Chinese culture embraces the idea that individual is also a part of a certain community in the society. The higher community represented by the public power can effectively reconcile conflicts among different communities and individuals, and make the common interest of the community as well as individual interest realised and guaranteed at the same time. Chinese people are more likely to talk about the right to live and development for all the Chinese people. On the contrary, the European culture puts individual in the center of basic rights and values. Immanuel Kant once said "Human itself is the aim," which makes the society and everything else the means. The State and the society are made to serve for the purpose of protecting individual's right, especially civil and political rights.

2. European Convention of Human Rights and the Court

The origin of *the European Convention of Human Rights* belongs to a line in the development of human rights which can be dated back to ancient times; however, it is a direct response to the Second World War which had included the horror of the holocaust. After the Second World War, European movement arose, simultaneously and spontaneously, throughout the European democracies. They arose in response to the threat to fundamental human rights and to political freedom which had overwhelmed the European continent during the War. The Council of Europe was established on 5 May 1948 and then *the Convention for the Protection of Human Rights and Fundamental Freedoms* was adopted by Council of Europe Contracting Parties on 4 November 1950, widely known as *the European Convention of Human Rights*. From 1 November 1998, the new permanent European Court of Human Rights came into being, replacing the old Commission and the Court.

The European Convention on Human Rights guarantees, for the most part, civil and political rights. However, Article 1 of Protocol 1, which protects property rights, and Article 2, which guarantees the right to education, are limited exceptions to this principle. Section I of the Convention spells out, generally in more detailed form, most the basic civil and political rights contained in the Universal Declaration, while the First, Fourth, Sixth, Seventh, Twelfth and Thirteenth guarantee certain additional rights and freedom. The remaining Protocols amended procedural provisions of the Convention. Finally, Protocol 14 paves the way for the next set of changes to improve the efficiency of the measures of implementation under the Convention. Though the rights set out in the Convention and Protocols are derived



from the Universal Declaration, the content of these rights and the legitimate limitations are often made more specific.

The Convention System is triggered mainly by individual applications, which may be lodged with the Court by any individual or legal entity located within the jurisdiction of a State Party to the Convention. The pool of potential applicants is therefore vast: in addition to the eight hundred million inhabitants of greater Europe and the nationals of third countries living there or in transit, there are millions of associations, foundations, political parties, companies and so forth. Not to mention those persons who, as a result of extraterritorial acts committed by the States Parties to the Convention outside their respective territories, fall within their jurisdiction.

Here are some examples which can give out a general idea of what kind of people and rights and freedoms are protected by the Court.

Sometimes the applicants are well known in their country or even internationally. One example is Princess Caroline Von Hannover (*Von Hannover v. Germany*). In 2004, the Court found in her favour in the case brought against Germany. The State was found a breach of the right to respect family life by allowing the publication of the paparazzi photos taken without her knowledge.

Rights and freedoms are guaranteed even to convicted criminals, which is an aspect of the Convention system that some people find difficult to accept. For example, the Court ruled in *T v. the United Kingdom* and *V v. the United Kingdom* that the two ten year old British boys who murdered a toddler had not had a fair hearing. It was found that they were unable to participate effectively in the trial which lasted for three weeks in public in an adult court, not adapted to the needs of young offenders.

The Court has ruled cases even concerning Chinese nationals. One example is the case *Liu v. Russia*, where a Chinese man who married a Russian woman was rejected by Russian police to issue a residence permit. It was found by the Court a violation of his right to respect for family life. Another instance is the case *Sun v. Russia*. Sun, a Chinese salesman who went to Russia with US dollars and Chinese Yuan on him, got caught at the airport. He was convicted as attempted smuggling of foreign currency by the domestic court and all the money was confiscated. The European Court held there had been a violation of his right to property.

In all these years, numerous judgements from the Court have played an important role in shaping the Contracting States' legislation. Take France as an example, Article 760 of its previous Civil Code basically provides the inheritance share of adulterine children is only half of legitimate children, which reflects the tradition of the French society since Napoleon's era. The Court, however, found in the case *Mazurek v. France*, it was an interference of the adulterine child's right to property and also resulted in discrimination. Accordingly, this



judgement leads to a long-awaited change in the Civil Code and thus establishes the principle that children should be treated equally regardless of descent.

Another aspect of the Convention system worth mentioning is the enforcement of the Court's judgments. When the Court delivers a judgment finding a violation, the Court transmits the file to the Committee of Ministers of the Council of Europe, which is composed of government representatives of all the member states. The Committee of Ministers confers with the country concerned and the department responsible for the execution of judgments to decide how the judgment should be executed and how to prevent similar violations of the Convention in the future. The Committee of Ministers meets regularly to discuss the execution of the judgments. Cases remain under discussion until other members are satisfied that the judgments are implemented and appropriate measures are put into place to ensure this problem will never recur. This will result in general measures, especially amendments to legislation, and individual measures where necessary. The presence of representatives of all the member states ensures the political pressure can be brought to the country concerned if they are slow in fulfilling their obligations.

3. A Conclusion

The European Convention system is said to be the most effective system to protect individual human rights in the world. Despite its well-designed machinery, its success also depends on that the Convention system accords with the European tradition, culture and current situations. The rights and freedoms guaranteed in the Convention and the individual application device both cater for the European people understanding and wish about human rights protection, deriving from the nature law concept and individual and rights oriented mindset.

Besides, as the Council taking in new member states, the Convention now has 47 Contracting States, covering an area of almost the whole Europe (except Belarus) and part of Western Asia as Turkey and Georgia. Those 47 countries are various in political system, economic level, legal system, social development, history and culture; their cases often display strong national and regional features. This requires the Court and its judges to emphasize on the objective and purpose of the convention, interpret the Convention in the light of present-day conditions and thus try to reconcile the distinctions of different countries.

Furthermore, it should also be noted that there are also many things in common of China and Europe in the human rights area. **Firstly**, as China's law and policy place individuals in an increasingly important position, it can be seen that China and Europe don't have divergences over the basic judgment of the value of individuals and its protection. **Secondly**, the different understandings of the cultural relativity of human rights between China and Europe are not worlds apart. China acknowledges the general meaning of human



right while Europe notices the various human right features and situations in different regions, upon which the two parties are able to hold human rights conversations with each other. **Thirdly**, considering China is such an enormous country, the geographical and economical unbalance is also a fact that can not be overlooked, which is somehow similar to the situation of the whole area of the Council of Europe, so China and Europe have great potential to cooperate in this field. **Lastly**, though China and Europe have distinct human rights protection mechanisms, they both hope to guarantee and promote human rights through a just and sound legal system. All these things in common show that China and Europe have abundant possibilities to communicate and cooperate in the future.

The question whether “human rights” are “universal” or not, time and again causes controversial arguments between China and Western countries. However the fact that a dialogue and an exchange of ideas, how different they might be, goes on, is in itself valuable. Societies change, history teaches humans sometimes painful, sometimes pleasant lectures. In a merging world of globalization, the exchange of ideas of different values may stipulate new perspectives of the human intellectual development, be it for an individual, for a nation, or for humankind as a whole.

To conclude, I am positive that China shall set up its own human rights protection system, which adapts to its own tradition, culture and social development. To be more specific, China will define its own content and scope for the human rights and design the protection mechanism within its legal system in accordance with the ratified international instruments.

(The author is Judge at the European Court of Human Rights.)



Viewing “Responsibility to Protect” from NATO’s Intervention into Libya

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In April 2011, NATO launched military operation against Libya, marking the third “compulsory execution” of the concepts such as “human rights overriding sovereignty” and “responsibility to protect” after Yugoslavia in 1999 and Iraq in 2003. As the military actions of the West in Libya continue, the humanitarian disaster in Libya increasingly deteriorates. More than 700,000 refugees fled to Sudan, Egypt and other neighboring countries and more than 2 million people need urgent humanitarian relief. NATO had to recognize that the military operation had caused an increasing number of deaths and injuries of civilians and it could not guarantee not to harm civilians’ lives in the future. This, again, leads to another fierce debate of the international community on the “responsibility to protect.”

I. The Process of Putting Forward “Responsibility to Protect”

In the 1990s, ethnic and religious disputes led to increase in the number of regional conflicts. In particular, the genocide in Rwanda, a small country in Africa, in 1994, greatly shocked people’s conscience. The negative attitude of the international community on the genocide also caused extensive criticism. In 1999, NATO launched military intervention into Yugoslavia on the excuse of protecting the basic human rights of Albanians in Kosovo. In 2003, the United States launched a war against Iraq. While the Pentagon claimed that the war was progressing smoothly, the humanitarian disaster in Iraq further deteriorated. The war led to nearly 5 million Iraqi refugees. A large number of civilians became homeless and lived under the threat of death, starvation and disease. Due to the two wars, the debate on the relations between “respecting sovereignty and protecting human rights” turned white-hot. The issues such as whether external force should interfere, who should interfere and how to interfere become the focus of debates of the international community.

In December 2001, the International Commission on Intervention and State Sovereignty led by former Canadian Prime Minister Jean Chretien submitted the report of “Responsibility to Protect”¹ to the United Nations, noting that “sovereign states have a responsibility to

1 The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty.



protect their own citizens from avoidable catastrophe – from mass murder and rape, from starvation – but when they are unwilling or unable to do so, that responsibility must be borne by the broader community of states.” “Responsibility to Protect” was fully supported by Annan and was written into the report of *A More Secure World: Our Shared Responsibility* by the Panel of Eminent Personalities of the UN reform. In the process when various countries discussed the outcome documents of the world summit in 2005, “Responsibility to Protect” became one of the seven most disputable issues. After compromises of various parties, the “Responsibility to Protect” was finally interpreted as “the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity” at the 2005 World Summit Outcome; the United Nations were willing to take timely and decisive collective action for this purpose, through the Security Council, when peaceful means prove inadequate and national authorities are manifestly failing to do it¹.

Human rights development is a historical process. Putting forward the concept of “Responsibility to Protect” reflects the profound evolvement of the concept of international human rights protection with positive significance. However, it is still questionable whether or not external intervention is the best way to protect human rights. Western countries such as the United States and European countries insist it is reasonable to interfere, believing that new intervention foreshows the new world. They think the current intervention from the international community is inadequate and compulsory intervention should be adopted to ensure clear results. Former British Prime Minister Tony Blair indicated that the state sovereignty was not so important than human rights and prevention of genocide². Most developing countries worried that “Responsibility to Protect” would be abused and interventionism would “usher in a world in which big powers ride roughshod over the smaller ones, manipulating the rhetoric of humanitarianism and human rights.”³

II. Challenges of “Responsibility to Protect” on the Theory and Practice Layers

First, viewing from the main players, there is no clear explanation of what kind of countries are applicable for “Responsibility to Protect.” Though the UN Charter stipulates the principle of all countries are equal, the reality is, big countries and small ones, and strong countries and the weak ones are defacto in unequal footing. Only big and strong countries have the power to interfere into other countries. The big countries, not the small ones, can determine when and where to protect. In this regards, the vast developing countries show

1 The 2005 World Summit Outcome of the United Nations, <http://daccessdds.un.org/doc/UNDOC/GEN/NO5/487/59/PDF/NO548759.pdf?OpenElement>.

2 Tony Blair, speech at the Economic Club of Chicago on April 25, 1999. Quoted from Xu Xueyin, Zhu Kuan: “On Neo-Interventionism,” *Contemporary International Relations*, Issue 8 of 1999, p. 19.

3 The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty, December 2001, <http://www.iciss.ca/pdf/Commission-Report.pdf>, 2005-3-1.



their concerns and some representatives of developing countries expressed their doubts publicly: “Who can protect according to the stipulations of the document? Who can send troops to a place thousands of miles away? Who have sufficient funds, weapons and logistics to launch protection actions?”¹ Some developing countries further pointed out that the concept of “Responsibility to Protect” lowered the threshold of foreign intervention, putting the United Nations on the road of interfering into the internal affairs of sovereign states. If we divide the world countries into two categories: the countries that only supervise human rights of other countries and do not need to improve their own human rights situation, and the countries that can only be supervised and have no rights to speak, we are actually denying the human rights principles. Some countries insist that the government should take the first responsibility of protecting its civilians², and the international community should support their efforts under the principle of not infringing their state sovereignty³.

Second, viewing from the connotation, there is no strict stipulation on the protection coverage. For instance, there is no stipulation in the UN Charter and other documents to determine whether or not a human rights infringement case in one country threatens the international peace and security, and under what circumstance can the international community take compulsory measures. These are usually affirmed by the Security Council, and the affirmation is relatively flexible. This phenomenon is very possible to lead to abuse of “Responsibility to Protect,” and may be used as an excuse for the strong countries to occupy and invade weak ones. History shows that when a certain country conducts “humanitarianism intervention” into another country, the former usually has ulterior purposes. “Humanitarianism” or “protection of human rights” is nothing but facades.

Third, the principle of “consistence” that should be stressed while promoting the “Responsibility to Protect” cannot be implemented. Though the international bodies such as the United Nations have formulated a series of international conventions on human rights and established some international standards which various countries should work hard to abide by, there is no unified and objective judgment on the human rights situation of a country because of the different conditions and different view on human rights in various countries. If all countries judge each other’s human rights situations with their respective standards and measure whether the people in other countries fully enjoy human rights, they will surely get quite different conclusion. Some experts on international law also doubt whether the international community can reach consensus on the issue of humanitarianism intervention,

1 A letter from the permanent representative of Bolivarian Republic of Venezuela to the chairperson of the UN Assembly on October 7, 2005. <http://daccessdds.un.org/doc/UNDOC/GEN/N05/560/65/PDF/N0556065.pdf?OpenElement>.

2 Speech of the representative of the Congo at the Security Council meeting 5,577, December 4, 2006, <http://daccessdds.un.org/doc/UNDOC/PRO/N06/640/60/PDF/N0664060.pdf?OpenElement>.

3 Speech of the representative of Russia at the Security Council meeting 5,577, December 4, 2006.



and worry that in the foreseeable future, the phenomenon that an individual country with “competent capacity” and “motives of bearing (humanitarianism) intervention” uses force is inevitable or can be proved morally.

Fourth, to judge the human rights situation of a country with the standards of some certain country, “Responsibility to Protect” is unfair and even politicized. After the conflict between Israel and the Hezbollah of Lebanon in 2006, Israel bombed Lebanon in large scale, causing serious humanitarianism catastrophe. The United Nations appeal for ceasefire of Israel, but the U.S. Secretary of State stood up to be against the ceasefire. We can see that the Western countries are optional in launching “humanitarianism intervention” and have double standards. Meanwhile, Western countries also expand the issue of human rights to the realms of bilateral relations with the third world countries by linking up economic, political and military assistances with human rights. When they think the human rights situation in a country is not good, they usually refuse to provide, or provide less assistance. Judging other countries’ human rights situations with its own human rights standards will turn human rights into a tool for the country to reach its political goal.

Finally, promoting “Responsibility to Protect” may go counter with the good original intention, or even bring greater humanitarianism catastrophe. The original intention of establishing the concept of “Responsibility to Protect” was to deter large-scale infringement of basic human rights for the instructive, or at least harmless results. However, good motives do not necessary lead to good results. This experience has been proved many times in the international political realm. In history, no intervention reached the pre-set or claimed goals without causing other evil results. Take the NATO’s bombing Yugoslavia for example. The reason for the war was the humanitarianism catastrophe in Kosovo; however, it was after the air raid of the NATO that waves of refugees emerged. The war led to new and direct war disasters, including casualty of civilians and damages of civil facilities. In addition, the Albanian forces supported by the intervention became the new source of catastrophe at that region¹.

III. Opinions on Solving the Increasingly Serious Humanitarianism Crisis

Human rights cause is a historical process and all the countries are in the process without exception. The human rights situations of various countries are unavoidably restrained by social development and are constantly improved with the social development and deepening of people’s recognition on human rights. Thus, every country has the task of further improving the human rights people can enjoy. Meanwhile, due to the differences in historical backgrounds, cultural traditions and social and economic development, various

¹ Yao Kun: “The United Nations Promoting New Progress of Human Rights Cause,” *The United Nations and Harmonious World*, Sichuan People’s Publishing House, September 2008, pp. 235-237.



countries adopt different approaches and procedures and have different contents and forms in protecting human rights.

First, the governments of the involved countries should take the first responsibility of protecting civilians according to the UN Charter and International Humanitarian Law. Sovereignty principle is still the basic principle of international relations, as well as the basic norm that should be followed while solving human rights problems. International community and external parties can provide assistances and supports and urge conflict-related parties to earnestly implement humanitarian laws to avoid hurting civilians; but they cannot damage the state sovereignty and territory integration of involved countries or launch interventions by force without approval from the governments of involved countries. In addition, the origin of the internal turmoil of a country is usually complicated. We should be cautious in judging whether the government of the country is capable and willing to protect its citizens and should not interfere randomly. Even if the external supports are necessary, we also need to respect the willingness of the country involved so as to avoid intervention by force.

Second, stressing on the dialogues and cooperation among conflict-related parties. The internal conflicts of a country involve factors in many aspects and can only be properly solved through dialogues between the government and the people. In case of necessity, the international community can conduct “constructive intervention.” Under the principle of improving and promoting human rights, the United Nations, international organizations and related countries can provide “constructive assistances” to a country. The intervention should be conducted on objective, just and balanced basis, encouraging dialogues among various parties involved. Efforts in fund, personnel and technology fields should be made to solidly promote dialogues of various parties and enhance their mutual trusts. Military intervention should be the last thing we should do. History and reality fully show that military intervention is not the effective way of solving crisis. Though military intervention can rapidly change a country’s regime, new confrontations and conflicts usually follow. The country that is interfered into cannot realize stability, leading to a new round of regional chaos. During this process, the civilians suffer greatly.

Third, giving priority to prevention in international human rights protection and making efforts to solve the root problems of conflicts so as to address symptom and root causes. If we just let conflicts develop and take effective protection measures after the conflict, we will be helpless facing emergent chaos and conflicts. The international community should actively explore measures to prevent conflicts, actively deal with the ongoing conflicts and provide safe and reliable living environment for civilians. This will be the best protection for civilians.

Practices of human historical development show that human rights concept and contents are not forever unchangeable. Influenced by the history and tradition of a country, they are



also subject to the country's social and political systems, economic levels and scientific and cultural development conditions. Only by combining the universality of human rights with detailed situations of different countries can we accurately distinguish the nature of domestic laws and that of international laws on human rights. Only on the basis of respecting state sovereignty and not interfering into domestic affairs can the problem of human rights protection be really solved and the flag of humanitarian fly high above every corner around the world. Just like what was made clear at the prologue of *the Declaration of Principles of International Cultural Cooperation* formulated and adopted by the UNESCO in 1966: Since wars begin in the minds of men, it is in the minds of men that the defenses of peace must be constructed. No matter what banner a military operation holds, it cannot be launched at the cost of destroying innocent lives and wealth. This is the moral norm as well as the universal appeal of people worldwide.

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Is the Western Outlook on Human Rights the Universal Values?

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In recent years, the debate on human rights and universal value has become a hot topic in domestic academic circle. Some scholars earnestly explored the issue from philosophic and political angles. In the international relations, some politicians of Western countries also like to promote the universal values and criticize the human rights situations in developing countries. They believe that liberty, equality and human rights in developed capitalism countries such as the United States, the United Kingdoms and France are the universal values with congenital advantages which should be followed by other countries. This has led to our deep thinking on the essence of human rights and values. Is human right a universal value? Is the Western outlook on human rights a universal value? It is of great theoretical and practical significance to clarify this issue. This article tries to discuss this issue from the angle of human rights theory.

I. The Essences of the Western Universal Values

Before we discuss this topic, we should first distinguish two concepts.

(I) Value and values

Value mentioned here refers to the relationship between a person in reality and the attribute of the object that can meet his or her certain needs. Value is related to people's needs, can meet people's certain needs, and is the target of interests and goals of people. Thus, the concept of value reveals the usefulness of something for people. In this sense, human rights can protect people's dignity and personality and can meet people's demands for liberty, security and development. Thus, human rights are the very important value.

Values refer to people's reaction to social presence, their general evaluations and outlooks on the significance and importance of the surrounding objective matters (including people, events and materials), and the criterion used by social members to evaluate actions and events and select their satisfactory goals among various possible goals. These general evaluations and outlooks, in the final analysis, reflect people's attitudes toward interests. That is to say, values are the interests people are aware of. Mr. Mei Ninghua believes that viewing from the essentially decisive roles of interests in the values, we can see that only



two types of values in human values system that play dominant roles to other values and occupy the core position: one is individualism and the other is collectivism. By investigating the development history of human society and the evolution history of ideological concepts, we can see that the historical evolution process of values is fundamentally the process of conflicts, confrontation and even collision of individualism and collectivism. In addition, the two types of core values often penetrate into and compensate each other¹. From the angle of human rights, we can see that the Western human rights outlook embodies the values of individualism while Chinese human rights outlook reflects more about collectivism values, based on which, we stress on the protection of individual rights and interests and organically unify collective interests and individual interests.

(II) Universal value and universal values

Universal value refers to the value contents universally recognized and pursued by human society, such as liberty, democracy, human rights, equality and justice, etc. Of course, these contents themselves are formed and realized historically. Liberty, democracy and human rights are also the common value orientation of the Chinese people. After the founding of the People's Republic of China, especially after China's reform and opening up, China carries forward socialism democracy, improves socialism lawful governance, maintains social equality and justice, respects and protects human rights and recognizes these values in laws, embodies them in policies and follows them in practices.

Universal values are the ideological expression of the Western world which are used to guide or even arrange the world order by force. Some people believe that universal values consist of meanings in two aspects. First, the value concepts are applicable to all people, regardless of their classes. Every individual agree on and practice the values and they are universally applicable; second, the value concepts are applicable to all societies, regardless of their social morphology. They are eternal². We can easily see that the so-called "international applicable" "universal values" are actually the value system of the Western capitalism countries, namely, the Western democracy, liberty, human rights, equality and rule by law, etc. Since it uses the term "universal," it seems to be on the commanding elevation of morality. However, some Western scholars suspect the universality of these value concepts. At the book *Atlas du Monde Global* jointly written by Former French Foreign Minister Hubert Védrine and Pascal Boniface, Director of the Institute of International Relations and Strategy of France, they mentioned the problem. When some people suspected whether Vedrine had "over radically" abandoned the "universal values" such as human rights, liberty and democracy, he answered, "I firmly believe in and defend these values. But I must sadly tell you that the 1 billion population of the Western world are only minority in the 6 billion

1 Mei Ninghua: New Thinking on the Essential Attribute of Values, *Beijing Daily*, January 17, 2011.

2 Please refer to "Several Issues Related to Universal Values," *Qiushi magazine*, Issue 22, 2008.



population of the world. What we think the ‘universal value’ is unnecessarily universal. Now, we have no reason or capacity to force other people to accept our values.”

We all know that the United States keeps on saying it abides by the “universal values” such as liberty, democracy and human rights and considers itself the “guard of human rights.” But, it has numerous problems in its human rights situation. For this, former U.S. President James Earl Carter sighed that the United States had abandoned its historical leading role as the human rights guard, and high-level officials were making great efforts to defend the anti-trend activities. He said it was an embarrassing tragedy¹. He criticized that the United States had the trend of Christian Fundamentalism and trampled human rights, abandoned environmental protection responsibility and refused to share wealthy with extremely impoverished people on the globe under the name of combating terrorism. In one word, the United States does not act according to the “universal value” everywhere. Then, why do the Western countries such as the United States promote the “universal value” that they do not do so good? Many Western scholars believe that the practice is essentially for its national interests; it adopted the ideological form suitable for the universal value to justify its promotion and intervention². Interests and values are two dominant factors all countries must consider in determining their security strategies. Like what former U.S. Secretary of State Condoleezza Rice said, discussion on realism and liberalism could bring supreme glories to scholars for generations and tenured professor position in universities and institutes. But in the decision-making process of diplomatic policies, there is neither pure realism nor pure liberalism because power and values cannot be separated. Joseph Nye said directly that values are the invisible national interests³.

In this sense, we do not deny universal value, but we cannot accept the universal values of the Western countries and ideology of “Western centralism.” We object the practice of criticizing other countries, or even interfere into other countries’ internal affairs under the banner of human rights and universal value.

II. Errors in Theories and Practices of the Western Human Rights

Human rights occupy the core and the most eye-catching position in the Western values. Some Western politicians like to talk about human rights as if it is the patent handed down from their ancestors. The purpose behind their practice of criticizing human rights situations in other countries is to maintain their own privilege and superiority complex. However, through the glory of the Western universal value, we can see the errors in their human

1 (U.S.) Carter: *Our Endangered Values: America's Moral Crisis*, Northwest University Press, p. 114.

2 Huang Lizhi: “Western Universal Values: Invisible National Interests,” *Chinese Social Sciences Today*, March 31, 2007.

3 Please refer to Pan Zhongqi: “Balance of Interests and Values – Continuance and Adjustment of the U.S. National Security Strategy after the Cold War,” *Social Sciences*, Issue 4, 2005.



rights theories and practices. For an increasing number of people, the superiority complex of normality and human rights of the Western countries are nothing but the emperor's new clothes.

(I) Universal values mix up the universality and particularity of human rights

Human rights combine both universality and particularity. Universality is in its connotation ever since the birth of the concept of human rights. The Western universal values only recognize human rights universality and refuse to recognize human rights particularity. It is the ostrich ideology. Professor Xu Xianming said that it is commonly believed that the universality of human rights contains three dimensions: universality of the main body, universality of the content and universality of the value. The particularity of human rights is commonly believed to be the diversities of measures, ways and modes in the process of fully realizing human rights in different countries and regions because of the differences in factors such as historical traditions, cultures, religions, value concepts, resources and economies. Recognizing particularity of human rights does not mean to deny the universal principles of human rights; it believes in the necessity of diversity in human rights theories, human rights concepts and human rights systems under the premise of human rights universality¹.

The universality of human rights is not abstract and should emerge through the particularity of human rights. Particularity of human rights means that the realization of human rights links not only with the status quo of the international community, but also certain social and historical conditions of various countries. Hence, the realization of human rights is not complete or perfect. No country can assert that its human rights condition is perfect and the human rights condition of the international community and various countries is in the process of constant development. Different countries have different social and historical conditions, and a country also has different characteristics in the sequence of human rights value and ways of realizing human rights because of its different social and historical stages. The human rights ideal beyond the stage and national conditions cannot bring happiness to the people, but catastrophe to the country and its people. Former Soviet Union leader Mikhail Gorbachev initiated "new thinking" and advocated human values were superior to everything, leading to the disintegration of the Soviet Union and degrading the country from a world power to the second-class country. People's livelihood plummeted greatly. We should learn from the profound lessons.

China recognizes the universality principle of human rights, and believes that the universality principle of human rights should be combined with the national conditions of various countries. The universality principle of human rights consists of meanings in two layers: The first is the universality of human rights main body, namely, human rights should

¹ Edited by Xu Xianming: *Principles of Human Rights Laws*, China University of Political Science and Law Press, 2008, pp. 84-92.



be the rights that should be enjoyed by all people, or at least all the citizens of a country or all the members of a society, regardless of their ethnic group, color, sex, language, religion, political opinion, nationality, social status, assets and education background; internationally, human rights mean the liberty and equal rights for all the ethnic groups and nations; the second is the universality of human rights principle and human rights content. The universality of human rights requires rights and dignity equality for all the people. The values of liberty and equality reflected by human rights are the universal pursuance for all mankind, reflecting people's common ideal. Thus, the basic principle and content of human rights are applicable for all the people as the basic value and goal and all the nations and peoples should make efforts to realize them. In today's world, the universality of human rights is mainly reflected in the human rights documents of the United Nations and international conventions on human rights. China always recognizes and respects the UN Charter, the Universal Declaration of Human Rights and the basic principles of human rights confirmed by international human rights conventions. China has signed and joined in a series of international conventions on human rights, and supports the United Nations to adopt actions to crack down on the practice of trampling human rights in a large scale. All these efforts reflect China's affirmation on the universality principle of human rights.

(II) Universal values mix up the naturalness and sociality

The starting point of the Western universal values is the assumption of the common humanity. This humanity-based understanding on human rights is backed by theories of the natural law and natural rights. The theory believes that people are born to enjoy the rights endowed by the natural law. The rights are universal and would not be subject to time and places. It seems that the common humanity cannot be denied because "there should be human rights where there are human beings." Viewing from the naturalness of human beings and the difference from other species, it is not very wrong to say that there is some common humanity. But people's essences lie in their sociality. Their pursuance of value is not only the reflection of their naturalness, but also their sociality. We do not deny the universal value of human rights, but human rights are concrete and based on the society. People's basic nature is the sociality because people are living and working in the society. Without the society, people cannot live. Persons who have no relations with other people like Robinson exist only in novels and cannot be found in the reality. Since different people have different positions in the social relations and seek different interests, they definitely have different value judgments on the same event.

The Western universal values consider more about the universality of humanity and the natural attribute of human beings. But some scholars in China think that we should consider not only human beings' natural attribute, but also their sociality. Human rights are the rights people should enjoy according to their natural attribute and sociality. The different



recognitions on human rights value and human being attribute in the East and the West directly influence the differences on the concepts of human rights. For example, China and the United States may have great divergence in concept when it comes to the detailed human rights affairs without abstract recognition of human rights. First, in terms of the origin human rights, the United States believes that human rights are natural while China thinks human rights are the results of social history. Human rights are not natural or unchangeable, but are generated under a certain social and historical condition and are subject to the changes of era; second, in terms of the main body of human rights, the United States believes that human rights are rights for individuals and only individuals are the main bodies and bearers of human rights. But China thinks that human rights are the unification of individual rights and collective rights. Human rights are not standing absolutely opposite the collective human rights. They are dialectical unity. Only by coordinating the development of individual human rights and collective human rights can we most effectively promote development of human rights; third, in terms of the human rights contents, the United States believes that human rights only include civil and political rights, while China believes that human rights not only include civil and political rights, but also economic, social and cultural rights. In its major human rights documents and other related documents, the United Nations always stresses on the importance of economic, social and cultural rights. Only some very few countries like the United States refuse to recognize economic and social rights as the human rights; fourth, in terms of the relations between rights and obligations, the United States separates the rights from the obligations, believing human rights are the “natural rights” which emerged before human society and stressing on the absoluteness and priority of rights. China believes that human rights are the unity of rights and obligations. Only in the social community where people shoulder obligations for each other can we really realize human rights; fifth, in terms of human rights and sovereignty, the United States believes that human rights are superior to sovereignty, while China thinks that essentially, human rights are affairs within a state sovereignty. Those Western countries that deny sovereignty with human rights do not have much interest in actively promoting international cooperation and pragmatically encouraging human rights in various countries. What they do is to attack, westernize and evolve developing countries with human rights issue and force them to accept the Western political systems and values.

(III) Universal values mix up the morality and political nature of human rights

The United States and other Western countries claim to be “teachers” of human rights and “human rights guards,” and make great efforts to establish the human rights values based on the so-called humanitarian ideal with strong fraudulent guise. During the process, the United States stresses the so-called humanity and morality forces on the commanding position of morality. The country dresses up as a “benevolent country” of universal value



and a missionary of “altruism and humanitarianism.” This can justify the direct intervention of the United States into developing countries. In fact, airing universal values is not a pure academic issue or moral issue, but an issue with clear political goals.

Viewing from the human right ideology promoted by the U.S. human rights values, we can see that realizing human rights is not a concrete and historical process, but the absolute requirement beyond ethnic groups and historical stage. Thus, when human rights are put into practice, multiplex standards will surely emerge. Surely, it cannot equally treat all ethnic groups, but divides them into “groups with human rights” and “groups without human rights;” it surely cannot regard human rights maintenance and realization as the equal rights of various countries, but divides them into “human rights maintenance countries” and “countries being sanctioned.” It surely tramples human rights (deprives a nationality from the freedom of selecting their own system and lifestyle) under the banner of “protecting human rights” (such as anti-ethnic cleansing), etc. What the countries like the United States have done totally proves the analysis. They claim themselves the “saviors” and “human rights granters,” and easily sanction or even invade other countries under the name of human rights conditions. But they do not talk about their scandals in human rights, refuse to make corrections and even arbitrarily force other countries to shut up. The weapon that can ensure the advantage and privilege is to establish the “humanitarian ideal” based on the so-called unitary values¹.

Human rights are the common pursuance of human beings. But the human rights values of the United States and other Western countries are impossible to be universal. Those who air the “universal values” are actually selling Western political systems and values under the banner of liberty, democracy and human rights. We should keep alert on this and grasp the nature of the Western countries promoting unitary values. We should genuinely realize human rights and other universal value with the affirmation of equal existence of different cultures, civilizations and corresponding values as the precondition, and encouraging sound exchanges of various values by seeking common ground while preserving differences and learning and complementing each other as the principle. We should recognize the equality of all people of various ethnic groups, equality of all countries regardless of their size, solving international conflicts through political negotiations, solving national conflicts through ethnic reconciliation and solving cultural differences with open and exchangeable approaches. Only by doing this can we have a peaceful and unified world family and equality and justice.

III. Making Efforts to Construct the Discourse System of Chinese Human Rights

While talking about human rights and universal value, we mean not only to criticize

1 Hou Huiqin: “Theoretical Errors and Practical Traps of ‘Universal Value’,” *Studies on the Marxism*, Issue 9, 2008.



the Western universal values and see clearly its fraudulence and falsity, but also to establish China's human rights theory to enrich the discourse system of the international human rights. While illustrating their own human rights allegations, some non-Western countries unconsciously cite the Western human rights as the universal human rights, and try to hedge the pressures from the universalism human rights outlook with their indigenous culture and traditions under the preconditions. Their practice actually puts their own ethnic cultures under the scope of criticism or trials of the Western human rights culture¹. We should make clear the complicated relations between culture and human rights and make efforts to construct the discourse system of the Chinese human rights.

(I) Distinguishing the international human rights discourse and the Western outlook on human rights.

Undoubtedly, human rights discourse first emerged against the background of the Western culture. At the beginning, human rights were only the value symbols of the Western culture on the world and human beings. Supporting the human rights ideology are the corresponding individualism, liberalism and ideological mode. It is generally believed that the Western outlook on human rights at least reflects the internal quality of the individualism, liberalism and egocentrism of the Western civilization. After the human rights discourse was internalized, human rights discourse was separated from the Western outlook on human rights. Non-Western countries were forced to use human rights discourse to introspect their own cultures and constantly enrich international human rights discourse. According to Yasuaki Onuma from Japan, "Human rights are one of the globalized ideologies and systems of the Europe and the United States. Within the significance, it is not unreasonable to regard European and the U.S. outlook as the universal one. However, the contents of a system or ideology will unavoidably change during the process of expanding from the original place to other regions."² Hence, the universal applying of international human rights discourse is not the popularization of the Western outlook on human rights, but the exchanges and dialogues of various cultures of human rights.

(II) Making clear the linkage between the Chinese culture and human rights.

Human rights are not the patents of the West. The East world also formed its unique human rights cultures in history, but did not express them in text. Civilizations such as the Confucianism, Buddhism and Islamism have rich ideologies on human rights. They have clear ethnic and cultural mettle in understanding the human rights. We do not need to obey the order of the Western countries and limit ourselves within the cage of "Western centralism" or relieve ourselves on the excuse of "having the concept in ancient time."

1 Tang Jianfei: *International Conventions on Human Rights and Harmonious Outlook on Human Rights*, Social Sciences Academic Press, 2010.

2 (Japan) Yasuaki Onuma: *Human Rights, Nation and Civilization*, SDX Joint Publishing Company, 2003, p. 196.



According to a Taiwan scholar Lee Ming-huei, the Confucianism tradition has provided a new interpretation angle and argument base for the human rights concept originated from modern Western world, which not only enriched the connotation of human rights concepts, but also provided conducive cultural soil for the implementation of non-Western culture (Chinese culture for instance)¹. Western scholars advocate the theory of universal value to monopolize the sole interpretation power of human rights and dress themselves up as the “human rights guard.” They judge and criticize other countries’ human rights theories and practices from the angle of the Western outlook on human rights. Universal human rights do not mean unification of human rights by the Western outlook on human rights, but the human rights recognized by different human rights cultures and different human rights ideologies. The international conventions on human rights should embody the common stance of different human rights cultures.

(III) Enriching and improving the human rights theory with Chinese characteristics.

Chinese culture did not use human rights discourse in history. When human rights discourse becomes the counterpart of the popularization of the Western outlook on development, China frequently suffers pressures and impacts in the international human rights realm. Some Western countries criticize China on the excuse of human rights. It is urgent to establish and improve the human rights theoretical system with Chinese characteristics. China is now in the preliminary state of socialism and will be in the stage for a long term. We should start from the reality to fully tap the modern significance of the Chinese traditional human rights culture. We should see not only our advantages, but also our inadequacy so as to learn from all the civilization fruits of human society with broader minds and more active attitudes, including the excellent fruits of the Western human rights theories. This way, we can make efforts to form the human rights theoretical system with Chinese characteristics through deep researches and bold practices so as to constantly increase the international discourse power in human rights realm and jointly promote development of the world human rights cause.

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¹ Please refer to Huang Junjie: *Conflicts of Traditional Chinese Culture and Modern Value*, Social Sciences Academic Press, 2002, p. 229.



On Coherence and Differentiation of the Development of Human Rights

– From the Perspective of Value Goals and Institutional Paths of Human Rights

ZHOU Yezhong & ZHU Daokun
China

Human rights issues in the real world can be elucidated from the following two dimensions: First of all, human rights are value goals, which mean that a human being is bound to enjoy certain rights. Of course, there are certain value pursuits within those rights. Meanwhile, the realization of human rights must be an institutional arrangement, which means that human rights values must be transformed into specific operational systems, so that they can be fully realized, maintained and safeguarded.

Therefore, the development of human rights also includes two aspects: First of all, it should have a good development goal, namely good value pursuit, which is an ethical requirement for the development of human rights, i.e., the indicating beacon and macroscopic orientation for the development of human rights. Secondly, it should have a good institutional arrangement, which is a realistic path for the development of human rights, i.e., the route arrangements and specific plans to achieve these value goals. Although the above two aspects have a very strong correlation, they are also diverse from each other. For different countries, the establishment of value goals and the arrangement of institutional paths not only have coherence to a certain degree, but also have strong differentiations.

I. Coherence and Differentiation of Value Goals of Human Rights

The value goals are the indicating beacons for the development of human rights. Why do we want to establish human rights? Why do we want to treat human rights as our own careers? To answer these questions, we should start from the value goals of human rights. On the one hand, the value goals of human rights have coherence, which makes human rights a common cause for people around the world; on the other hand, the value goals of human rights have differentiation, which correspondingly makes human rights have different connotations in various countries.

1. Coherence of Value Goals of Human Rights

Since its date of birth, the concept of human rights has strong value colors and clear



ethical objectives. In Western countries, human rights were a product of ideology cloaked by religion at first. Therefore, it had strong religious feelings, i.e., “natural rights” was an important weapon to fight against the concept of “divine rights of king.” These ethical characteristics possessed from its date of birth met people’s moral requirements, so that the concept of human rights obtained universal respect.

The emergence of such moral check has made “human rights” contain some rights that are beyond statutory laws. This means that as anyone is born to be a human being, he should be treated as a human being; moreover, as anyone has the same physiological characteristics, he should be treated the same as others. Specifically, people in the society need to meet some common requirements and standards. For instance, people have basic needs for survival, security and property, etc. If these needs can not be satisfied, people will find it difficult to survive as a human being. It is not possible to have any changes due to the differences of human beings. In this sense, a necessary condition for the survival of individuals is to grant them rights, which are the most basic elements of human rights. Undoubtedly, these contents have coherence, specifically including two basic aspects – survival and development:

First of all, people should have the right to subsistence. It’s a necessary and basic right entitled by human beings under certain social relations and historical circumstances. Among those needs that must be satisfied, the right to subsistence is the top priority. It should be a rational understanding: if a human being can not be guaranteed to survive, how can he enjoy other rights? We should further recognize that human existence can not be separated from their nation and country. Without the independence and survival of a country, the individual right to subsistence could not be safeguarded. Therefore, the individual right to subsistence can only be satisfied in certain social life. For example, from 1840 to 1949 (110 years), China suffered from hundreds of invasive wars. As a consequence, large parts of territory were occupied and people’s wealth was plundered. According to statistics, foreign invaders had looted 100 billion *liang* (a unit of weight equal to 50 grams) silver from China only via 1,100 unequal treaties.¹ Such cruel plunders had seriously violated China’s sovereignty and undermined the independence of China, which made Chinese people lose their basic living conditions. In such sense, the right to subsistence is not limited to individual survival, but also includes the survival of their nation and country.

Second, people should have the right to development. With the right to development, individuals, nations and states can actively and freely participate in the development of politics, economy, society and culture, as well as equally share the benefits of development. Having obtained basic conditions for survival, human beings are bound to have the needs for further development. Therefore, the right to development is a basic human right that is widely

1 Dong Yunhu: “The Right to Subsistence is the Most Important Human Rights of Chinese People,” *Scientific Socialism*, 1991, No. 5, Page 66.



accepted among the international community. In 1979, Resolutions of No. 34/36 of the 34th UN General Assembly proclaimed that the right to development is a basic human right. Equal opportunities for development are natural rights of each country and each individual. In 1986, Resolutions of No. 41/128 of the UN General Assembly adopted *the Declaration on the Right to Development*, which had comprehensively interpreted the main body, contents, status, way to protection and realization for the right to development.¹ Like the right to subsistence, the right to development is not only an individual human right, but also a collective human right. Individuals can fully develop only on the basis of national development and social progress.

2. Differentiation of Value Goals of Human Rights

Although human rights have coherence on overall goal and include two major themes – survival and development for all states, nations and individuals, human rights have certain differentiation on value goals due to the following reasons:

First of all, the goals for the development of human right are historical. Human rights belong to the historical category, and are the inevitable result of historical development and the product of social development to a certain historical stage. History is moving forward, indicating that the development of human rights will inevitably lead to the same destination. However, history is multi-dimensional, which shows that the development path of human rights might be different. In other words, although the development goals of human rights are consistent in general, they might be different due to the degree of social development and particular backgrounds of history. For instance, as different countries have different pursuits on the right to subsistence, its contents of the era can be divided into two parts, that is, some countries treat environment and health as the primary issue of survival; while others treat peace as their primary issue of survival. The latter ones are against the background of disasters caused by the World War II. People have noticed that wars are the greatest threat to survival; thus people have the desire to live in a peaceful environment. So, the right to anti-war, anti-nuclear power and elimination of the nuclear threat etc. has become the contents of peaceful right to subsistence.² It can be seen that countries around the world treat those rights as their fundamental ones mainly due to historical reasons.

Secondly, the goals for development of human rights are regional. For different countries, the development of human rights is not possible to take the same path. For example, the human rights pursuits in Western countries originated from the resistance to the shackles of feudalism; therefore, their claims on human rights were individual liberty and equality. In *Anti Duhring*, Engels pointed out in arguing the process of the formation of human rights, “Once the economic progress of the society wants to establish equal rights via getting rid of the shackles of feudalism and eliminating feudal inequalities, it will be natural

1 “What is the Right to Development,” *People's Daily*, May 20, 2005.

2 See Xu Xianming: “On the Right to Subsistence,” *Social Science in China*, 1992, No. 5, Page 48.



to declare liberty and equality as human rights.”¹ However, for China, the pursuits of human rights mainly originated from the resistance to feudalism, imperialism and bureaucrat-capitalism. Therefore, at the beginning, China’s claims on human rights focused on the state and national liberation as well as people’s basic needs for food and clothing, namely the right to subsistence. In an era of collapsing economy, precarious social orders and battered political system, excluding external interference and seeking for national independence were the most urgent claims on human rights. Through the comparison, we can know that people of all countries have clearly different claims and values goals on human rights based on different historical backdrop and social environment.

Thirdly, the development of human rights is also social, which means that human rights are the concepts existed in reality, and will obtain effective implementation via the transformation of social concepts. For example, although Declaration of Independence (1776) proclaimed “all men are created equal” in the U.S., it was not until 1960s that women and black people were gradually granted equal rights via Civil Rights Movement. What’s more, the legal equality of colored people in the United States was not widely recognized and actively implemented by the society. And there was still a wide range of discriminatory regulations and discriminatory practices in the society. In China, although racial discrimination is rare, gender discrimination still exists. However, the basic principle of gender equality has been established in our country for a very long time. All these phenomena have shown that the development of any claims on human rights just exists in certain objective society, and is restrained by specific social and historical conditions. Moreover, the development will be a very time-consuming process, and it’s impossible to accomplish in an action. Therefore, in the course of the development of human rights, it’s inevitable to have some abnormal phenomena that need to be corrected. However, if we do not consider from the perspective of social and historical conditions but discuss only on the basis of some texts, we will ultimately draw a blank.

II. Coherence and Differentiation of Institutional Paths of Human Rights

The institutional paths of human rights are the route arrangements for the development of human rights. The basic values of human rights require the arrangements of specific great institutions to reflect. Great institutions are the inevitable way to better and faster achieve the goals for the development of human rights. However, we must realize that any institution must take the corresponding social environment as its historical background. If we do not take this point into account but make superficial institutional arrangements, we will inevitably fall into the evil system no matter how good the original intention was.

1 *Selected Works of Marx and Engels*, Vol.3, People’s Publishing House, 1995, Page 447.



1. Coherence of the Institutional Paths of Human Rights

The institutions of human rights have certain coherence on the development path, depending on the coherence of human rights on value goals. In order to protect the realization of the same value, the institutions were designed to have certain similarities. Specifically, any country around the world will protect the survival and development of the state and its populace through a series of measures. The institutional paths of developing and safeguarding human rights include three aspects: constitutionalism, democracy and the rule of law.

First of all, the realization of human rights should be based on constitutionalism. The so-called constitutionalism is a kind of political form or process that regards the Constitution as the prerequisite, democratic politics as the core, the rule of law as the cornerstone, and human rights protection as the purpose.¹ The protection of human rights by constitutionalism consists of the following aspects: First, as the “empowerment law,” Constitution has established human rights as the legal and basic rights of citizens. The enforcement of Constitution will provide supreme protection for human rights. Second, as the “limitation of power,” Constitution has defined the boundaries of state power and established the positive obligations of the state, so that it can effectively prevent violations of human rights by state power. Meanwhile, Constitution has further defined the obligations of the state to promote and develop civil rights. Third, as the “rule of Constitution,” Constitution is to adjust and regulate political relations in certain sense.² The smooth enforcement of Constitution will further structure the effective power order and shape a solid political foundation, and create favorable political conditions for the protection of human rights.

Secondly, the realization of human rights should take democracy as the path. Two forms of modern democracy have reflected the basic requirements of the development of human rights. Electoral democracy is the first. Electoral democracy is the main form of modern democracy, and the basis for constituting all national institutions. Citizens in modern countries enter into agencies that represent public opinions via election, and express claims for them and their classes, and supervise the activities of the legislature and government departments in line with laws. Deliberative democracy is the second. Deliberative democracy is an effective complement to electoral democracy. It emphasizes effective dialogue with all sectors of society and makes decision based on the full communication of all parties. To promote deliberative democracy, modern countries should set up detailed public participation mechanism, so that the public can make their own claims on human rights via various forms and carry out full consultation. Therefore, the social governance can be optimized and the development of human rights can be further promoted. In such a diverse society, deliberative

¹ Zhong Yezhong: *Constitution*, Higher Education Press and Peking University Press, 2005, Page 183.

² Deng Lianfan: “Constitution: From Political Law to the Rule of Constitution,” *Science of Law*, 2009, No. 2, Page 50.



democracy is an essential democratic philosophy.

Thirdly, the realization of human rights should take the rule of law as its safeguard. Such safeguard has four aspects: First, we should safeguard human rights via scientific and democratic legislative process. In particular, we should stress that laws should be enacted based on extensive comments by agencies that represent public opinions, and thus the dock of democracy and rule of law can be realized. Second, we should safeguard human rights of citizens via detailed arrangements for human rights. Although the law has set the scope and boundary of human rights, no explicit prohibition by the law means freedom for citizens. Third, we should realize citizens' human rights via the establishment of effective, feasible and specific approaches. In other words, citizens should follow some certain manner to orderly exercise their rights. Fourth, we should make comprehensive arrangements via relief ways of human rights, so that citizens can restore those violated rights, which means that human rights should have corresponding safeguard methods when being violated. Generally speaking, human rights should be safeguarded via effective judicial procedures.

2. Differentiation of the Institutional Paths of Human Rights

Different countries have distinct characteristics on the institutional paths for the development of human rights due to different political traditions and institutional features. It can be reflected in the differences of institutional paths of constitutionalism, democracy and rule of law of all countries.

First of all, different basis for constitutionalism will lead to different focuses of the realization of human rights. Undoubtedly, different models of constitutionalism have different characteristics. For example, the British constitutionalism is featured by unwritten Constitution and parliamentary supremacy. The realization of its human rights mainly focuses on the Parliament. Human Rights Act of 1998 is an important law enacted by the Parliament. American constitutionalism is featured by written Constitution and the separation of powers. The realization of its human rights mainly focuses on the Supreme Court. Those important principles on safeguarding human rights mainly explained by the Supreme Court in line with the Constitutional Amendments. In addition, for some European countries, the protection of human rights is seriously constrained by the European Court of Justice and European Laws. Thus, countries around the world have different development paths and modes on constitutionalism. For China, the focus of the constitutional system is People's Congress at all levels. Supervision carried out by the NPC is the most authoritative political oversight, which makes the protection of human rights rely on the People's Congress.

Secondly, different democratic concepts will lead to different concepts on the realization of human rights. Which on earth is the priority of democracy, votes or negotiation? In the electoral democracy, which mode of election can represent more public opinions, individual plurality system or proportional representation system based on political party representation?



Different answers to above questions will easily lead to different democratic concepts as well as the emergence of Parliament and government with different political leanings. And then they will lead to different concepts on the realization of human rights.

Moreover, different backdrops for rule of law will lead to different institutions on the realization of human rights. For instance, in countries practicing British and American laws, the fair trial regards jury trial as an element in criminal cases. The Sixth Amendment to the U.S. Constitution provides that, "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed..." This basic right to jury trial originated from legal and religions traditions of Britain and America. Thus, if other countries are forced to implement such trial, it will be difficult to have the appropriate legitimacy. For China, as the rule of law has established for a short time, and we still have many social problems that need to address; therefore, we should not make progress recklessly and blindly in the course of effectively practicing the rule of law. We must realize that chaos and the rule of law are in fundamental conflicts. Only by following the development rules of the rule of law and making progress step by step can the rule of law deeply root among the people and further protect human rights.

III. Coherence and Differentiation of the Development of Human Rights in the New Era

For our current age, we can have different definitions from different angles, such as the era of globalization, the era of diversification, the era of urbanization, risk society, transformation society, Internet age, etc. Anyway, it's a "new era" that human beings have never had. Therefore, in this "new era," what human rights are and how human rights should be developed are our common problems.

1. Coherence of the Development of Human Rights in the New Era

There are a variety of civilizations around the world, which coexist but harass each other in this world. However, nowadays, people and nations have a better understanding of each other and exchange profoundly with each other, which leads to new collisions. Although these collisions have brought a lot of conflicts, nations still can form consensus in many aspects; thus further promoting the commonality of value goals of human rights.

For example, in a few decades ago, we totally could not imagine that a forum themed by human rights would be held in Beijing. We totally could not imagine that so many scholars of the country would gather together and discuss the topics of human rights with foreign experts. Although we communicate with, question and argue with each other, we have more in common. As what we do more is to discuss and achieve mutual understanding, rather than hold diametrically opposed debates with each other after we firmly stand our positions.



If I have to advocate that the development mode of human rights in China is irrefutable, and foreign experts insist that the Western human rights are the universal truth, we will have a drastic debate without recognizing each other. If so, we just turn to a higher level of International College Debate Competition, rather than convene such meetings.

It's based on the mutual understanding on the development of human rights that China has not only carried out further researches on human rights, but also carried out international exchanges on human rights. Right now, China is committed to the further development of human rights. As the exotic concept "human rights" has an extremely important value goal, China has clearly written "the state shall respect for and safeguard human rights" into the Constitution when China modified the existing Constitution in 2004. Since then, China has gradually introduced a series of laws and regulations to regulate the exercise of government power and protect civil rights. For instance, *Supervision Law on Standing Committee of People's Congress at all levels of People's Republic of China* has strengthened the state's authority to oversight the government. *The Decree of Government Information Openness of People's Republic of China* has defined the legal obligations of the government to disclose information. On June 30th, 2011, China has passed *Administrative Compulsory Law of People's Republic of China*, which has limited and restrained the compulsory measures and enforcements of the government. All these measures have learned from the practice of human rights in Western countries, and made institutional arrangements in line with China's specific conditions.

2. Differentiation of the Development of Human Rights in the New Era

There have always been differences on the development of human rights among different countries. In this new era, those differences on the development of human rights still exist, and are even expanded in a certain degree. Although the reasons for the new differences are very complicated, they are inseparable with the changing situations of all countries in general. The development and changes of globalization, technological development and the security of the world have all brought challenges to the development of human rights.

On the one hand, globalization has brought tremendous challenges to the development of human rights. The United States has the world's largest number of countries of immigration, which has 12 million illegal immigrants. In 2006, there were the largest immigrant demonstrations throughout the United States. For American scholars, it can be a new perspective to study human rights. Some American scholars even believed that such movement could develop into a new round of Civil Rights Movement.¹ On the other hand, science and technology have brought great convenience as well as many challenges to the development of human rights. The challenges include: information technology has brought

1 Kevin R. Johnson and Bill Ong Hing, "The Immigrant Rights Marches of 2006 and the Prospects for a New Civil Rights Movement," *Harvard Civil Rights-Civil Liberties Law Review*, 42 (2007), 99.



challenges to privacy and freedom of expression; new biotechnologies (such as human cloning and cloning organ) has brought challenges to the basic ethics of human beings and human dignity; medical technology (such as euthanasia) has brought challenges to the right to life; and further development of industrial technology has brought challenges to the environment, and so forth.¹ What's more, international security issues caused by terrorist activities have exerted a great impact on human rights. For example, the U.S. abused criminal suspects at Guantanamo Bay in Cuba. In 2006, the case of Hamdan (a suspect held at Guantanamo Bay) suing Rumsfeld had raised widespread concern in Western jurisprudential circle. Recently, five suspects have been transferred to the military court again to be on trial, which has aroused attention of the public and jurisprudential circle once again.

So, how should we regard such differences? The authors believe these new circumstances are not new issues of human rights institutions. Although they have the complexity of human rights institutions, they can not substantially affect the existing way of thinking. For instance, when the U.S. government faced political and military difficulties in different stages in the history, it tended to take special actions on the issue of the conflict between terrorism and individual rights. Well-known examples are listed as follows: in 1917, President Wilson strongly enforced Spy Act. During the World War II, President Roosevelt sent Japanese-Americans of the West Coast to concentration camps. And President Truman forcibly occupied steel mills during the Korean War, and so on. Another example is the human rights issue brought by new technology. In fact, they have appeared in previous societies, but it's essentially an issue about human dignity.

IV. Conclusion: The Harmony and Unity of the Coherence and Differentiation of the Development of Human Rights

In the present era, with the expansion of the scope of interpersonal communication and the increasingly frequent international exchanges, it is likely to have more integrations and conflicts with the concept of human rights. Ultimately, coherence and differentiation, which are two seemingly contradictory concepts, will develop at the same time. They seem to be contradictory but inseparable. Under such conditions, coherence and differentiation can obtain an organic unity by taking mutual respect and constructive dialogue as the prerequisite.

Coherence means communication and integration. Human beings have the value demands of survival and development based on their natural attributes. Any kind of human rights concepts around the world essentially start from two themes to promote the realization of human values. As mentioned above, although the current human rights institution has

¹ Lorenzo Zucca, *Constitutional Dilemmas – Conflicts of Fundamental Legal Rights in Europe and the USA*, Oxford University Press, 2007 ed.



undergone dramatic changes, it is influenced by social issues faced by such institution. And solutions are still inherent in such issues of survival and development.

Differentiation indicates equality and respect. Due to the existence of such differentiation, one human rights concept is no longer an examined object, but an equal and commensal subject when facing another human rights concept. In an era of multi-value, the concept of equality is particularly important. With such concept, any state of human rights will never be the only content of human rights.

The existence of coherence and differentiation means at different angles that the further contact, exchange, communication and dialogue among different human rights concepts and institutions are extremely significant and have real possibilities. On the one hand, this kind of interaction is feasible. The coherence of human rights on value goals and institutional paths has indicated that there is such human rights concept which can be conducive to the harmonious development of the overall society and the common prosperity and progress of human beings. And different human rights concepts and institutions do not have fundamental conflicts on purpose. On the other hand, such interaction is necessary. The advance of globalization has caused conflicts among human rights concepts and institutions. However, the objective existence of such conflicts has precisely produced the necessity of interaction among different human rights concepts and created a platform of dialogues and coexistence for different human rights concepts.

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HUMAN DIGNITY AND HUMAN RIGHTS





Human Dignity and Human Rights

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Zambia

It is acknowledged that the foundation of freedom, justice and peace in the world is recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family.

To promote human dignity and human rights, countries need to be fully committed to their obligations under the various human rights instruments. In this regard, they should have in place appropriate administrative, legislative, judicial and other measures in order to meet their international human rights obligations. Consequently, countries should be encouraged to undertake human rights programmes that balance different dimensions of human rights. For instance, government programmes should be targeted towards the promotion and protection of civil and political rights, economic social and cultural rights, as well as specific rights of vulnerable groups including women and children, both at international and regional level.

States Parties need to appreciate the role that state reporting plays in assisting governments to take stock of its policies and to note weaknesses in the implementation of its obligations under international human rights law.

There is no doubt that when governments allow other stakeholders to take a proactive role in the coordination and implementation of human rights programmes, gaps that usually go unnoticed are easily recognised.

I take this opportunity to report on Zambia's progress in implementing the various human rights instruments that have been ratified.

Zambia has ratified a number of international human rights instruments that aim at protecting the rights of all persons especially Women and Children. These instruments include: *the Convention on the Elimination of all forms of Discrimination against Women (CEDAW)*, *the Convention on the Rights of the Child (CRC)*, *the International Covenant on Civil and Political Rights*, *the International Covenant on Economic, Social and Cultural Rights (ICESCR)*, *the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)*, among others.

It should be highlighted here that, Government has incorporated the rights of these instruments into the domestic system through several policy measures and pieces of legislation.



Government is currently preparing the State Report on these instruments in order to take stock of its legislative, judicial and administrative functions, in order to assess the impact of these functions on the rights and welfare of the beneficiaries in the country.

In terms of legislative measures, the Constitution of Zambia, Cap. 1, provides for a Bill of Rights which guarantees individual's rights. Other legislative measures include *the Zambia Development Agency Act* No. 11 of 2006 and *the Citizens Economic Empowerment Act* No. 9 of 2006 which seek to ensure the full development and advancement of everyone, especially women, for the purpose of guaranteeing them the enjoyment of human rights on equal basis.

Government recently enacted *the Anti-Gender Based Violence Act*, 2011 to enhance the protection of victims of gender-based violence and thereby promoting dignity and human rights.

Further, Zambia has continued to implement the National Gender Policy and Strategic Plan of Action which were adopted in 2000 and 2004 respectively to accelerate the advancement of women.

The government has continued to promote and encourage the involvement of women in decision making process. And to afford them equal opportunities as their male counterparts.

In addition, government is simplifying all procedures for land acquisition and ownership, encouraging women's access to and control over land. The aim is to at least allocate 30 percent of available land to women as an affirmative action.

With respect to Children, Zambia has ratified *the Convention on the Rights of the Child* (CRC) and has passed a number of key policies which aim at enhancing the implementation of the CRC in the country including the review of the National Child Policy (NCP) in 2006 aimed at better responding to the welfare of the child in Zambia. The review was necessitated by the need to address issues such as increasing household poverty, child labour, child trafficking, HIV/AIDS, child abuse in various forms which continue to affect a child in Zambia particularly with regard to the right to survival, development and protection. Additionally, the National Child Health Policy (NCHP) was developed in 2008 in order to improve the health situation of the child through providing sustainable, promotive, preventive, curative and rehabilitative health services.

We believe that the Fourth Beijing Forum on Human Rights is an essential tool facilitating the fertilization of knowledge and ideas on how best we can promote human dignity and human rights.

(The author is Counsel of International Law and Agreements Department of Ministry of Justice, Zambia.)



Cultural Traditions, Values and Human Rights in Brazil

Manuela DAVILA

Brazil

Brazil is going through a great period of economic and social development.

Over the past eight years, this development has also allowed us to rebuild our cultural values and enhance the promotion of human rights and values for all Brazilians. We have promoted the rescue of the historical rights of indigenous people and descendants of slaves, “Quilombolas,” and we have changed our law to combat domestic violence against women.

Due to this development, we have also made considerable progress in guaranteeing our citizens’ human rights.

We have made sure that 38 million Brazilians do not starve anymore, and we have widened the access to university for 863 new students. Also, we have seen 20 million people joining the middle-class. We are therefore focused on ensuring that the economic and social rights are fulfilled.

I believe that is the main question – or one of the central issues – in developing countries when it comes to human rights: it must be ensured that our people eat, study, and are healthy.

But this country which is growing and has left a Dictatorship Military just for 25 years, still has many civil and political rights to ensure, so that all dimensions of human rights are a reality.

Next week, Congress will approve a truth commission – the name given to an organization that will make enlighten the facts of the military dictatorship. 25 years later!

But beyond the mistakes of the past, we still have in Brazil a serious social problem arising from social inequality: our prisons.

We have half a million prisoners and only 1% of those went through college. This means that those who study do not commit crimes? No. It means that, in Brazil, only the poor are punished.

Of the total of the prisoners, the majority (127,000) is less than 24 years old and are there due to the drug traffic. Discuss trafficking drug is, therefore, for countries with conflicts in this area, an issue of human rights. Unfortunately, I have no time to discuss this theme.

But I’m working on it and I would like to speak with organizations that invest in the rehabilitation of these young people to return to society with dignity and opportunity.

Look at this example:



“I was imprisoned for eight years and eight months. I entered the prison inexperienced. I left it as an expert.” This phrase reflects the stage of development of the Brazilian penitentiary system.

A crisis situation has worsened over the years, which thousands of Brazilian citizens are treated as useless subjects. While waiting, they are thought to unlearn all the basic principles of life in society and only to think how to do better in the criminal life.

If the time spent in prison is instructing the prisoners how to commit more crimes, what role the state is playing? This is the discussion we have proposed in the Human Rights and Minorities Commission of the Congress House. This is not about the defense of the end of punishment although some still insist that human rights are the defense of bad guys. Our law and our justice act accordingly. They fulfill their role as punitive agents when necessary. The question that we propose goes beyond the surface: it addresses the lack of policies to recover these citizens and the viability of perspectives so that they can change the course of their lives.

If a young person commits a crime, he or she has to pay for it. But beyond the punitive role, the state must give this young people prospect of a paradigm shift. This young man or woman, who paid for his or her crime, must have an opportunity to leave the prison. There can't be a gap between the willingness to change and the reality that is given. But this problem remains invisible.

We only know the role played by non-political and non-governmental groups and organizations. The AfroReggae, for example, plays it. In three years, 2,069 people were employed. 914 were former convicts. None turned back to crime. This group, like others from Brazil, are fulfilling a gap, and play a role that should be the State's. And that's what we have to think about and discuss frankly and openly.

While we neglect the public policies for the reintegration of former convicts, we are abandoning part of our population. The public administration must structure a comprehensive system for reintegration with the professional training of former convicts. We should adjust the separation of prisoners according to the type of the crime and we should protect the former detainees from the threats from criminal gangs and from the police. If we avoid this debate, we enlarge the world of violence, crime and marginalization.

Violence is not fought with more violence. The answer is to give back to society employed and reinserted citizens. Therefore we are studying the possibility of presenting, through the Commission, a bill to regulate the rehabilitation of former prisoners.

We need to rethink the role of the criminal justice system. One must think of all the journey from the situation where a crime is committed, to the moment of the release of the convict. We must prevent the crime. We need an efficient system. But above all, we need to show those who are leaving the prison today that they can have a different life of course,



with less money than drug trafficking, but with the chance of having a family and with the certainty that is possible to plan the future without stunting the future of the next.

This must be the center of our debate. While we do not think about the rehabilitation of those who leave the prison after paying for their crimes, we are always walking in vicious circles, fighting violence with violence, intolerance with intolerance. The State must be a protagonist of the change that we all need.

The State needs to think about the work developed by AfroReggae as a model and take it to the whole country, to all the prisoners. Only with a full rehabilitation of those who commit crimes will we have a society with less violence and more rights guaranteed to all.

(The author is Chairman of the Commission on Human Rights and Minorities of the House of Commons of Brazil.)



A Brief Discussion on Prison Inmates' Right to Human Dignity

FENG Jiancang
China

Human dignity is in essence the foregrounding of people themselves, in their treating people as human beings. It is evident that denial of human dignity is equivalent to a negation of humanity itself. Thus, human dignity is an inalienable, unlimited right. If there is one exception to rights that have no boundaries in this world, it is the right to human dignity. The professed adage, "A man may be killed but should never be insulted," suggests a person's dignity has to be respected even if he or she is a criminal, and even during the legal resort to capital punishment. As prison inmates are deprived of their personal freedom by law, with their other rights limited or suspended, it is all the more vital to protect the human dignity of those who constitute such a distinct group of people. This helps to protect their own rights as well as to remedy past deeds, thus advancing social civilization and the legal process.

1. Multifaceted Foundation already Enacted to Guarantee Prisoners' Right to Human Dignity in China

On the legal perspective, China's Prison Law states in its seventh article: "Human dignity of a prisoner shall not be humiliated, and his personal safety, lawful properties, and rights to defense, petition, complaint and accusation as well as other rights which have not been deprived of or restricted according to law shall not be violated." This article in the General Provisions is proclaimed as a guideline of Prison Law for protecting inmates' rights. Meanwhile, related articles in other chapters of this law stipulate the contents of basic rights for prisoners. These rights are defined by law and protected as much as possible in practice through various measures. To prevent prison officers from violating inmates' rights, China has spelled out the obligations and discipline for prison officers in articles 13 and 14 of this law. In addition, inmates' rights have been specified from various perspectives in such laws as the Constitution, Criminal Law, Criminal Procedure Law, People's Police Law and Law on State Compensation, as well as some administrative regulations or those issued by the Ministry of Justice. All these can serve as a legal basis for protecting inmates' basic rights, including their right to human dignity. Since its first white paper on human rights issued in 1991, China has published a series of white papers concerning its progress in and protection



of human rights. The rights protection for inmates, a special disadvantaged group in society, is certainly contained in those white papers. China presented to the world in its 1992 white paper *Criminal Reform in China*, “In the actual practice of criminal reform, China pays close attention to implementing the principles of humanitarianism. Criminals are not only provided with proper living conditions, but their human dignity is also respected. The humiliating of prisoners is forbidden.” In 2004, the 10th National People’s Congress at its second session passed an amendment to the Constitution. That “the country respects and protects human rights” is included into the 33rd article of this amendment, becoming one of China’s major steps toward constitutionalism.

At the level of practice, as early as the beginning of the 1980s, a special school was opened in a correctional facility by a labor-reform brigade of Weifang, Shandong (now Shandong Provincial No. 3 Prison). This measure was adopted throughout other prisons during a new period of prison reform. Such concept of reforming prisoners through education and its actual implementation was unprecedented in the international field of criminal rehabilitation. Modern prison authorities have done so much to improve prisons, both in policy and in facilities, further laying a solid foundation for protecting the legitimate rights of inmates. Since 1999, to ensure sound law enforcement, China has conducted three-year education programs for correctional officers. With their own special supervisory agencies for correctional affairs, people’s procuratorates at various levels have set up their own offices in prisons, aimed at examining the onsite practice of criminal punishment. In recent years, China has carried out the “Sunlight (Transparency) Project” among prisons so as to supervise law enforcement and protect inmates’ legitimate rights, as well as to increase transparency of law enforcement. In July 1999, the Ministry of Justice promulgated a trial version of Two Releases and One Supervision Regulations (publicizing the legal basis and results of law enforcement), while carrying out criminal punishment in prisons. On October 12, 2001, the Ministry issued the Opinions on Implementation for Promoting Open Correctional Affairs in the prison system (Ministry document: No. 105 [Year 2001]). In this document, “open correctional affairs” includes inmates’ basic rights, the foremost of which is that human dignity of prisoners shall not be insulted, nor shall their security and legitimate property be violated. On February 14, 2006, the Ministry promulgated six prohibitions for correctional officers, all being effective measures to protect the human dignity of prisoners. In recent years, the Ministry of Justice has launched a special campaign to regulate law enforcement in the fairest manner. This campaign allows for further standardizing of law enforcement in fair and efficient ways, providing guarantees for protecting the rights of persons serving prison sentences, especially for respecting their human dignity.

China has offered material guarantees for protecting inmates’ right to human dignity. Although underdeveloped at socialist primary stage, China has been improving



material living conditions for inmates as much as possible. These include eating, clothing, accommodation and daily-use articles that are guaranteed by the state. For example, inmates can eat their fill, and have cooked, lukewarm and healthy food. Chinese prisons have formed a health network for inmates at three levels, namely provincial hospitals, prison hospitals, and grassroots clinics, to ensure a timely and effective health care for prisoners. China's Prison Law explicitly states: "The State shall ensure the expenditures of a prison for the reform of prisoners. The prisons' expenditures for the people's police, for the reform of prisoners, for the living expenses of prisoners, for the administration and installations of the prison, and other special expenses shall be included into the State budget." In 2003, the promulgation of Standards for Basic Expenditure for Prisons ensures a full standardized guarantee of prison expenditure, and the range of fiscal guarantees for prison expenditure, providing a basis for the establishment of a system covering full prison expenses. As prison reform has been carried out in full swing, the standards for covering prison expenditure have been raised. The gradual implementation of full coverage of prison expenses and a long-term mechanism for a dynamic increase of such prison expenditures have laid a solid basis for protecting inmates' human rights and respecting their right to human dignity. With strengthened social security measures, the Chinese government has increasingly paid attention to social security issues concerning convicts who have been released after serving their terms, including legitimate rights protection, material assistance and relief, employment settlement, and guidance for returning to a normal life. All these measures aim to help former inmates to actually enjoy their rights, and become law-abiding, self-supporting citizens, free of prejudice.

2. Several Aspects Demanded Attention Concerning Protection of Inmates' Right to Human Dignity

1) Instituting a concept of respect for inmates' dignity

We should avoid an impersonal approach toward inmates while establishing a concept of respecting their persons. Criminal psychology research studies show that, in harming their victims, criminals usually try to degrade or even deny their victims' humanity, so as to strengthen their resolve while committing a crime, to avoid any guilt of conscience or morality, so as to more efficiently carry out a crime. In fact, there is also an impersonal approach towards criminals, when the State attempts to bring them under control, which may be seen as similar to that exercised towards victims by criminals. These methods are most evident during the punishment of criminals. For example, during a criminal investigation, people often compare investigators and suspects to hunters and the hunted. And investigators themselves often claim to be hunters as well. At public prosecutions, prosecutors are used to employing such terms as inhumanity or beastliness to convince judges and other spectators that criminal suspects are guilty. Such terms are also found in court judgments.



In correctional facilities, due to the extremely vulnerable position of criminals, namely the inmates, and the importance of maintaining regulatory authority, many correctional officers believe that, “to some extent, an impersonal approach toward inmates is necessary for the control and punishment of prisoners.” This often leads easily to the neglect of the rights of such inmates. It is a long-term challenge both to fulfill a national responsibility of fighting and controlling crimes and to avoid an impersonal approach toward inmates.¹ The Public’s negative appraisal of criminals also contains such an approach. The mainstream media are used to adopting such wording as having no humanity, being worse than a beast, venting animal desires, and being sex maniacs, cold-blooded animals, and perverts to describe criminals. The public look at criminals as if they were observing beasts, especially for those criminals who violently commit bodily assaults, such as rapists or murderers. The role of the public in crime control is said to be at the cost of criminals’ dignity. This impersonal approach is often irrational and easily goes to the extreme, although being able to bring crimes under control to some extent.² It is a long and urgent course for the public to establish a concept of respecting criminals and inmates’ dignity.³ This is also the case with correctional officers.

2) Paying attention to the implementation of inmates’ right of equality

Different treatments and discrimination would invariably lead to harming human dignity. From the perspective of human rights, the right of equality is one of the basic contents of human rights. It is based on the rights of human body and dignity and in parallel with the right to freedom. The right of equality indicates a social member entitled to the equivalent treatment in an equal or similar situation. *The Universal Declaration of Human Rights* states in its second article that equality demands that “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” For inmates whose freedom is limited, they certainly differ, to some extent, with other people in the right of equality. However, some basic ideas of this right should be implemented – “All are equal before the law, including before criminal punishment.” The seventh article of the Declaration carries that “All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.” China’s Constitution defines that any organization and

1 Yao Jianlong, “An Impersonal Approach: Crime Implementation and Control,” *Public Security Research*, Issue No. 3, 2002.

2 Yao Jianlong, “An Impersonal Approach: Crime Implementation and Control,” *Public Security Research*, Issue No. 3, 2002.

3 Wu Xu, “Legal Protection of Individual Dignity: A New Perspective on Criminals and Improvement of Character,” Jiangsu Prison Net, September 29, 2009.



individual should “abide by the Constitution and the law,” and should not “enjoy the privilege of being above the Constitution and the law.” “All acts in violation of the Constitution and the law must be investigated.” To further implement the right of equality, China has included this principle into some other basic laws such as Criminal Procedure Law and Civil Procedure Law that define equality before applicable laws. The Criminal Law revised in 1997 states in its fourth article that “The law shall be equally applied to anyone who commits a crime. No one shall have the privilege of transcending the law.” This is one of the fundamental principles of Criminal Law: all are equal before Criminal Law. This principle contains three aspects, being equal in convicting and sentencing a criminal, and in carrying out punishments. The last aspect means that prisons shall treat prisoners equally in terms of criminal punishment. In prisons, inmates should receive the equivalent treatment for the same grading for their acts. We should not take into account their position, social status or wealth by giving special treatment to some while discriminating against others. For example, standards for parole and commutation of punishment should reflect equality. Whoever qualifies should be judged strictly by law without consideration of close relationship or high birth. Of course, treatment should match degrees of crimes, malign intents and correctional results, which is an inevitable phenomenon in carrying out punishment. The spirit of judicial impartiality should be commensurate with conditions reflected in evaluation or progressive systems. This highlights rather than disobeys the principle of all being equal before criminal punishment. Such equality also reflects the common practice across the world. *The Standard Minimum Rules for the Treatment of Prisoners* adopted by the UN in 1955 prescribes that rules of general application for prisons “shall be applied impartially. There shall be no discrimination on grounds of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”¹

The principle of being equal before criminal punishment set forth in Prison Law is an extension of the principle of being equal before Criminal Law as well as a manifestation of the Constitutional spirit, and matches the requirements in the Standard Minimum Rules for the Treatment of Prisoners. Such equality goes through criminal rehabilitation in the first stage starting from inmates’ entry into a prison, prison rules introduction, to their work assignments; in the middle stage from different-level treatments to a 100-point grading commensurate with rewards and punishment; in the final stage from mid/final-term commutation, parole, temporary release on medical parole to final release upon serving prison sentences. These stages involve each link. Different work assignments result in high or low grading, which then leads to different rewards and punishments, which therefore decide the reporting of commutation and parole. Submitting a report of commutation and parole is a

¹ Feng Jiancang, main editor, *Supplementing and Improving Prison Law*, published in June 2000 by China Procuratorates Publishing House, Page 14.



short-cut for prisoners who wish to return to normal life soon. Thus, giving equal treatment in those stages reflects a basic right for each inmate that draws much concern. Respecting and protecting inmates' right of equality should restrict the exercise of discretionary power as much as possible. The power should be put under transparent supervision, allowing inmates to feel the pleasure in obtaining open, fair justice, ensuring them to have a healthy and comprehensive development in character, dignity and capability, thus incorporating their evaluation results, rewards and punishments into lawful administration. Currently, prisons and detention centers have made public their correctional affairs, which is a good practice.¹

3) Respect for inmates' right of human dignity demanded in specified rules

With improvements in social civilization and law awareness, people have become increasingly recognized the core of modern rule of law as the protection of human rights. Because respecting and protecting human rights are one of our principles in drawing up laws, this is also a basic value orientation for laws. Such Constitutional principle is being implemented step by step. Human rights have rich contents, involving human economic activity, political rights, and various aspects of social life. They call for respect, protection and acknowledgement by state power and its administrative power for citizens' rights and various aspects of inmates. The process and results of criminal justice are closely linked to dignity protection, directly reflecting the extent of a country's political democracy, justice, and human rights protection. Encouraging facts can be seen that in recent years, progress has been made for suspects, the accused, criminals and inmates in terms of their human dignity protection. Even for criminals about to receive capital punishment, attention should also be paid to their right to human dignity. Before execution, prisoners are arranged to meet their close relatives. Ways of execution are reformed – either firing squads or lethal injection. Thus, it helps lessen prisoners' pain, and let them die in dignity, thus guaranteeing human rights they deserved. China's judicial organs have prohibited the parading of criminals through the streets. On August 11, 2003, Beijing First Intermediate People's Court promulgated its 10 measures for regulating law enforcement officers, including the temporary use of hoods for defendants in criminal cases while they are being brought to trial or transported under guard, and the removal of restraints upon arrival in courts. It is forbidden to push or manhandle the accused, press their heads down, or restrain their necks, while transporting or bringing them to trial under guard. During this process, police should only hold the elbows of the accused. As part of state apparatuses, prisons are places for inmate rehabilitation, and should manifest certain august presence. However, if prison authorities concentrate only on the convenience of prison management and the power of a state apparatus, and neglect the respect for inmates' human dignity and human rights, it is not advisable to do so. We have made

¹ Web article, "A Brief Discussion on Legal Protection of Criminals' Human Rights." Prison Information Net, September 4, 2006.



gratifying practical achievements in paying more attention to the protection of inmates' right to human dignity. It has been reported that Beijing prisons have been the most innovative in their concepts of respecting inmates' human dignity in the process of carrying out criminal punishment. They have focused on humane treatment during rehabilitation, and have eliminated outmoded methods of handling prisoners. To display august power and ensure safety, prisoners were once required to squat and cover their heads while awaiting a body check when they first enter a correctional institution. This practice was to increase their fear of police and of possible punishment during rehabilitation. Regarding this, prison authorities have now changed their previous practices by offering seats to newly arrived inmates awaiting checks or assignments. This reflects more civil behavior and humanitarianism in the prisons.¹

In recent years, many new measures have been promulgated regarding prison management. For example, as of May 1, 2004, the Code of Behavior for Inmates issued by the Ministry of Justice came into effect, while the Code of Behavior for Reforming Criminals issued in 1990 was repealed. The new code adopts statements for guidance rather than using the language of reprimand, retracting such prohibitive terms as forbidding same-sex lifestyles or women inmates dyeing their hair. These are indicators of respect and equality toward inmates, paying more attention to the protection of their human rights. It could be said that the promulgation of this new code, representing institutional changes in prison management, manifests a major step toward judicial enlightenment. The new code, issued from a perspective of protecting human rights, further foregrounds the principle of respecting and guaranteeing human rights in China's Constitution. In this sense, as with the inmates' right to dye their hair, a seemingly small change over minor matters connotes overall respect for improving human rights. As with each state agency that exercises power, only as long as civil rights are fully respected in all matters, is it then possible to accelerate China's construction of a socialist nation subject to the rule of law.

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1 Yu Lixiao, "Beijing Prisons Respecting Criminals' Human Dignity: No more Squatting and Covering Heads for Incarcerated Criminals," Chinanews.com, July 27, 2005.



Discuss on Human Dignity and Human Rights Protection from the Perspective of Peacekeeping

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China

From an academic point of view, human dignity is the source of human rights, which has a profoundly academic history. Since the end of World War II, the issues of human rights have drawn great attention from international community, so the human right theories, whose basic consideration is human dignity, have developed constantly. In this era of advocating rights, human dignity and human rights protection are universal values and concepts, which were emphasized once again after the World War II. Moreover, human dignity was clearly identified as the basis of human rights at the system level. This paper begins by describing the relationship between human dignity and human rights. Then it describes the influences that UN peacekeeping operations have exerted on human dignity and human rights. Furthermore, this paper introduces and analyzes China's contributions on maintaining international human rights via the platform of UN peacekeeping operations.

I. Human Dignity and Human Rights

“Every human, regardless of their age, gender, race, color, physical or mental ability, language, religion, political opinion, and national or social background, has the inalienable and inviolable dignity.”¹ Since the end of World War II, human beings have a new understanding of the relationship between human dignity and human rights. The concept of human dignity not only plays a leading role in discussions of human rights around the world, but also develops a closer link with the concept of human rights.

First of all, from the perspective of human dignity, human dignity is one of the basic human rights, and a core essence of basic human rights. It is equal and inalienable; it has both moral and legal significance. Human dignity is fragile and requires the protection from the state and international community. Article XXII of *Universal Declaration of Human Rights* states “Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with

1 [Germany] Author: Hans Kung, Karl-Josef Kuschel, translated by He Guanghu: *Global Ethics – Declaration of the Parliament of the World's Religions*, Sichuan People's Press, 1997, Page 14.



the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.” In fact, dignity is interpreted as the basic human rights thoroughly possessed by everyone. Therefore, having the dignity means that people have human rights.

Secondly, from the perspective of human rights, human rights are universal values, which maintain the dignity of human beings. *Universal Declaration of Human Rights* has set rules on human rights protection, “All nations are obliged to recognize that everyone has the equal right to life, freedom and security of person. And all nations are obliged to grant all people of the territory full and complete protection on these rights, regardless of nationality, gender, race, language and religion.”¹

When we talk about the relationship between human dignity and human rights, specifically human rights are the basic dignity and freedom of human beings which are linked to certain historical conditions. As seen from the correlations of their definitions, protecting human rights is protecting human dignity. Therefore, when some countries and regions can not effectively protect their own human rights, the UN collective security mechanism will play a positive role on maintaining human rights and human dignity.

II. Peacekeeping Operations of UN and Human Rights

Secretary General of UN Ban Ki-moon has pointed out that the United Nations has devoted considerable attention to articulating a common understanding of security. *The United Nations Millennium Declaration* captures the principle that lies at the core of this vision: that men and women have the right to live their lives and raise their children in dignity, free from hunger and the fear of violence, oppression or injustice.² The topic of human dignity can be applied in a double sense. First of all, it can be applied at the level of values and concepts of human beings. Secondly, it can be applied at the level of international law, national constitutions and other laws. UN peacekeeping mechanism is a typical application of preserving human dignity at international level. Meanwhile, human rights are social practices, aiming to achieve concrete human dignity and human potentials that have been institutionalized as basic rights.³

Nowadays, the international community faces complex situation of international security. To a great extent, the clear intertwined momentum of traditional security and non-traditional security has posed new threats on international peace and security. Many

1 Han Depei: *Human Rights in Theory and Practice*, Wuhan University Press, 1995, Page 20.

2 “Securing Peace and Development: the Role of the United Nations in Supporting Security Sector Reform,” *Report of the Secretary-General*, 23 January 2008, A/62/659-S/2008/39, p. 4.

3 [US] Jack Donnelly, translated by Wang Puqu, *Universal Human Right in Theory and Practice*, China Social Sciences Press, 2001, Page 13 and the following pages.



peacekeepers that are sent to peacekeeping mission areas by the international community not only protect human rights to a certain extent, but also maintain local people's dignity. Since the World Summit of 2005, the concept of development, peace, security and human rights has been more deeply rooted among the people, and UN has showed more determination on preserving human rights and human dignity via peacekeeping operations.

Generally speaking, there are three basic ways to protect human rights. First of all, we protect human rights from the economic level. Economic development is the foundation and safeguard of fully realizing all basic rights, and the internal motivation to preserve human dignity and the right to subsistence and development. Most developing countries around the world are all emphasizing the great significance of economic development. When improving people's livelihood, they can also enhance their ability to protect human rights. On the other hand, those countries, which can not effectively develop their economy, have relatively more deficiencies on protecting human rights to a greater extent.



Secondly, we protect human rights by political protection. Nations are the subjects of human rights protection, and will play an important role in the protection of human rights.

Thirdly, we protect human rights by legal protection, including national and international laws. UN peacekeeping mechanism and operations, which follow the principles of human rights protection from international laws, are an important way to protect human rights in international community.

The game of violation and protection of human rights still continues in the UN peacekeeping mission areas. The presence of peacekeeping forces has combined the above three ways of human rights protection, which has exerted positive influences on maintaining peace and stability, as well as developing economy in UN peacekeeping mission areas. Meanwhile, the presence of peacekeeping forces has become an effective means to protect human rights. Among them, the legal protection of human rights is directly involved in peacekeeping operations, while the political and economic protection is indirectly involved. Developed economy is the cornerstone for improving the situation of human rights. Actually, the current peacekeeping operations or peace-building operations contain different aspects, including "Peace-making," "Peacekeeping" and "Post-conflict peace building," divided by the United Nations.¹ The presence of peacekeeping forces has contained the violation of human rights. Individual behaviors in peacekeeping forces should follow the principles of respecting human rights during the process of law enforcement in peacekeeping mission

¹ "An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peacekeeping," A/47/277 –S/24111, 17 June 1992.



areas. Starting with the basic values of human beings, these principles have preserved human rights and human dignity under the framework of peacekeeping operations.

First of all, we should respect human rights of all human beings in mission areas and comply with those principles and regulations related to human rights in the *Charter of the United Nations* and *International Human Rights Law*. As the subjects of human rights are universal, “all human beings” in mission areas include peacekeepers from different countries, temporary government staff of the host country and the common people of the host country. Specifically, everyone should respect the identity, gender, race, custom, religious belief of people from different countries, especially, the right to life of common people of the host country. Moreover, everyone should respect local cultural traditions and living habits.

Secondly, peacekeepers should not violate human rights during the process of law enforcement. The game objects of peacekeeping forces are those criminals in peacekeeping mission areas. However, they also have basic human rights, and their rights and interests should also be protected. Therefore, peacekeepers should not abuse imprisoned prisoners, detained suspects and sequestered persons, and not create new violations of human rights in the course of peacekeeping.

Thirdly, peacekeepers should take immediate and effective actions when violations of human rights happen. One of the important peacekeeping missions of UN peacekeeping forces is to protect the human rights of local people. According to the authorization of the United Nations, peacekeeping police have the right to take effective actions and intervene through legal channels to prevent the violations of human rights.

Fourthly, peacekeeping forces should become the model of respecting human rights in the peacekeeping mission areas and the advocacy power of human rights protection via their existence and actions. UN peacekeepers can promote the protection of human rights and the preservation of human dignity via advocacy and practices. First, peacekeeping forces advocate and mobilize the common people in the mission areas and set examples by personally protecting human rights, which can be an effective way to advocate the concept and content of human rights. Second, peacekeepers train local police forces, and advocate international laws and human rights laws to a greater extent, which will be conducive to strengthen the awareness of human rights in the mission areas.

What’s more, peacekeeping forces should actively support local charities. There are many issues of human rights and social development in peacekeeping mission area; therefore, peacekeeping forces should actively support local charities, which is meaningful to local people, especially for those vulnerable people who are old, weak, sick and disabled, as well as women and children, as their human rights are likely to be violated. The development of philanthropy will help common people remain stable in a turbulent environment, alleviate the damage of wars and live with dignity.



In summary, as the violations of human rights are the blasting fuses of various conflicts, so respecting human rights can effectively consolidate peace. Therefore, the protection of human rights by peacekeeping forces in peacekeeping mission areas is comprehensive and multi-layered, and fully reflects the concepts and values of human rights protection of the United Nations.

III. The Contributions of Chinese Peacekeeping Forces on Human Dignity and Human Rights Protection

Respecting human dignity and protecting human rights is a sign of social civilization. A country's attaching great importance to human dignity means that it respects human rights. Chinese government has been placing great importance on the protection of human rights, and participating in the UN human rights activities and events with a positive and responsible attitude. Moreover, Chinese government strives to promote the healthy development of international cause of human rights by supporting UN collective security mechanism and peacekeeping mechanism. Furthermore, Chinese government has made positive contributions to protecting human dignity and life of the host country, and played an increasingly important role in the matters of human rights around the world.

After the Cold War, armed conflicts or wars within some countries and regions have become the major threats to international peace and security. Under the support of the new concept of "peace, development and human rights," the United Nations seeks to carry out positive peacekeeping operations around the world. In particular, UN has made a long-term and extensive strategic planning towards the implementation of peacekeeping operations. As a permanent member of UN Security Council, and an observer and participant of international regimes, China has widely participated in the UN peacekeeping operations with a more positive and sound posture. Moreover, China has actively participated in UN human rights institutions, and shown the international community that China supports world peace and stability, and protects human rights and human dignity.

China has actively participated in UN peacekeeping operations. Since 1989, China has sent civilian personnel to Cambodia to participate in UN peacekeeping operations for the first time, which marked the beginning that China participated in UN peacekeeping operations. In 1992, China sent an engineering team with 800 people to Cambodia, which was the first Chinese complete peacekeeping force. In January 2000, China sent 15 peacekeeping police to the UN Transitional Administration in East Timor. In 2004, China sent the complete peacekeeping police forces to Haiti for the first time. So far, China has sent almost 20,000 peacekeepers to 15 peacekeeping mission areas of the United Nations. Chinese government has decided to send peacekeeping forces to participate in UN peacekeeping operations, and gradually increase the intensity of dispatch, which has shown that China, being a permanent



member of UN Security Council, has made significant contributions to safeguarding world peace and security. It has also shown that China has firm determination to preserve world peace and protect human rights.

To sum up, the United Nations and the international community have spoken highly of China's peacekeeping operations. China's peacekeeping forces have withstood all kinds of severe tests and done a great job in UN peacekeeping mission areas with firm political stance, excellent ideological morality, rigorous service quality and strict discipline. They have made contributions to the stability of the host country, and promoted the social development and protected human rights of the host country as well, which has won respect and support from the entire world. Having worked diligently over the last 20 years, China's peacekeeping forces have greatly supported UN peacekeeping operations, made contributions to world peace and demonstrated an image of a responsible power.

IV. Conclusion

China attaches great importance to the protection of human rights and the preservation of human dignity. What's more, China has offered great help and support via various channels to human rights issues advocated by the international community. The contributions and accomplishments of Chinese peacekeeping forces have fully demonstrated that China has made tremendous contributions to human rights around the world. China's peacekeeping policies have once again shown that China will unswervingly safeguard world peace, promote global development and protect global human rights.

(The author is Director of China Peacekeeping Police Training Center.)



Human Dignity as the Foundation of Human Rights

Nina KARPACHOVA

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Human Dignity is the most essential and profound issue of the international human rights system and is the cornerstone on which the whole human rights system is built.

I. Human Dignity as a Basis for Development of the International Human Rights System

The international community started paying special attention to the issue of protection of human dignity following the greatest tragedy of the 20th century – World War II that caused the death of tens of millions and brought deep suffering, pain and, deprivation to hundreds of millions.

The preamble to the *Charter of the United Nations* sets a strategic task to “reaffirm faith in fundamental human rights, in the dignity and worth of the human person.” To further this strategy, the *Universal Declaration of Human Rights* affirms that recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom: “All human beings are born free and equal in dignity and rights.”

That human dignity is recognized as a basis for development of the human rights system has become a subject in many international documents for the purpose of strengthening rights. For instance, the preamble to the *International Covenant on Civil and Political Rights* explicitly states that “these rights derive from the inherent dignity of the human person.”

It is my conviction that human dignity is the main motivation behind efforts to affirm human rights and freedoms. Dignity as an ethical value of the highest order is the foundation of human rights and freedoms. In fact, the four generations of human rights represent the historical genesis of the legal groundwork for human dignity.

In this day and age, we see the development of the four generations of human rights based on the concept of genetic identity. At this time, contemporary challenges to human rights raise a particularly sensitive issue regarding the need for in-depth understanding of the nature of human dignity as the foundation of all human rights and freedoms. It is most appropriate that this issue is being discussed at this forum as we need to analyze it from a concrete historical perspective, taking into account the principles of development and harmony.



II. The Nature of Human Dignity

Human dignity essentially stems from the notion of being human and is a pivotal element in the dialectic of the relations between the individual and the society. Human character represents the unity of opposites and a degree of manifestation of the social nature of individuals in their own life and actions.

Karl Marx's famous classical definition of human nature as the "totality of all social relations" suggests the interpretation of human character as a concrete historical form of practical integration of the individual into the existing system of social relations, and the individual's impact on this system and its development. Individuals fulfill themselves as humans to the extent that their actions and involvement in the system of social relations lead to changes and developments in the life of other people and society in general.

At different stages of historical development, dignity was associated with certain social roles of the individual. To act in accordance with one's dignity meant to behave in accordance with one's social status. Hence, the notion of human dignity in fact encapsulates a certain social attitude that, on the one hand, determines the degree of recognition of an individual as a person by society, and on the other, represents an individual's perception of self as a person worthy of respect and acceptance.

Human dignity combines these two aspects in one conflicting unity. Its formation requires more than the presence of favorable social conditions. It requires the individual's concrete effort and deliberate choice to act and strive for. As Confucius once said, "When a country is well governed, poverty and a mean condition are things to be ashamed of. When a country is ill governed, riches and honor are things to be ashamed of."

Along with the change in the system of social relations comes a change in the nature of human dignity. It means that human dignity should not be treated as perpetual abstraction. In terms of thinking, human dignity cannot be reduced to society's subjective opinion of an individual or the individual's subjective opinion of oneself.

Let me share with you a few conclusions that I have come to based on my hands-on experience as Commissioner for Human Rights.

It is obvious that every human on Earth has inherent dignity. However, it is important to realize that dignity is inherent not only in the living humans but also in those yet unborn and those who already died. It seems to exist as an entity but manifests itself in human actions only. Therefore, I have to defend the dignity of Soviet Ukrainian soldiers who were killed in battles for Estonia during World War II. In 2007, their remains were removed from a mass grave when the memorial to the liberators of Europe from Nazism was dismantled in downtown Tallinn, the capital of Estonia. We repatriated and reburied their remains with due honors in the Alley of Honor in downtown Poltava in Ukraine and thus restored their human dignity.



At various points in history, the objective nature of dignity was recognized as a ritual for the living and the dead, or as the spirit of a deity in whose image and likeness man was made, or as the unity of the divine and the natural, free in its creative self-expression in the Renaissance, or as the sole natural rights and dignity of human beings in the Modern Age.

The Great French Revolution showed respect for human dignity by bringing down barriers between social classes and recognizing dignity of all people as inherently equal. The need to overcome social and religious barriers that remained of the feudal system led to the acceptance of the secular concept that recognized human dignity without distinction of race, skin color, sex, language, religion, and political or other opinions.

III. Limitations of the Liberal Concept of Human Dignity

Soon, it has become clear that the concept of inherent human dignity in fact reduces a person to the notion of worth. The cynicism of this approach is reflected in a saying well-known in the Western world: “The dignity of a man is his price.” A man came to be seen as a specific commodity, in the general scheme of commodity production, that could also be bought and sold, and his worth also came down to his price.

Philosopher Immanuel Kant once made a witty remark that a man carries his dignity in his pockets in the form of money. Ultimately, one may conclude that in a market economy, only capital has worth, not people. The power of people became the power of capital. It could be obtained by inheritance before birth and passed on to heirs upon death.

Reducing an individual’s social role to the function of a commodity in market relations has led to absolutization of individualism which is immanent to the Western European liberal concept of human dignity. Under capitalism, civil society as a community of private owners first and foremost lays down the rights and freedoms that let people assert them as proprietors in society and the state. Eventually, Western liberalism puts some individuals in opposition to society by encouraging ideal competition between individual freedom and human dignity, just as this ideal now dominates the economy.

IV. The Dialectic of *Human Dignity*

In essence, human dignity is a system of social relations, ideals, norms, traditions, and values in which it manifests itself. This system does in fact exist independently of a specific individual. It represents the social nature of the individuals, who use it as a guide in their development and explore and channel it into their activities. Behind the guise of the market, there are a great variety of human activities in the system of social production that enables individuals to develop their multiple abilities. Human dignity is determined by the social power of an individual’s occupation. As mentioned above, in a capitalist society, it represents not the power of humanity but rather the abstract power of money that can buy anything, or



as the power of capital.

Individuals who are integrated into these relations are historically determined and limited by their place and role in the social division of labor. This determines the dialectic of human dignity. On the one hand, when a person is born, one's dignity represents ability – or should I say, abstract ability – to fulfill one's human potential and human worth. On the other hand, the social division of labor leaves room only for fractional and marginal fulfillment, i.e. within the limits of an already fixed scope of activity.

These are two sides of the same coin. One is the basis for the principle of universal human rights. The other represents the limitations and obstacles to the implementation of this principle.

It is not possible to resolve this conflict within the framework of the individualistic liberal concept of human dignity that puts the individual above society, or excuses social relations that serve the interests of certain owners of capital. In fact, as this approach evolved, it has had the opposite effect, i.e. total subordination of individual interests of the vast majority of mankind to the interests of big business represented by transnational corporations, along with media manipulation of mass consciousness.

This has led to the emergence of double standards in human rights, and efforts to use these rights as a guise to promote political, ideological, military, and economic interests of big business.

The most brutal and cynical violations of human dignity are wars and armed interventions initiated under the guise of protection of democracy and human rights. When missile attacks are launched on civilians to allegedly protect those same civilians from violence, violence only escalates. This is exactly what is happening now in Libya. I have received many letters from relatives of Ukrainian professionals working in Libya, mostly doctors many of whom refused to leave Libya that was being tormented by violence and NATO bombings. For days and nights they were performing surgery on the wounded, saving people's lives. Their dignity manifested itself amidst the civil war in Libya in spite of direct threat to their lives. One of the doctors was killed, and one nurse was seriously injured.

The global financial crisis has exposed the ineffectiveness of the liberal model of development of society. Social production needs to promote all-round development of the potential of all individuals, free and equal in their dignity and rights. It is imperative that the public interests focus on development of all individuals, and that the efforts of all individuals are aimed at building such a society. Only then shall human dignity no longer be a commodity and an unattainable ideal. This can only be achieved within the framework where people and labor are no longer seen as a commodity.

The development of the human rights system is far from complete. The international community needs to make major shifts in social relations. In this historical development,



each one of us is responsible and must stake our personal dignity on peacefully shifting towards a world with no wars, no violence, and no exploitation, a world in which all individuals will have access to a decent life and development, and where human dignity will not be an abstract notion but the real foundation of human rights.

(The author is Ukrainian Parliament Commissioner for Human Rights.)



The Establishment of Human Rights Concepts Based on “Theory of Dignity”

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On 5th March 2010, Chinese Premier Wen Jiabao clearly stated in the Government Work Report at the Third Session of the Eleventh National People’s Congress: “Everything we do is to make people live happier with more dignity, and make the society more just and harmonious.” This is Chinese leaders’ “theory of dignity”¹ called by the media, or the perspective of human dignity, was stated in the Government Work Report for the first time.

It’s very correct and profound to use the “theory of dignity” to interpret the political objectives and measures of the government, which is also completely corresponding to the understanding of the nature of human rights in international human rights laws. The author intends to interpret human rights and human rights practices in China from the perspective of human dignity, as we can find the basic characteristics of human rights from such perspective. What’s more, domestic legislation of China should pay more attention to these regards.

I. “Theory of Dignity” Reflects the Foundation of Human Rights Emphasized by International Human Rights Laws

The *UN Charter* adopted in 1945 recognized in the preamble that “to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person in the equal rights of men and women and of nations large and small.” which is the historical background and basic motivation for international human rights laws.

Universal Declaration of Human Rights, adopted by the United Nations on 10th December 1948, has been translated into 298 languages and become the document with the largest number of translation versions in Guinness World Records. As the core content

1 Premier Wen Jiabao has mentioned the dignity of citizens for three times. Including the of the State Council on 12th February 2010, the exclusive interview by Xinhua Net on 27th February and during the two sessions on 5th March, which was called “theory of dignity” by the media. See Tang Weijie: “Wen Jiabao Paid Great Attention to People’s Livelihood, Policy Address Mentioned ‘Theory of Dignity’ for the First Time,” cited from: <http://www.chinanews.com.cn/gn/news/2010/03-05/2153932.shtml>, interview time: 8th December 2010.



of *International Bill of Human Rights*, it has been cited by a large number of international human rights conventions and Constitutions of many countries. The first sentence of the preamble clearly stated “whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.”

International Covenant on Economic, Social and Cultural Rights and *International Covenant on Civil and Political Rights* were adopted on 16th December 1966, which are the most important “covenants on human rights.” The preambles of the above covenants further reaffirmed that human rights are core values deriving from human dignity, namely, “recognizing that these rights derive from the inherent dignity of the human person.”

The preamble of *Vienna Declaration and Programme of Action* adopted by the 3rd World Conference on Human Rights in 1993 has also stated that “all human rights derive from the dignity and worth inherent in the human person.”

As the British scholar Lux pointed out that human dignity is “a fundamental ethical principle,” which indicates that “a single individual has the supreme inherent worth or dignity.”¹ For international human rights laws, the “inherent dignity” of human beings is the foundation of human rights, and the ultimate guidance or primitive for all principles and rules of international human rights laws.

China has approved more than 20 international human rights instruments, which means China solemnly recognizes these international human rights standards and is willing to promote the consensus and actions in the field of human rights among international communities via international communication and cooperation. The “theory of dignity” stated by Chinese leaders just fits for the nature of human rights emphasized by the United Nations and numerous international human rights instruments.

II. Human Rights Concepts under the Guidance of “Theory of Dignity” Emphasize Governmental Responsibilities to Respect and Protect Human Rights

As human rights are based on the inherent dignity, they are not from others or given by any institution and organization, but natural rights based on the characteristics of human beings. National laws and policies can confirm such rights in form and take action to realize such rights, but give them in charity to the citizens. On the one hand, citizens have the right to require the government to recognize and realize human rights; on the other hand, government, which plays a leading role in social structure, should bear the major responsibility to promote and realize human rights. The author believes such understanding of the nature of human rights is not only conducive for us to understand the responsibilities

1 [Britain] Steven Lux, translated by Yan Kewen: *Individualism*, Jiangsu People's Publishing House, 2001, p. 43, 48.



and obligations of a country on respecting and protecting human rights, but also conducive for the government and other actors to properly understand and realize human rights in the course of promoting and protecting human rights. For instance, to respect for the suggestions of the subject of rights, listen to their suggestions and create conditions for promoting and exercising their rights.

At the level of policy-making, *Program Outline of the Eleventh Five-year Plan of National Economy and Social Development* approved by the 4th session of the 10th National People's Congress in 2006 clearly stated that "respect and protect human rights, and promote the integrated development of human rights cause." The content about protecting human rights has been written into the *Charter of Chinese Communist Party*, the ruling party, and the reports of 15th, 16th and 17th National Party Congress. In particular, *National Human Rights Action Plan (2009-2010)* has been issued by the News Office of the State Council on 13th April 2009, with the authorization of the State Council. It's for the first time that China has developed such national plan themed by human rights, which is a historic breakthrough. It means that all departments of the government should undergo review from the perspective of human rights, and carry out necessary integration and coordination from the perspective of safeguarding human rights. In other words, all duties of governmental department should not just be related to human rights, and consciously integrate the perspective of human rights and strive to promote the objectives of human rights.

During China's legislative process in recent years, the influence exerted by the mainstreaming of human rights is apparent. From the perspective of fundamental law, the *Constitution* amended in 2004 regulated that "the state shall respect and protect human rights." And there are specific regulations in department laws. For example, Article VII of *Law of People's Republic of China on the Protection of Minors* has reflected the point of incorporating the protection of children's rights into government work. And the Paragraph II regulates: "The State Council and relevant departments of local people's government at all levels shall make great efforts to protect minors, and incorporate the protection of minors into the program of national economy and social development and annual plans. Moreover, the relevant expenses shall be incorporated into the budget of corresponding government."

Human rights have been reflected in the mainstreaming course of legislation and policy decisions of the Party and State, which means that government respects human dignity and promotes the realization of comprehensive development with people-oriented.

III. Human Rights Concepts under the Guidance of "Theory of Dignity" Emphasize the Universality and Equality of Human Rights

As human dignity is based on the personality all shared by human beings, it is universal. All human beings, regardless of gender, color, ethnicity, race, religious belief or



other backgrounds, enjoy human dignity, thus, human rights. In this sense, human rights are universal and equal. Although different groups or individuals have different needs, opinions and preference, or the path and approach of realizing human rights are different in different regions or under different circumstances, the norms of human rights, being the basic principles and standards, have something in common. In particular, the principle of equality and non-discrimination is exactly the core of international human rights laws.

As human rights are universal, it's necessary and possible to carry out international cooperation on human rights as well as widely accept and disseminate the international standards of human rights at the international level. Chinese government has approved or joined in more than 20 international human rights instruments, which means that China not only has been committed to bear the responsibility of international laws, but also has expressed the willingness to protect human rights and promote world peace and development.

Human rights are also universal at the domestic level, and the concept of "all men are equal" is put on more emphasis. The Paragraph II of Article XXXIII in China's *Constitution* states: "Chinese citizens shall be equal before law." The preface of *Law of Regional National Autonomy* amended in 2001 states: "Regional national autonomy embodies the state's full respect for and guarantee of the right of the minority nationalities to administer their internal affairs and its adherence to the principle of equality, unity and common prosperity for all its nationalities." Article II of *Laws on the Protection of Women's Rights and Interests* amended in 2005 states: "Women shall enjoy equal rights with men in all aspects of political, economic, cultural, social and family life. It is a basic state policy to realize equality between men and women. The state shall take necessary measures to gradually improve various systems for the protection of the rights and interests of women and to eliminate all kinds of discrimination against women." Article III of the aforesaid amended *Law of People's Republic of China on the Protection of Minors* states: "Minors shall, regardless of their sex, ethnic status, race, family property background and religious belief, enjoy their rights equally in accordance with law." Article III of *Law on the Protection of Person with Disabilities* amended in 2008 has stated the principle of equality and non-discrimination targeted on disabilities in multiple dimensions: "Persons with disabilities shall enjoy equal rights with other citizens in political, economic, cultural and social respects and in family life as well. The rights and dignity of persons with disabilities as citizens shall be protected by law. Discrimination on the basis of disability shall be prohibited. Insult of and disservice to persons with disabilities shall be prohibited. Disparagement of and infringement upon the dignity of persons with disabilities by means of mass media or any other means shall be prohibited."

The universality and equality of human rights is the biggest challenge encountered in the law enforcement. *Law of Criminal Procedure* amended in 1996 not only states "The law



applies equally to all citizens and no privilege whatsoever is permissible before the law” (Article VI), but also states “A defendant shall have the right to defense, and the people’s courts shall have the duty to guarantee his defense.” (Article XI).

According to the universality of human rights, we shall protect human rights of all mankind. The enjoyment and protection of human rights is to obtain the basic demand for equal opportunity and treatment. In this regard, the interests and voices of vulnerable groups deserve the greatest attention.

IV. Human Rights Concepts under the Guidance of “Theory of Dignity” Emphasize on the Respect for the Dominant Position of Right Holders and Listening to His/Her Voices

If we want to emphasize human dignity, we are bound to emphasize the respect for the dominant position of right holders. She or he is the subject of rights, not just the object of rights or protection target. The subjects of rights should not be passive, but initiative and active.

First of all, dignity belongs to individuals, and then it can form a collective dignity by accumulation. To respect for individuals or collective dignity, we must listen to their opinions on needs for rights, exercise style for rights and so on. In this regard, blindly acting on their behalf may not be recognized or accepted by the subjects of rights, even though the original motivation might be good.

Everyone enjoys dignity, including all children, although in traditional culture, children are often seen as the subsidiaries of their parents, and do not possess the independent subjective status. However, Article V of *Law of People’s Republic of China on the Protection of Minors* clearly states that the foremost principle that the protection on minors shall follow is to “respect the personal dignity of the minors.” Our domestic laws have absorbed and transformed the principle of listening to and respecting children’s opinions and safeguarding their right to participation from the *UN Convention on Rights of the Child*, which is also known as *Charters of Rights of the Child*. Article XIV of *Law of People’s Republic of China on the Protection of Minors* states: “When making decisions concerning the rights and interests of minors, the parents or other guardians of the minors shall, on the basis of the minors’ age and intellectual development, inform the minors of the decisions and hear their opinions.” And Article LII specially regulates: “Where in handling cases of divorce, which involve the support of minor children, the people’s courts shall hear the opinions of the minor children who have the ability to express their intentions and shall, according to law, make judgment in accordance with the principle of safeguarding the rights and interests of the children and in light of the specific conditions of the two parties.” China’s first *National Human Rights Action Plan* clear states: “The state will create an environment



and opportunities to expand children's participation in family, school, community and social affairs in line with children's physical and psychological development."

Cases in judicial practices have vividly illustrated that respect for children's opinions and dignity may have positive impacts. In the case of the right of name between Yao Kunyun and Yao Pengcheng happened in Kunming, Yunnan Province¹, Yao Pengcheng, the plaintiff, filed a lawsuit against Yao Kunyun (his ex-wife), the defendant, to People's Court in Wuhua District, Kunming City, Yunnan Province in May 2010 on the ground of Yao Kunyun privately changing his son's surname and infringing his visitation right, and demanded his ex-wife to restore his son's original surname. The plaintiff and the defendant had been husband and wife, and had a son, named Yao Yueda. In 1995, they divorced via court decision, and the defendant had the right to raise their son. In September 1999, the plaintiff found that the defendant had secretly changed his son's surname to "Ma," so he filed a lawsuit and asked the court to order the defendant to restore his son's original surname. The defendant thought that the new name had been used for 6 years, and relatives, teachers, classmates, social archives and insurance had all accepted and recognized his new name. If the demands of the plaintiff were satisfied, then the young child would face another major change in his life. However, according to then judicial interpretation of the Supreme People's Court, People's Court in Wuhua District, Kunming City believed: changing children's surname shall obtain the consent from their father. Therefore, the court brought in a verdict that Yao Kunyun shall change his son's surname from "Ma" to the surname of his biological father or mother within 5 days since the judgment came into force. Later, the defendant appealed to Kunming Intermediate People's Court. But the Intermediate People's Court upheld the conviction. From this case, we do not see that the court sought to the opinions of Yao Yueda, who is the child in this case. His right of name seemed to be his parents' right in this case.

As time goes by, the above legal reasoning has been changed, and those judicial interpretations that are harmful to children's independent right of name have been abolished. In 2007, People's Court in Changping District, Beijing Municipality had made an opposite judgment to a similar case.² In this case, Mr. Wang was married in March 1993 and had a son. In April 2002, Mr. Wang and his wife divorced via court decision, and his ex-wife had the right to raise their son. Later, Mr. Wang found out that his ex-wife had changed his son's name. Mr. Wang requested the court to restore his son's original name on the grounds of his ex-wife arbitrarily changing their son's name without consulting with him. Mr. Wang's ex-wife believed that the new name had been used for over a year. This name had been recorded in his school enrollment and archives, and teachers and classmates had already been familiar with this name, so it would be harmful to the child if the name was changed. The court held

1 Kunming Intermediate People's Court of Yunnan Province (2001), KUN MIN ZHONG ZI No. 1514.

2 Cited from, <http://www.chinacourt.org/html/article/200709/19/265509.shtml>, access time: 10th December 2010.



the position that the right of name is the right of status of every citizen. Citizens have the right to use and change their names, and the right to protect their names from violation. Mr. Wang's son has the right to change his name, so the court had rejected Mr. Wang's claim.

It can be seen that respect for the personal dignity of the child and safeguard of the maximum rights and interests of the child have promoted the transformation of China's legislative and judicial concepts.

V. Human Rights Concepts under the Guidance of "Theory of Dignity" Emphasize on the Empowerment of the Subject of Rights

As a Chinese old saying goes "give a man fish, and you have fed him for a day. Teach a man how to fish, and you have fed him for a lifetime." The realization of rights not only depends on the "protection" and "offer" from others, in particular the government, but relies more on the self-reliance and self-development of the subject of rights, which is the fundamental way.

Muhammad Yunus, the Nobel Peace Prize winner and also known as the founder of "Bank of the Poor," said: both men and women are willing to support themselves, which is the natural psychology of human beings. You control your own fate and your own life, thus you will gain dignity.¹

In particular, under the specific circumstances of the field of economic and social rights, the willingness and requirement of the subjects of rights should be valued and respected, so that they will be able to play a role in the realization of their rights. Empowerment can reflect such autonomous right and the right to participate. Empowerment enables the exercise of the rights to be the closest and the most pertinent to the grassroots and the subjects of rights. Empowerment to the subjects of the rights is an important way, or even the fundamental way, to solve the issues on the realization of rights.

Over the past 30 years, the impoverished people in rural areas of China have dropped from 250 million in 1978 to 35.97 million in 2009, which has shown that China has made remarkable achievements in poverty alleviation. Liu Wenshu, Deputy Director of Department of External Cooperation, State Council of Leading Office of Poverty Alleviation and Development, said that the government has been developing the new Ten-year Poverty Alleviation and Development Program (2011-2020). The new program will focus more on increasing the revenue and improving the abilities of impoverished people.²

For instance, the year of 2007 can be called "the year of labor legislation" of China. In 2007, China has adopted three labor laws, i.e., *Employment Promotion Act*, *Labor Contract*

1 Anthony Yuen: *Dialogue with World Leaders*, Shanghai People's Publishing House, 2009, Page 20.

2 "Experts: Innovations on Patterns of Poverty Alleviation, and Make Impoverished Groups Become the Subject of Anti-poverty Action," Xinhua Net, Beijing, 13th December 2010.



Law and Law on Mediation and Arbitration of Labor Disputes. In addition, there are other administrative regulations and local regulations that concern the rights and interests of labors, such as *Ordinance for Employee's Annual Leave with Salary* and *Collective Contract Regulations of Shanghai Municipality* etc. The legislation process is unprecedented as many laws and regulations have been enacted and adopted to protect labors' rights and interests at both central and local level. However, "ruling by law alone is of little effect," so the law enforcement is more critical and challenging.

It's not sufficient to just rely on departments of mediation and arbitration established by the government and judicial procedures regulated by laws to resolve large number of labor dispute cases. Nowadays, the collective negotiation between employers and employees is becoming a need of practice and an appeal from the society, which draws attention from all walks of life. As the economic organizations involved in the rights of labors have diverse forms and the specific circumstances vary widely, if they are able to play a role in the realization of their rights of labor, their willingness and requirement of the subjects of rights will be valued and respected. Collective negotiation can reflect such autonomous right and the right to participate. In 2010, the Standing Committee of Shenzhen City, Guangdong Province was reviewing *Regulations on Collective Negotiation among labor relations of Shenzhen Special Economic Zone (Draft)*. National Federation of Trade Union has given a clear schedule in 2010, aiming to basically establish the collective contract system and fully implement collective negotiation on wages in those enterprises, which have already founded the Trade Union, within 3 years (2010-2012).

Of course, to fully understand the meaning of empowerment, we should realize that it not only includes protecting our own rights, but also includes preventing others' rights from violation. The UN training materials on human rights have pointed out correctly: "Not all situations of human rights abuse can be traced back to legislative inadequacies, unfair administrative practices or flagrant violations by the State. Violations of economic, social and cultural rights also occur through the actions of private organizations and individuals, in the workplace, in the local community and in the family, often away from public scrutiny. For that reason all members of society should be made aware of their own personal rights and responsibilities under international and domestic law... They should be made aware of the duties they have to others."¹ Therefore, individual empowerment is not exclusive, but also inherently includes strengthening the awareness of responsibilities, which is the ideal type for the realization of rights with the balance of rights and obligations.

The real dignity does not come from the achievements that just benefit oneself or the success of bad goals, such as benefiting oneself at others' expenses and so forth. It

¹ UN Office of the High Commissioner for Human Rights: *Handbook for National Human Rights Institutions: Economic, Social and Cultural Rights*, UN 2004, Page 99.



comes from properly bearing one's own, others', national and social responsibilities, from safeguarding rights in line with laws without unnecessary silence, compromise and concession, and from properly considering and treating others' and social responsibilities.

In summary, Chinese leaders particularly emphasized “the theory of dignity” that is consistent with the concept of governance of “people-oriented” as well as scientific development concept. The “theory of dignity” not only shows that the government respects and protects human rights, but also has an importantly instructive significance for the future development of human rights cause.

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Explicating Dignity toward a Minimal Conception of Global Justice

Thomas POGGE
America

“Science, democracy, rule of law, freedom and human rights are not concepts unique to capitalism. Rather, they are common values pursued by mankind in the long historical process and they are the fruits of human civilization. It is only that at different historical stages and in different countries, they are achieved through different means and in different forms.” – Premier Wen Jiabao¹

Chinese Premier Wen Jiabao has recently formulated the standard by which the Chinese government wants its work to be judged: “Everything we do is to ensure that the people lead happier and more dignified lives.”² We should explore the meaning of this lofty standard and its practical implications.

Being a philosopher from the West, I can best contribute a few reflections on the concept of dignity as I understand its meaning and role in the Western tradition. Such reflections can be illuminating if I am right to believe that concepts play a substantial role in shaping not only discourse but also the evolution of societies. A paradigmatic example of this is the Declaration of Independence of the United States, which begins with the amazing assertion that it is self-evident that all human beings are created equal. Once it had been given such great prominence, this idea was destined to be subversive of slavery and the subjection of women in the United States and even beyond its borders.

Though less important, the concept of dignity has played a significant role in the post-war history of my home country, Germany, where it is highlighted in the very first Article of the Constitution: “Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority. The German people therefore commits itself to inviolable and inalienable human rights as the foundation for any human community, of peace and of justice in the world.”

Dignity is not an independently existing thing, but an attribute – of human beings, for

1 Wen Jiabao, in “Our Historical Tasks at the Primary Stage of Socialism and Several Issues Concerning China’s Foreign Policy” (Xinhua News Agency).

2 Wen Jiabao, in “Report on the work of the Government” (March 5, 2010), quoted in *China Pictorial*, volume 742 (April 2010), p. 26.



example. It is essential to our notion of dignity that it has two distinct but related meanings. Using one meaning, we say that each human being has an inherent dignity, which is inalienable and equal for all. Using the other meaning, we say that the dignity of human beings is precarious and stands in need of social protection.

We find both meanings used side by side in the *Universal Declaration of Human Rights*. In the first three occurrences of the word it is used in its first sense:

Recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world (*Universal Declaration of Human Rights*, Preamble, paragraph 1);

The peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women (*Universal Declaration of Human Rights*, Preamble, paragraph 5);

All human beings are born free and equal in dignity and rights (*Universal Declaration of Human Rights*, Article 1).

In the next occurrence, “dignity” is used in its other sense:

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality (*Universal Declaration of Human Rights*, Article 22).

To call these rights *indispensable for* dignity is to say that any person lacking in these rights also falls short in dignity. Article 22 thus suggests that dignity is both alienable and possibly unequal: those who have dignity can lose its indispensable preconditions and therefore dignity itself – and will then not be “equal in dignity” with those who still have it.

One can clarify the link between the two senses of “dignity” by examining how the *Universal Declaration* treats the closely related notion of rights or human rights. Article 22 suggests that every human being has certain rights, but also that these rights stand in need of realization. A group of frightened children, caught in the midst of a terrible bombing campaign, do not enjoy their human “right to life, liberty and security of person” (*Universal Declaration of Human Rights*, Article 3), and yet they still have this right in the sense that they ought to enjoy it. Here we might say that the realization of a human right (globally, or within some jurisdiction) involves the achievement of secure access to its object (for all human beings, or for those within this jurisdiction). To call X a human right is to say that secure access to X must be established and maintained for human beings – which imperative persists even, and especially, when the right is not realized.

Calling X a human right also implies that it is *for the sake of the human beings having this right* that secure access to its object ought to be maintained. Any responsibilities or



duties we may have in regard to the realization of a human right are duties owed to those who still lack secure access to its object. Thus, those who violate human rights are wronging those whose rights they are violating – rather than merely disobeying God, for example, or disturbing the harmonious order of the cosmos.

Tying these thoughts together: to say that every human being has dignity in the first sense is to say (a) that s/he has the potential for dignity in the second sense and (b) that the realization of this potential – a life with dignity – is of great moral importance. A human being can lead such a life only if s/he has secure access to certain essentials, that is, only if her or his human rights are fulfilled. It is therefore of great moral importance to ensure such fulfillment. When a human right is fulfilled for all, then we may say that it is fully realized (worldwide, or within some jurisdiction).

There are three dimensions in which a human being may fall short of a life with dignity. The first involves greatly inferior social standing and excessive subordination to others. Many people live under such conditions of indignity: being ordered about, ridiculed, humiliated, slapped in the face, terrified, not in control of their dress or appearance (naked in front of strangers), and perhaps adapting to such conditions with servility, flattery, or self-abnegation. US treatment of captives at Abu Ghraib provides a comprehensive range of examples of how people can be stripped of their dignity. Similar fates are suffered, less dramatically, by much larger numbers of people worldwide: by domestic servants, factory workers and wives in many countries, by refugees and prisoners, by people trafficked for prostitution or labor, and also by patients in hospitals and nursing homes, enlisted soldiers, and pupils unpopular with their peers. As inequality is rising fast in modern China, relations of personal domination are becoming more common again. Arresting this trend would require checking the rise of inequality and also a strengthening of the rule of law.

The second dimension of (in) dignity involves care of one's physical self. This dimension is related to the first in that it is humiliating to appear in public clothed in rags, smelling of urine or covered with skin lesions or eczema. But these dimensions are separable nonetheless. Even when a person has little or no contact with others, she may take care of herself through proper personal hygiene, a healthy diet, and regular physical exercise – or she may be unable or unwilling to do so and then become a fit object for pity or disgust for herself and for others.

The third dimension of (in) dignity involves a person's inner or mental life. Here dignity is especially closely associated with self-control. It is undignified to be overwhelmed by low emotions and desires such as envy, greed, hunger, lust, anger, or pride. It is undignified to lack cognitive or executive powers: to be highly forgetful, for instance, or unable to pursue mildly complex tasks. And it is undignified to be held back by laziness or weakness of the will.

There are in principle two ways in which human dignity can be protected or maintained

in these three dimensions. One involves a change in human psychology such that what was perceived or experienced as indignity comes to be seen as consistent with the full dignity of human beings. Society may, for instance, be or become fully accepting of people with speech impediments, of ethnic minorities, of women, or of people with an artificial anus. This path to dignity is not always workable for either of two reasons. In some cases, psychological reactions can at best be mitigated. Thus, it may be impossible wholly to eliminate feelings of disgust in response to certain skin diseases or incontinence problems. In other cases, such a psychological adjustment of how we conceive human dignity would be morally unacceptable. Thus, even if torture could be thoroughly professionalized – administered perhaps through machines remotely operated by emotionally uninvolved technicians focused on the extraction of information – we should still have to judge it a grievous affront to the dignity of the person screaming in pain. And even if there were wide cultural acceptance of conduct driven by strong emotions of greed or lust (as has indeed existed in some societies) – we should still want to maintain our judgment that this is conduct to be left behind.

These empirical and moral limits of cultural adjustment indicate our social task: to structure human life, insofar as is reasonably possible, so that all human beings can live in dignity. The three dimensions of indignity suggest the indispensable presuppositions to be socially secured. First, human beings must have a protected standing within their social world that allows them to avoid excessive dependency on others and to defend themselves against humiliation and abuse. The human rights of Articles 3-21 of the *Universal Declaration of Human Rights* are especially relevant to protecting this component of human dignity. Second, human beings must have the education, income, and social services they need to take proper care of their bodies through adequate nutrition, clothing, shelter, sanitation, clean water, physical exercise, rest, and medical care. This component of human dignity is protected especially in Articles 22-27 of the *Universal Declaration of Human Rights*. Finally, human beings should also have access to the ennobling achievements of humanity: to literature and music, sports and science, and to the exploration of other species and our natural environment. Here again appropriate education is crucial, as is access to museums, libraries, academic institutions, theaters, movies, and other cultural facilities and community activities. It is through the encounter of others and their achievements that human beings reach their full potential.

Dignity is different from those many things and attributes that are valuable insofar as they are valued. Such conferral of value presupposes a certain value in the conferrer. One person's appreciation may confer value on a musical performance even while another's lust confers no value on his encounter with a prostitute. The human capacity to confer value depends on our potential for dignity, not merely something valuable but a precondition of value.

This complexity can be integrated into a conception of morality as aiming to maximize



value by protecting human capacities to confer value and human opportunities to do so. Such a consequentialist conception might instruct us to sacrifice the dignity of some in order to enhance the capacities or opportunities of others. Typically, however, those who give a central place to dignity in their moral thinking resist such trade-offs. They deny that one may sacrifice the dignity of some for the sake of multiplying valuable activities, or even protecting the dignity, of many others. This is not tantamount to the assertion that human dignity must never be sacrificed, no matter what. It does affirm, though, that the value of dignity transcends the value it confers on human activities and that the non-violation of dignity is of greater moral importance than its promotion.

One need not take sides on this dispute to conclude that current global institutional arrangements constitute a massive and wholly unjustifiable violation of human dignity. Shaped in negotiations among the world's most affluent and powerful agents, these arrangements maintain and aggravate vast social and economic inequalities that force half of humankind to subsist in conditions of severe deprivation, as is dramatically documented in the latest statistics regarding social and economic human rights. Among 6,700 million human beings, 1,020 million are chronically undernourished (a new historical record), 884 million lack access to safe water, 2,500 million lack access to basic sanitation, 2,000 million lack access to essential drugs, 924 million lack adequate shelter, and 1,600 million lack electricity; 774 million adults are illiterate and 218 million children are child laborers. Roughly one third of all human deaths, 18 million annually, are due to such poverty-related deprivations, easily preventable through better nutrition, safe drinking water, cheap re-hydration packs, vaccines, antibiotics, and other medicines (Pogge, *Politics as Usual*, 11-12). Most human beings do not have "a standard of living adequate for the health and well-being of oneself and of one's family, including food, clothing, housing, medical care and necessary social services" (*Universal Declaration*, Article 25).

We see that this ongoing catastrophe is avoidable from a single figure: the poorer half of humanity has been reduced below 3 percent of global household income. This progressive marginalization of the poor is long-standing and ongoing. Between 1988 and 2005, the richest twentieth of humanity has raised its share of global household income from 42.9 to 46.4 percent, to well over 9 times the global average income. The bottom half (ten times as many people) saw its share decline from 3.5 to 2.9 percent or 1/17 of the global average income. Losses were greatest in the bottom quarter, whose share declined by one-third: from 1.16 to 0.77 percent or 1/32 of the global average income. The eradication of all severe poverty would require a shift of no more than 1.75 percent of global household income – half of what the richest twentieth gained in recent years.

In conjunction with such vast inequalities, extremely low incomes (in the region of USD 10-30 per person per month) also undermine the civil and political human rights of those



in the poorer half. To meet their most basic needs, many feel obliged to commit themselves or their children into various forms of slavery or debt bondage, into beggary or into jobs of extreme dependency, exploitation or servility. And in most cases, the people of a “less developed” country are politically disempowered by an oppressive and corrupt “elite” that ignores their needs, imposes huge national debts upon them, and sells their natural resources to foreigners in exchange for the arms it needs to stay in power.

The world’s affluent mostly manage to remain ignorant of the magnitude of global poverty: of the scandalous contrast between the enormous death toll and humiliation it produces and the minuscule shift in global income needed for its eradication. Those who understand the true proportions admit that they should be doing more, but most feel only slight unease in regard to their perceived moral imperfection. Few understand that the massive poverty the affluent fail to alleviate is poverty they cause and aggravate through institutional design decisions in which they prioritize their own comparatively trivial interests over the most basic needs of the majority of humankind.

The terms of the WTO Treaty reflect the pressure powerful firms in the affluent countries exert toward continued and asymmetrical protections of their markets through tariffs, anti-dumping duties, export credits and huge subsidies to domestic producers. Such protectionism greatly impairs export opportunities for the poorest countries and regions. If the WTO proscribed protectionist barriers against imports from poor countries, their populations would benefit greatly: export revenues would be higher by hundreds of billions of dollars each year, hundreds of millions would escape unemployment, and wage levels would rise substantially (Pogge, *Responses to Critics*, 183-4).

Powerful firms have also successfully insisted that their intellectual property rights – ever-expanding in scope and duration – must be vigorously enforced in the poor countries. Music and software, production processes, words, seeds, biological species and medicines – for all these, and more, rents must be paid to the corporations of the rich countries in exchange for (still multiply restricted) access to their markets. Millions would be saved from diseases and death if generic producers could freely manufacture and market life-saving drugs in the poor countries (Pogge, *Politics as Usual*, 20-1).

While the WTO requires all member states to legislate strong intellectual property protections, its rules do not constrain working conditions or labor rights and thereby engender a race to the bottom in which poor countries, to attract investment, compete by offering workers that are even more exploitable and mistreatable than those elsewhere. Hundreds of millions bear the consequences in the form of inhuman working conditions: incredibly long periods without breaks or vacations, assaulted by dust, dirt, noise, heat, and pollution, and terrified by supervisors who can fine, punish, harass or fire them on a whim.

To be sure, the ruling elites of poor countries – together – could better protect their



populations. They predictably fail to do this because they have more to gain from serving the interests of rich foreign firms and governments. Most have little need for domestic popularity, relying instead on an important international convention according to which rulers – merely because they exercise effective power in a country and regardless of how they acquired or exercise such power – are entitled to confer legally valid property rights in this country's resources and to dispose of the proceeds of such sales, to borrow in the country's name and thereby to impose debt service obligations upon it, to sign treaties on the country's behalf and thus to bind its present and future population, and to use state revenues to buy the means of internal repression. Such recognition accords international resource, borrowing, treaty, and arms privileges to many governments unworthy of this title. These privileges are impoverishing, because their exercise often dispossesses a country's people who are excluded from political participation as well as from the benefits of their government's borrowing or resource sales. These privileges are oppressive because they give oppressors access to the funds they need to keep themselves in power even against near-universal popular opposition. And these privileges are disruptive because they provide strong incentives toward the undemocratic acquisition and exercise of political power, resulting in frequent coups and (civil) wars in the developing world.

Humanity's technological-economic capacities now easily suffice for the avoidance of all severe poverty. But global institutional arrangements keep half of humanity in continuous anxiety: oppressed and humiliated, unable to take proper care of themselves and their families, and constantly preoccupied with making ends meet. These global rules do not arise spontaneously; they are carefully designed in protracted negotiations among powerful governments, acting with the approval of their citizens, and those in a position to lobby such governments. These privileged agents do not hate the poor and wish them no harm; they merely act rationally, in a competitive game, to enhance their own power and affluence. But still, they knowingly deny a majority of the world's people their most fundamental right "to and social and international order in which the rights and freedoms set forth in this Declaration can be fully realized" (*Universal Declaration of Human Rights*, Article 28). Such conduct constitutes a double denial of dignity. It denies the poor the preconditions of a life in dignity by depriving them of secure access to the objects of their human rights. And it denies that the poor have moral standing, that their unfulfilled human rights furnish reasons that must be given their due weight in the design of global institutional arrangements.

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Human Rights and Human Dignity

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Liberia

Many people in Liberia have inadequate or total lack of basic knowledge of the laws of the country and are not aware of both the content and substance of their constitutional rights and responsibilities.

Due to these and other factors, they do not know when their rights are violated, abused or where to seek redress. The civil war in Liberia began on December 24, 1989, but before then, the country had been confronted with challenges, socio-economic and political conflicts which resulted into violence leading to the military coup in 1980, which evolved into even greater violence and armed conflict during the 1990s decimating sectionalization and displacing much of the population and untold human rights violations thereby necessitating the intervention of the international community to restore peace and security in Liberia.

The Economic Community of West African states was most helpful in this endeavor.

The Independent National Commission on Human Rights (INCHR) was established on March 11, 2005 by an Act creating it, which came to being as a result of Article 12 of *the Liberian Comprehensive Peace Agreement* signed in Accra, Ghana on 18th August 2003.

The Commission has the general responsibility to protect and promote human rights in the Republic of Liberia according to the provisions of the Act, the Constitution, other relevant laws of Liberia and international human rights instruments. It will serve as a source of human rights information in the Republic of Liberia.

Because of the civil conflict, the Commission was not fully functional until the 2010, when seven (7) commissioners were nominated and were confirmed by the Liberian Senate.

For the past ten months, the Commission has been operational.

I will be speaking to you on the topic: **Human Rights and Human Dignity.**

What are Human Rights

Human Rights are rights which persons hold by virtue of them being human being.

Human rights are “basic rights and freedoms that all people are entitled to regardless of nationality, sex, national or ethnic origin, race, religion, language, or other status.” Human rights are conceived as universal and unrestricted, with all people having equal rights by virtue of being human. Actually, human rights are only for human beings as they relate to



mankind and not the state. Thus they are not dependent upon the grant of our permission or the permission of the state and also they cannot be withdrawn by sanction of the state/government. The beneficiaries of human rights are individuals. States have the obligation to ensure the promotion and protection of all human rights and fundamental freedoms, regardless of their political, economic and cultural systems. Human rights do not consist only of civil and political rights. These rights also cover the economic, social and cultural sides of human beings, and also the respect and love of one another as human beings.

After the 2nd World War, people felt the need of a Universal Declaration of Human Rights and that was adopted by the United Nations organization on 10 December, 1948 at Paris to protect the international level of human rights. In 1989 after the fall of the Berlin Wall, it was decided that a world conference on human rights be convened.

The conference took place in Vienna in 1993, where it was established that the fundamental human rights can never be derogated by the state, even during the period of emergency, that is, no emergency justifies torture, nor can remove a person's freedom of thought, freedom of religion and the acquisition of education.

The contemporary normal and political philosophy are more likely to focus on care for human rights upon a commitment to fundamental rules, such as, freedom, autonomy, equality together with other considerations relating to the essentials of human well-being and protection.

What is Human Dignity

Dignity of human being is an essential concept in the society as well as in the morality, because through it the quality and honour of the people can be determined, and from the sense of dignity the concept of Human rights can also be measured. There is a common belief that the dignity of human being can be measured through commercial/economic status of the people of the society and the G. N. P. (Gross National Production) of the particular state to be used as an instrument to measure the quality of human life. The quality of human life is a very complex phenomenon. It is not only restricted to the commercial or economic system, rather it touches the various spheres of the people. That is, health, food education, liberty, equality, franchise of the citizens and so on. We have a need to know, how people are enabled to live in the society in a dignified manner and also receive affordable health care.

The concept of human dignity plays a central role in the human rights discourse. According to *the Universal Declaration of Human Rights*, recognition of the inherent dignity and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world. *The International Covenants of Economic, Social and Cultural Rights and on Civil and Political Rights* state that all human rights derive from inherent dignity of the human person. Some modern constitutions include human dignity as



a fundamental non-derogable right; others mention it as right to be protected alongside other rights.

The current statistic shows that in this advanced age, many people are not able to fulfill their basic needs; they are not getting just and equal treatment in the various spheres of life. Still today, many peoples are suffering from unjust wages, malnutrition, narrow health services, inequitable distribution of education and also facing the problems of inhumane war, unjust arbitrary utilization of chemical weapons, and unjust distribution of natural resources.

Apart from that, even in this advanced world, people are facing the problems on racism, poverty, terrorism and many other evils. These evil problems and unjust treatments are gradually spreading over in the various parts of the globe which are basically violating the human rights and dignity of people. Human Dignity is inviolable. It must be respected, protected and non-compromising.

The dignity of the human person is not only a fundamental right in itself but constitutes the real basis of fundamental rights. The 1948 *Universal Declaration of Human Rights* enshrined this principle in its preamble. According to it, “the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.”

At the heart of human rights is the belief that everybody should be treated equally and with dignity – whatever their circumstances. This means that nobody should be tortured or treated in an inhumane or degrading way. It also means that nobody has the right to “own” another person or to force them to work under threat of punishment. And it means that everybody should have access to public services and the right to be treated fairly by those services. This applies to all public services, including the criminal justice system. For example, if you are arrested and charged, you should not be treated with prejudice and your trial should be fair and every person should be assumed innocent until guilty given their day in court and right to counsel.

Every human being should have the freedom to live his or her life the way they want and to make their own decisions, within reason. This includes the opportunity to do what they want in their private life, to meet and develop relationships with other people and to participate in essential economic, social, cultural and recreational activities of the community. They should also be able to acquire and enjoy property without unnecessary interference.

Human rights entail both rights and obligations. States assume obligations and duties under international law to respect, to protect and to fulfill human rights.

The obligation to respect means that states must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires states to protect individuals and groups against human rights abuses. The obligation to fulfill means that



states must take positive action to facilitate the enjoyment of basic human rights. At the individual level, while we are entitled our human rights, we should also respect the human rights of others and respect constitutional authorities, our elders and one another.

(The author is Chairman of Independent National Commission on Human Rights, Liberia.)



The Value and Realization of Human Dignity

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China

1. Introduction

Human dignity materializes as the respect for the humanity of all individuals. Currently, China is standing at a historical period of transforming from “national prosperity” to “people foremost.” Respecting and protecting human dignity marks its beginning and serves as its objective. Analysis of the value of human dignity and investigation into realistic approaches to protection of human dignity will be of practical and theoretical significance to the further advancement of human rights cause in China.

2. Descriptions of “Human Dignity” by the International Community

In the constitutions of countries around the world, human dignity is described as “dignity of human being,” “personal dignity,” “individual dignity” and “respect for the individual” and so on, with “dignity of human being” as the most widely adopted. For instance, the constitution of Germany defines it as “personality dignity,” as stipulated in Article 1.1 of the *German Basic Law*, “Human dignity is inviolable and all state powers have the obligation to respect and protect personality dignity.” The frame of reference for the Constitutional of the United States describes it as “dignity of human being.” O’Connor, the Supreme Court justice wrote in the majority opinion for the case of restricting abortion by the state of Pennsylvania: “Our laws offer constitutional protection for individuals to decide on issues of marriage, bearing children, contraception, family relations, raising children and education. Those issues concern the most personal and confidential decisions of a life and are central to the freedom protected by the 14th Amendment and the dignity and independence of our people.”¹ In Asia, Japan introduced the concept of human dignity after the Second World War, stipulating in Article 13 of its constitution that “All citizens are respected as individuals.” From this stipulation it can be seen that the term “respect for the individual” is adopted in Japanese Constitution.² However, in Article 24 on marriage, family and the two genders, the

1 Zhang Qianfan, *Western Constitutional System* (Book 1), China University of Political Science and Law Press, 2004, p. 253.

2 It is stipulated in Article 24.2 of Japanese Constitution that, “All issues regarding choice of spouses, property rights, inheritance, selection of residence, divorce and marriage and family, and etc. should be regulated in the laws on the basis of personal dignity and substantial equality between sexes.”



term “personal dignity” is adopted. It is universally acknowledged in the Japanese academia that there is no difference between “respect for the individual” and “personal dignity” in connotation.¹ In addition, it is stipulated in Article 38 of Chinese Constitution that “The personal dignity of citizens of the People’s Republic of China is inviolable. Insult, libel, false charge or frame-up directed against citizens by any means is prohibited.” Therefore, it can be seen that China adopts “personal dignity.”

Despite minute differences, descriptions of “human dignity” in the constitutions and jurisprudence of countries around the world reflect the same philosophy, namely, the personality of an individual and his subjective status in social relations comprise the core connotation of human dignity, despite his natural characteristics and social properties, as long as his humanity continues. This connotation is universally applicable to all individuals.²

3. Value Analysis of Human Dignity

The value of human dignity is reflected in its connotation and value status.

1) The Value Connotation of Human Dignity

Scholars tend to make different interpretations of the value connotation of human dignity in accordance with their own world views and values. Some think that it should be approached from the degree of political involvement. Others believe that it’s best interpreted from the perspective of how democratic rights are realized for the citizens. In the realm of legal studies, it is common understanding in the naturalist school of law that human dignity is a right entitled to an individual upon birth, an un-severable and inviolable legal right, and that one of the objectives of states is to give necessary respect and protection.³ Positivist School of Law believes that, since the concept of human dignity is not easily determinable, if defined as the fundamental rights of the people, it might be used by them to contradict public rights, and thus shake the authority of rule of law by the state, sabotage social stability and consequentially make impossible protection of humanity’s dignity. Because of the bitter lesson of Nazi militarism, people holding the view have been on the decrease after WWII, while the view of the Naturalist School of Law gets increasingly popular. Observing the understandings of human dignity around the world, we

1 Lin Laifan, “Personal Dignity and Personality Dignity – on the Interpretation of Article 38 of the Chinese Constitution,” in *Zhejiang Social Sciences*, 2008(3), p. 49.

2 Han Deqiang, Hao Hongmei, “On the Connotative Properties and Functions of Humanity Dignity in Constitutions,” in *Journal of Linyi Teachers’ College*, 2010(2), p. 86.

3 For instance, Klaus Stern believes that human dignity belongs to all individuals and their respectively desired values, and it constitutes the elementary substance indispensable for them. Based on this dignity, human beings are endowed with the capacity for self development. Human dignity consists in all individuals and in the essential connotation of humanity. It is a core element that incapable of derivation. Its external embodiment is the actual significance of self-government and self-determination, and the fact that human dignity can not be bereaved or abandoned. For details see Lin Shuiji, *Democratization and Constitutional Choice*, Taiwan Who-is-Who Forum Publishing Co., Ltd., 2002: 44.



may summarize its connotations as:

First, the ultimate purposefulness of humanity

As the objective of existence, humanity itself allows no random change of any kind for any other reason. In German, the objective formula can be deemed as the standard for concrete connotations of human dignity, since it has been referred to by the German Federal Constitution Court many times. When an individual is no longer the objective of state conducts, but instead their object or means, infringement of human dignity is in place.¹ No country should degrade its people to the level of objects or means for the ruling class for any excuse or reason. The Constitutions and laws of democratic countries practicing rule of law aims at ensuring that the state owes its existence to needs of the people. Therefore, the supreme value concept of constitutions is respect for and protection of human dignity.

Second, the equality of humanity

Human beings are born equal in dignity and rights. The principle of equivalence of life leads us to the ideology that individuals are equal in dignity, and all individuals are to be respected equally. Safeguard of human dignity takes existence of man as the only requirement. Individuals are entitled to equal personality upon birth, regardless of differences in nationality, race, gender, profession, family background, religious belief, level of education, property status, residence or birth place (whether it be urban or suburban). Therefore, equality is the essential requirement of human dignity.

Third, the independence and self-determination of humanity

Human beings owe their existence to their intellect, which makes it possible for them to depart from non-human natures and decide and form themselves based on the consciousness of determination. Therefore, factors determining the self-value of human dignity are the ability of self-awareness, self-determination, and self-realization. Self-government and self-determination have become the denotations of the concept of humanity, and the essence or core content of human dignity. Therefore, the objective and value of an individual's life should be determined by the individual himself, and realized by himself through self-choice and self-realization.

2) The Value Status of Human Dignity

Since its stipulation in constitutions, human dignity has been awarded a very high niche and appraisal, as witnessed by its statement in many writings concerning human dignity, like the supreme constitutional principles, the highest criteria of objective constitutions, substantial and fundamental criteria, supreme legal value of constitutional order. Although they all reflect the respect for human dignity², minute differences can be found in their

1 [Taiwan] Li Zhenshan, *Human Dignity and Human Rights Protection*, ANGLE Publishing CO., LTD., 2009, p. 15.

2 [Taiwan] Li Zhenshan, *Human Dignity and Human Rights Protection*, ANGLE Publishing CO., LTD., 2009, pp. 18-19.



interpretations of its value status in constitutions. Generally speaking, there are three different views.

The first view holds that human dignity is the root of fundamental rights and a principle superior to constitutions with the highest legal value in the constitutional order. Concretely, taking human dignity as the fundamental principle and highest value orientation means awarding fundamental position and roles to human dignity in constitutions. The essence is generalization and abstraction of other concrete human rights, making them different from individual rights resultant from contractual and legal relations. Thus those rights become the benchmark for judging the justness of state and social lives. By restraining and limiting state powers, constitutional protection is awarded to realization of human dignity. And this should be the substantial significance for human dignity to be stipulated in constitutions.¹ However, human dignity as the supreme constitutional principle is very abstract and its categorization into any fundamental rights is difficult, making it inapplicable in actual practices.

The second view believes that human dignity is a fundamental constitutional right, to be directly allowed into judicial practice as a concrete right. In this way laws can unequivocally stipulate concrete measures and approaches for protection and relief of human dignity. However, over-concrete stipulations will deprive human dignity of the diversity in value, and making relief impossible in cases of human dignity infringement beyond its legal definitions.²

The third view maintains that human dignity includes the generalized clauses of all concretized fundamental rights. Generalized clauses serve the function of carrying on and assist norms. In other words, when legal norms are insufficient in function because of defects or loopholes, generalized clauses should be used as complementation so that the complete function of constitutions in safeguarding fundamental rights can be fully exercised.³ In concrete practice, concrete fundamental rights should be given priority in case of infringement of human dignity, while human dignity clauses should be applicable in the event that they cannot effectively protect the dignity being infringed. Despite its complementation to the previous two views, this view apparently neglects the fundamental position of human dignity in constitutions.

Due to the fact that there has been no precedent so far in constitutional litigations in China, human dignity is inapplicable, both as a fundamental constitutional right and as a generalized clause of all fundamental rights. Therefore, it is more rational, or rather more

1 See Lin Shuiji, *Democratization and Constitutional Choice*, Taiwan Who-is-Who Forum Publishing Co., Ltd., 2002, p. 44.

2 Han Deqiang, Hao Hongmei, "On the Connotative Properties and Functions of Humanity Dignity in Constitutions," in *Journal of Linyi Teachers' College*, 2010(2), p. 87.

3 [Taiwan] Li Zhenshan, *Human Dignity and Human Rights Protection*, ANGLE Publishing CO., LTD., 2009, p. 9.



suitable to the realistic circumstances of China, to detail “human dignity” stipulated in the Constitution into concrete rights in subordinate laws. Concretely, this view acknowledges the supremacy of human dignity as a constitutional principle and on this basis makes it applicable in actual judicial practice by detailing it into concrete rights. At last, when judicial interpretation or administrative legislation can not solve real-life problems, human dignity can be used as the ultimate generalized clause. However, strict subjective and procedural limitation should be placed on its applicability. The author believes that only legislative bodies can serve as the subject, and neither judicial nor administrative agencies should be entitled to interpretation or application of constitutional clauses. Cases of human dignity infringement with social influence but no legal bases should be handled by the legislatures in a centralized manner and offer relevant legislative interpretations, so as to provide legal grounds for relevant cases in practice.

4. Value Realization of Human Dignity

1) Legislation

At first, improve the Constitution. Descriptions like “Respect the dignity of citizens” or “The dignity of citizens is inviolable” in the prime position of Chapter 1 “Fundamental Rights to Citizens” highlight its status as a fundamental right. Concretely, “Dignity of the Citizens is inviolable” should be added to Article 33.2 “All citizens of the People’s Republic of China are equal before the law,” and “The personal dignity of citizens of the People’s Republic of China is inviolable” in Article 38 should be revised as “The dignity of citizens of the People’s Republic of China is inviolable.” In addition, *The Personality Right Law of the People’s Republic of China* should be formulated when conditions permit, so that the civil law realm can protect the personality rights entitled to individuals via *The General Principles of Civil Law*, *Tort Liability Law People’s Republic of China* and the specific *Personality Law*. At last, legislative interpretation should be used to curb behaviors of infringing human dignity. Because the legislation for safeguarding human dignity still needs improvement, legislatures should step up with legal interpretations in view of typical behaviors of belittling human dignity in specific periods, so as to stop such behaviors from dissemination. On Nov. 29, 2006, the Police of Futian, Shenzhen, publicly punished after a shame parade of 100 criminals suspected of being involved in prostitution and whoring that were caught in the anti-vice campaign. On Dec. 5, 2006, Lawyer Yao Jianguo of Shanghai Promise Law Office submitted a petition to the National People’s Congress, proposing that, considering that similar incidents are not alone or accidental, the NPC as the supreme legislative agency has the necessity and obligation to publicly assert its stance on this issue and correct the illegal administrative conduct of Futian police because it violates legal stipulations and the essence of rule-of-law; and to stop similar events from occurring, clear prohibition of shame parade



should be implemented via legislation.¹

2) Administrative Law Enforcement

To actually protect human dignity, the concept of humane law enforcement should be established in administrative enforcement agencies, which should treat administrative counterparts as the subject and respect their dignity as individuals in practice. If individuals are deemed as the subject to be controlled through administrative enforcement, infringement on human dignity might occur.² Administrative law-executing departments should respect the personality and value of administrative counterparts, acknowledge their subjective not objective existence, and accept due limitation and restriction in the process of law enforcement.

Second, administrative law-executing departments should abide by the proportion principle. Their enforcement should be appropriate, protecting the legal rights of administrative counterparts, especially their human dignity, while exercising legal obligations to protect public interest. They should avoid and eliminate infringement on the human dignity of administrative counterparts through rough, simplistic and over enforcement.

At last, administrative law-executing departments should endeavor for procedural justice. Procedures are visible justice, which can only be maximized when all state behaviors are in accordance with pertinent legal procedures. Otherwise, they will lose legality and protection of citizens' dignity will be difficult. Therefore, administrative law-executing departments should ensure respect for human dignity by resorting to due processes in administrative behaviors.

3) Justice

Judicial departments should construct effective "barriers" for protecting the human dignity of the citizens. First, under the historical condition of China transforming from "national prosperity" to "people foremost," judicial department should seize the historical opportunity to support individual's efforts to maintain human dignity via legal means and expand the acceptance scope of cases involving compensation for spiritual damages. They should actively promote the right of judicial interpretation of the constitution and the judicialization of the constitution to protect dignity rights via solving disputes of human dignity infringement in civil trials.

Second, judicial departments should double their efforts in protecting human dignity of individuals. They should gradually increase the amount of spiritual compensation and unify the standards for spiritual compensation in handling behaviors of infringement on human dignity. They should also raise the cost for infringing upon human dignity and strive to

1 "Lawyer Petitions to NPC," in http://www.yewb.com/xkb/2006-12/06/content_1306717.htm [accessed Nov. 29, 2010].

2 Zhang Qianfan, *Western Constitutional System* (Book 1), China University of Political Science and Law Press, 2004, p. 253.



realize equal compensation for equal dignity.¹

At last, judicial departments should rectify their trial style and manners, emphasize protection of the human dignity of special groups and avoid secondary infringement on human dignity in judicial processes.

4) Social Supervision

Social supervision is an important approach to realization of human dignity. At first, supervisory roles of the media should be exerted. In the recent years, many cases involving serious infringement on human dignity attracted widespread social attention after their exposure and report by the media, including cuffing and shame parade of sex workers by Dongguan Police, publication of the name list of prostitutes and brothel visitors by Wuhan Police, and public punishment of Duan Dingmei and Qiao Zhuanli, two petitioners, by the Politics and Law Committee, the People's Court and Public Security Bureau of Fuping County, Shaanxi Province. In addition, scholars of law and legal workers should bear the duty of social supervision. *Regulation on Deportation of Urban Vagrants and Beggars* was nullified after 3 doctoral students and 5 prestigious jurists petitioned to the National People's Congress. At last, the supervisory roles of the entire citizenship should be fully used. While formulating policies and laws involving or affecting the human dignity of citizens, the state or government should consult the people, and promulgate and implement them after collecting and analyzing their opinions, and adopting the reasonable ones. Besides, the opinions of the citizens should be attended to while checking the effects of policies and laws, and timely adjustment should be made on the bases of public opinion.

5. Conclusion

Human dignity is a born right. Full respect of the human dignity of its citizens by a country is an important mark of its level of democracy. Respecting and protecting human dignity is the obligatory responsibility of a country. Countries should dedicate themselves to protect the dignity of all individuals from infringement, and promote their decent survival and development. If human dignity is only a supreme principle of the constitutions, its role will be limited and difficult to be realized in real life. Therefore, human dignity should be detailed into concrete rights entitled to individuals in legislative, administrative and judicial work of a country, while safeguarding of those concrete rights marks the steps of advancing from "national prosperity" toward "people foremost."

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¹ In 1998, Qian Yuan, a female student of Shanghai International Studies University, launched an accusation against Sichuan Beilu Branch, Shanghai Watsons Daily Necessities Co., Ltd, for spiritual compensation on the ground that she had been subjected to pants-off searches twice by the store. She petitioned for spiritual compensation of 500,000, and The People's Court of Hongkou District Shanghai ruled 250,000, while the Second Intermediary Court of Shanghai ruled 10,000.



People's Individual Rights are the Factors Protecting Individual Moral Values

Aleksandr Nikolaevich YUSHKEVICH
Belarus

For me, the theme of the Forum reflects the urgent problem of the modern society – respecting human dignity and human rights.

The whole world is increasing its attention on human rights and is adding new contents according to its own development.

It is known to all that the Declaration of the Rights of Man and of the Citizen of France in 1789 fully interpreted the rights of individuals and rights of citizens for the first time. Reviewing the past, we can see that before the adoption of the Declaration, there were revolutionary impetus struggling for individual rights under the banner of “Freedom, Equality and Friendship” in the 17th and 18th century.

Though the French Declaration exerted influences on political events, the revolution itself was lamentable. Several thousands of people were executed or died in riots. At that time, declaring rights could not bring any food, freedom and security to citizens. During the bloody riots after the revolution, people began to unreasonably but highly appreciate the philosophers in the enlightenment era.

Renowned British philosopher Edmund Burke proved that to get the correct laws, people should start from the traditional society and reforms should be conducted gradually and prudently.

Regretfully, the issue of realizing individual rights is still urgent today.

A series of events have increased people's attention on the issue.

First, in order to protect and rescue human nature, the continuous increase of human rights, which is directly related to the issue of global modernization, should be solved. Hence, people's individual rights are the most important global issue.

Second, people individual rights cannot do without the most important issue of the 21st Century – the force promoting the power democracy of political systems.

Third, with the development of information technology, the whole world is the witness of the violation of human rights without hindrance. Everyday, we can have the information on infringing the basic human rights and freedom on purpose, showing racism and humiliating people's personality and dignity.



Hence, the most urgent issue is people's dignity value. Please allow me to introduce my theory.

Obviously, dignity and personality are the major characters of human beings, which can help everyone form and maintain his or her personality. Neglecting a person's characters is actually humiliating him or her. Dignity is the major goal and source of human rights law.

In the category of morality and dignity, personality and dignity reflect the relations between people and the society. Meanwhile, the morality values of each person reflect his or her own dignity. In the category of personality, a person's morality value is related to various values he or she gets from the society.

Thus, morality values can be interpreted by human rights. Protecting human dignity can be seen in the limitation of the state on the profound and infrangibly private life of citizens.

To us, realizing the individual rights and individual morality values can be completely implemented under the condition of the state and social powers. A person can meet his or her own demands, has the rights to be independent and be self-organized and has social enthusiasm so as to make progresses in various fields. Individual freedom should be fully protected in the society. We should preset the scope of state interference and establish the reliable system of protecting individual rights and freedom.

I believe that protecting the priority of individual capacity of every individual is one of the main individual rights. The State should recognize individual independence and self-determination. The independence and self-determination should not be used to seek one's own individual interests.

However, the state cannot be too passive to avoid interest disturbance. When problems occur, the state should actively assist the implementation of human rights. The state should scientifically use the "Spirit of Modern States on Individual Interests," and should also have the conditions of fully protecting and ensuring the public interests, including the common interests.

For instance, the major tasks of the society and the state of Belarus include the principle of continuing to develop the national democratic powers. "Human being, his rights and freedom are the highest value; recognizing, following and protecting the rights and freedom of the people and citizens are the responsibility of the state." The Constitution of the Republic of Belarus stipulates that the country gives top priority to solving all the problems related to infringement of individual rights.

I earnestly appreciate the fruits China has made in implementing and protecting human rights. Since 1978 when China implemented the reform and opening-up program, we have seen that the Chinese people have possessed all the human rights at the largest scope, compared with some universally-recognized democracies.

There were times when the Chinese people did not have sufficient basic guarantees.



Today, the Chinese people are living in prosperity. This is not my first time to be in China. I have witnessed the stable progresses in social sectors.

Obviously, the state administration departments of various levels have adopted scientific development roads by putting people first so as to establish a harmonious society under the principle of democracy, the top power, equality and fairness.

I am deeply convinced that in both our countries, respecting the undividable human rights of individuals is the profound basis for the domestic and international politics.

Finally, please allow me, on behalf of the House of Representatives of Belarus, express my gratitude to the People's Republic of China for the Fourth Beijing Forum on Human Rights. Wish all the participants of the Forum successful, happy and healthy.

(The author is Chairman of the House of Representatives of the Republic of Belarus.)



Human Dignity and Human Rights Protection

ZHAN Zhongle
China

The most glorious symbol in human rights sector after the Second World War, “human dignity” has greatly deepened the connotation of human rights and promoted the progress of human rights cause. However, people have different views, even great divergences on the detailed connotations of human dignity and the relations between human dignity and human rights. We need to have deep exploration and analysis in this regard to enhance the consensus on human rights and promote vigorous development of human rights cause.

I. Connotation of Human Dignity

Human dignity refers to the phenomenon that a person is treated as a member of the human race and enjoys his or her due respects. Started from the Renaissance and became prosperous after the Second World War, the theme was energetically carried forward based on the retrospect of the criminal activities of the Nazi. Currently, people have not reached consensus on the recognition of human dignity and the major divergences include: Is human dignity independent from and higher than the dignities of other animals or even other creatures? Is human dignity based on people’s morality, freedom of will (subjectivity) and rationality or the basic spiritual demands of the human race? Is the essence of human dignity an objective state or a subjective evaluation? Is the dimension of human dignity individual oriented or society oriented? Is it the source of human rights or a presence as a kind of human rights? A widely accepted view is: Human dignity is the special value for the human race with both the spiritual core of the metaphysics and the subjective evaluation in the society oriented dimension; it makes self-sufficiency of human spirit as its essence, and shows the detailed contents of different spaces, times and places in the social evaluation based on people’s sense of dignity. As the internal attribute of human rights, human dignity should be treated as the source of human rights. On the one hand, human dignity provides solid value supports for the protection of concrete human rights; on the other hand, when human rights system is inadequate to hold the responsibility of human rights protection, human dignity should also show up, or give birth to new type of human rights, or directly provide ethical and even legal (such as the Basic Law of Germany) supports so as to shoulder the final task of human rights protection. Every detailed human right has the spirit of human



dignity. Thus, it should not be juxtapose with detailed human rights, but should be regarded as general values of human rights system and play the role of controlling the whole situation in human rights protection.

Thus, human dignity is a key concept in the process of human rights protection. It is unique only for human beings and is the sum of multiple subjective evaluations with the universal core of metaphysics. With the fundamental stress on the “human beings,” it is the source of detailed human rights system.

II. Requirements of Human Dignity Protection

Since human dignity is very important, providing sufficient protection to it is naturally a task for every political entity. Then, to what extent should we protect human dignity? This is the fundamental question of human dignity and human rights system construction. From the most ideal significance, human dignity protection should not stop until everyone's dignity is fully protected and all the people have total spiritual self-sufficiency; but in fact, no country can completely reach the height in reality. The cause of human dignity protection is deeply limited by the country's development level and available resources, which can influence the protection of human dignity at least from three aspects: First, protecting human dignity needs to consume huge resources in reality operation. For instance, Item 1 of Article 25 of *the Universal Declaration of Human Rights* stipulates: “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.” This is only a basic demand for human dignity and human rights protection. In reality, all the practices such as prevention and cure of disfigurement of infants, elimination of employment discrimination, increasing welfare of laborers and launching various effective publicity and education need supports from large amount of resources. The overall scale of human, fund and material resources can influence the reality capacity of protection. For instance, we cannot expect a country with the poorest people, extremely low government financial revenue that cannot even afford its daily administrative expenditures to follow the standards of the western developed countries. Second, we need to balance the protection of the current stage and the future. Especially, developing countries usually need to preserve certain amount of resources for basic infrastructure construction and development in the preliminary stage so as to ensure the increase of available resources in the future. If we put all the resources into the final human dignity protection at the beginning, we cannot meet the final ideal of human dignity; meanwhile, we will lose our capacity of protecting human dignity in the future. Third, protection of human dignity does not mean pure consumption of resources. Improvement



of people's health, increase of their consumption capacity and relief of social contradiction and so on can help promote further development of the country. This makes the relations among human dignity protection, resource consumption and resource reproduction more complicated. It is a very complicate tactic issue regarding how to best protect human dignity that has been expected for several centuries in a long-term and overall manner. In addition, human dignity is neither the matter in the world of Plato concept, nor the pure objective entity. It is the complex consisting of multiple subjective evaluations. Subjective evaluations have different detailed contents and standards in different spaces and periods of time and we need to make corresponding adjustment on the requirements of human dignity according to different spaces and periods of time. This makes the requirements of human dignity protection further complicated, and poses challenges to our current requirements of properly protecting human dignity and human rights.

We must first realize that though people have different interpretation on the detailed contents of human dignity and human dignity protection may subject to various reality conditions, we cannot cancel the institutional requirements of human dignity protection or deny all the needs of human dignity and human rights protection with cultural difference; we should keep the requirements on a reasonable realizable level and constantly increase the level with the promotion of economic development.

To properly master the requirement, we should retrospect the formation and mechanism of human dignity protecting goal. As the general fountainhead and solid backing of human rights, human dignity is in the central part of the goal of social values and the important core of ethics values of human society. Then, who have the rights to assert to decide the contents and levels of the goals of the values? Not philosophers; not politicians; not people in law circle. The goal of the values in a community should be jointly decided by the community itself through reasonable process. However, the mechanism of joint decision-making is very like to be omitted, because there is no experience of all the people in a community making interpretation-based decision on a value goal; the political process of detailed institutional construction also has too much considerations from other aspects. Thus, we must start from the reality and change the goal construction mechanism into goal identification mechanism. So long as we can effectively identify various urgent and real demands of the community in dignity protection, we can construct the current requirements of human dignity from top to the bottom based on this. This demand is constructed based on the social objective expectation of certain period of time and certain regions and will not be too ideal to exceed the reasonable level of the country. It can provide solid support for us to launch human dignity and human rights protection in detailed legal affairs.



III. Institutional Requirements of Human Dignity Protection: Launch of Human Rights Laws and Regulations

The institutional requirements of human dignity protection, at least from the legal layer, are embodied by detailed laws and regulations of human rights protection. These laws and regulations consist of two aspects: First, identifying, establishing and adjusting the institutions of human dignity protection goal; second, implementing the institutions of human rights protection and human dignity protection. The institutions of the two aspects support each other to protect various determined or undetermined human rights so as to reach the goal of protecting human dignity as a whole.

The institution requirements in the first aspect include mechanisms of collecting and analyzing comments and feedbacks of common people, people's expression and participation in decision makings. If we abandon the assumption that human dignity is the objective regulations of pure metaphysics, recognize the changes in interpreting the connotation of the concept according to different spaces and periods of time, eliminate the monopolization of pure metaphysics in interpreting its connotation, realize that it has solid social basis and plays very reality-based social functions, we should upgrade the feelings and assessments of people's sense of dignity and spiritual independence into the important premise of human rights protection. We cannot limit the concept on the top of the ivory pagoda, but should enable its connotation to be vividly interpreted through a series of mechanisms so that it can gain effective social consensus and real acceptance. Though the mechanisms in this aspect are insufficient, we can still find similar institutional bases after careful consideration. After the prosperous development of the institution of public participation, we can often see the public participating in various decision-making processes on the roles of consultants, evaluator and even establisher of value goals. Among the ways of public participation, the mechanisms of opinion integration and value combination have emerged; on the other hand, overseas polls also have very mature operation mechanisms. We can introduce them and institutionalize them. More importantly, China's Constitution and current international convention system have important assertion on this. For instance, Item 2 of Article 27 of China's Constitution reads: "All State organs and functionaries must rely on the support of the people, keep in close touch with them, heed their opinions and suggestions, accept their supervision and do their best to serve them." Article 35 reads: "Citizens of the People's Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration." Meanwhile, *the International Covenant on Civil and Political Rights* also has detailed description on the freedom of speech, of assembly and of association from Article 19 to Article 22. All these are the premise of properly launching the practices of human dignity protection. Only when we have adequate subjective evaluation on human dignity conditions in specific period of time and specific place, can we clearly



understand our detailed goals and distances.

The coverage of the institutions of the second aspect is very wide, including but not limited to the basic rights and interests system and social welfare measures in China's Constitution, the human dignity-related clauses, personality right system and institutions of mental compensation in the Civil Law, punishment on the crimes that severely infringe human dignity such as abducting and selling women and children in the Criminal Law, institutions of combat discrimination and mechanism of protecting laborers in the Labor Law, corporate social responsibility in the Economic Law, legal principle of penalty, institutions of public participation and accountability systems in the Administrative Law, the principle of presumption of innocence and stipulations of banning extortion of confessions by torture in the Criminal Procedure Law, clauses of mental compensation in *the Law on State Compensation* and a large number of international laws and documents in the realm of human rights protection, all of which reflect the spirit of human dignity. China has made great progress in the institutionalization in this aspect. It not only preliminarily established a human dignity protection system covering all aspects of social life, but also continues to make new breakthroughs. For instance, Article 43 of *the Administrative Coercion Law of the People's Republic of China*, which was adopted recently, stipulates: "Administrative organs shall not conduct administrative mandatory executions at night or legal holidays and festivals, except for emergencies. Administrative organs shall not force people concerned to implement related administrative decisions by means of cutting water, electricity, heat and gas supplies in citizens' life." The newly implemented *Law of the People's Republic of China on Social Security* clearly describes various measures of social security. Article 2 of the law clarifies: "The state shall establish social security systems such as the basic endowment insurance, basic medicare insurance, work-related injury insurance, unemployment insurance and maternity insurance to protect citizens' rights of obtaining material assistances from the state and the society according to law in cases of old age, disease, work-related injury, unemployment and giving birth to babies." In general, the above-mentioned laws can be summarized as the laws and regulations ensuring individuals and their communities to be properly treated by the society, state and international community according to the requirements of spiritual independence. Here, "proper treatment" does not apply to all circumstances, but has a floatable standards according to subjective assessment system in specific places and specific period of time. The threshold should be determined according to China's development levels and the scale of available resources.

Hence, in general, the progress of human dignity in China's human rights laws and regulations is a dynamic deepening process; we have made important achievements in this regard and should constantly increase the protection goal to fully protect human dignity and various human rights. In the future, we will continue to expand the institutional scope of



human dignity protection in the following three aspects:

First, constantly improving protection levels. These detailed laws and regulations on human rights can improve the protection of human dignity in the legislation and implementation with the improvement of resource and institution conditions. In the area of legislation, take laborer protection mechanisms in the Labor Law for example, the law can grant greater rights and interests to laborers in aspects such as work safety, working time, labor organizations and relations between employers and employees with the constant improvement of economic development and continuous increase of the level of law-based governance, so as to enable laborers to have more dignified life. More importantly, on the layer of law implementation, we still need to make great breakthroughs in some areas of implementing laws and regulations on human rights protection. For instance, we can make efforts for further achievements in the areas such as the deepening of the implementation of Article 41 of the Constitution, which grants citizens with the rights of criticizing and making proposals to the state organs and their functionaries, launch of procreation right according to Article 17 of the *Law of the People's Republic of China on Population and Family Planning*, and the affirmation of compensation responsibility and mental injury compensation standards so as to better protect human dignity.

Second, introducing and establishing protection mechanisms. Besides improving the existing operation levels of protection mechanisms, we can also establish or introduce new protection mechanisms from overseas countries so as to better protect human dignity. China is currently actively introducing or constructing many high-level laws and institutions of human dignity and human rights protection. For instance, the establishment and improvement of civil salvation management stations, softening of administrative management and exploration and launch of new insurance system in rural areas, new medicare insurance and community medicare system are the examples of introducing and establishing new type of protection systems.

Third, breakthroughs and expansions of institution frameworks. With the increase of usable resources and constant improvement and life of sense of dignity, human dignity protection will continue to enter new institutional space and will not stop at the human rights norms of developed countries or some certain idealized institutional template. So long as we need to continue to increase the subjective evaluation and expectation of human dignity and further improve objective conditions, we need to develop new modes and new institutions to protect new appeals of dignity protection. This involves more profound changes. For instance, in order to better protect people's spiritual independence, we need to further decrease people's feelings of being arranged, being decided on and being excluded. Thus, we need to grant greater position to the people as the main players. Shifting from administrative management to public administration and from hard ruling to ruling in a hard and soft



manner is a typical example today. In the future we will be very possible to exceed the public administration mode of today and usher in better institutional frameworks. For this, we need to have the reforming attitude to keep paces with the era and usher in further breakthroughs of the cause of human dignity and human rights protection.

Conclusion

In general, since the connotation of human dignity has subjectivity, sociality and relativity to some extent, its protection approach should not be immutable. We should not have blind faith in some certain templates and should not distort or even abandon the basic value that is of vital importance to human rights cause at will. We should absorb the advantages of human dignity and human rights protection institutions worldwide and gradually provide energetic protection to human dignity through detailed human rights protection institutions by means of combining the spiritual core of human dignity and listening to our own dignity appeals.

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CHINA HUMAN RIGHTS PROTECTION





Protection of Women's Rights and Interests in Macau

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I. Introduction

With China's reform and opening up, great achievements have been witnessed by all of us in the protection of human rights, the basic pursuit of which is the gender equality. Remarkable achievements have also been accomplished in the protection of women's rights and interests. It has been 12 years since Macau's return to its motherland. Over these years, Macau, under the framework of the "Basic Law," has successfully practiced the great concept of "one country, two systems, Macau people administering Macau." The rapid economic development is also accompanied by the persistent improvement of living standards, women's position, and women's rights and interests.

A study on the gender difference in Macau has been conducted by Women's Affairs Advisory Committee of the Macau Special Administrative Region in recent years, to look into the gender equality conditions in Macau. Based on the relevant researches, women's basic conditions of survival and development are good, better than the average level of the world. The gender equality condition in Macau remains at a relatively high level when compared with that of the other regions of Great China, even the world.

In addition to the continuous endeavors of Macau Government and the non-government organizations, the aforementioned success is attributed to the relatively perfect legal system.

The law, to a large extent, is a reflection of values of human society, including the moral orientation. Therefore, the value orientation of the citizens in one region can be learned through the study of the local laws. This paper will introduce the protection condition of women's rights and interests in Macau based on the current laws, so that we can understand the relationship between the human rights and the protection of women's rights and interests in Macau.

Some basic principles will be introduced first from the perspective of constitutional laws and international conventions, and then the protection of women provided by the current Macau laws will be explored, from work, family, crime, and other aspects.

II. The Provision of the "Basic Law" and International Conventions on Women's Rights

The laws serve as one of the main means to protect women's rights. In Macau, the



main basis of the protection of women's rights is the "Basic Law" of the Macau Special Administrative Region and the relevant international conventions.

As the fundamental law of the Macau Special Administrative Region, the "Basic Law," which took effect at the return of Macau to the motherland, offers the protection of gender equality and women's rights. Its Article 25 states: Macau residents shall be equal before the law, and shall not be discriminated due to nationality, origin, race, sex, language, religion, political or ideological belief, educational level, economic status or social conditions. Therefore, both men and women equally enjoy the rights and shoulder obligations set by the law. Namely, women enjoy all the rights and freedoms the "Basic Law" awards to the Macau residents, including work, speech, marriage, and so on.

On the other hand, the protection of women's rights is witnessed in the international conventions and regional agreements, which are set by the "Basic Law" and are applicable to Macau. For instance, the gender equality and other issues are regulated in *the Convention on the Elimination of Discrimination against Women*, including women's rights in education, health, family life, job opportunities, economic, personal security and other aspects. In addition, *the International Conventions on Economic, Social, and Cultural Rights* offers a solid legal foundation for the gender equality and women's rights, especially in the economic, social and cultural rights.

Thus, behind the provisions of the "Basic Law" and relevant international conventions, the gender equality as one of the fundamental principles is embodied in all the legislations, to offer the most fundamental protections of women's rights in Macau. Next, the paper is to introduce how women's rights and gender equality are embodied in the legislation.

III. The Protection of Women's Rights in the Labor Relations and Social Security System

1. Labor relations

Whether the gender equality is fully implemented is largely reflected in the work, employment, and others. To ensure the gender equality and protect women's rights, we must ensure that women get the same rights and opportunities as men, in terms of work, employment, and that they are offered special and adequate protections in particular cases.

No. 7 / 2008 law of Macau's current "Labor Relations Act," which entered into force on January 1, 2009, offers further protection of the rights of female workers in Macau, mainly including the following areas:

1) The principle of equality:

Labor Relations Act has clearly stated the principle of equality, which is embodied in the relevant provisions of the law. For employment, the law expressly states that men and women enjoy the same rights, and do not differ from each other because of gender, marital



status and other factors. For instance, in the job advertisements, no restrictions shall be directly or indirectly made upon the gender; no admission priority shall be given due to the gender difference, and gender can't be taken into account, unless the nature of work is special. Men and women are equal in front of the law in the aspects of pay, benefits, promotion, and so on. The salary must be based on objective criteria, in line with the principle of equal pay for the same job. It is regarded as discrimination, if gender is taken into account. It also provides that men and women get the same opportunities for promotion, which should not vary by gender.

2) Special protection of women:

In addition to the principle of equality, the law offers special protection of women based on their special conditions, including:

i. Women are prohibited to take up the work affecting their fertility: Generally, men and women enjoy the freedom of selection of occupation, while the law has expressly stated that women are prohibited to take up the work substantially or potentially endangering their fertility, to protect women's health.

ii. Maternity leave: Women employees get 56 days of maternity leave, and their maternity leave is paid if the employees have worked for a year.

iii. The protection of pregnancy: The law has worked out regulations to protect the pregnant women, whose rights of work can't be damaged because of pregnancy. The pregnant women can not be unfairly dismissed during the pregnancy and three months after childbirth. Moreover, the female employees shall not be arranged at the work causing adverse effects on the body over this period.

2. The social security system

The establishment of social security system is to offer the basic social security, especially the protection of pension, to improve the quality of life of residents. It has also been stated in the legal system that all qualified residents have equal right to participate in the social security system.

IV. The Protection of Women in Family Relations

In the past, the concept of "follow one's husband no matter what his lot would be" remains rooted in China, so is the concept of "men work outside, women work at home." But with the social development, these concepts are increasingly being changed, which is reflected in the law. Relevant provisions have been stated in the law to specify that men and women enjoy the same rights and shoulder the same obligations in family affairs.

1. The rights and obligations of the couple

Family and marriage are shared by the couple. Neither party is superior to the other. It has been stated in Macau's current law that the marriage is based on the fact that the couple



enjoy the same rights and shoulder the same obligations. Both parties are held responsible for the management of family affairs, mutual respect, fidelity, cohabitation, cooperation and mutual support.

Both parties can add the other party's surname to their own name after marriage, which, however, is a right rather than an obligation. The married woman doesn't need to follow the surname of her husband.

After marriage, any party can engage in any occupation or work without the consent of the other. Thus, the concept of "men work outside, women work at home" is no longer a "law."

2. The couple's property

How does the law state about the post-marriage property? The couple ready to get married can freely set the property system within the scope permitted by law.

For the management of family property (the house where the couple live) can't be managed or handled at random by whoever owns it. The family property can't be handled by whoever owns it even after the divorce.

The provisions above reflect the protection of the relatively weak party of the couple, especially the woman. Nowadays, although men and women become equal, there are still a large number of women who give up career for the family. Based on the relevant reports on the situation of women in Macau, one-third of women give up their careers for the family.

3. Divorce

Marriage can not always be wonderful and perfect. Even if the law does not advocate divorce, it provides two ways of divorce, consensual divorce and divorce by litigation. The divorce proceedings are generally made against the fault of the other party.

In the divorce proceedings, the party at fault generally bears the obligation to support the other. But, based on the law, the party who has no legal right to be supported can be given the right of being supported, in particular, the party who has ever made contribution to the family, which is decided by the judge according to the actual situation. So, even if one party bears the fault, or both are not at fault, both of them can get support. Such a provision offers great protections of the women who give up the cause for the family.

V. The Protection of Women's Personal Safety

Due to the physical conditions, women are often victims of crimes. Thus, the protection of women must be clear in the law, especially in the following cases:

1. Sexual crimes

1) The general sexual crimes

In the existing law in Macau, the provisions mainly cover the following sexual crimes, including rape, sexual coercion, sexual assault on the disabled, and other charges. These charges are to protect women's sexual freedom. The law also provides that the related



penalties will increase if the victims may suffer from sexually transmitted diseases or acquired immune deficiency syndrome, or may be pregnant, or may suicide or die, etc.

In the existing law of Macau, the term of “sexual harassment” is not specifically defined, but it does not mean that such behavior will not be subject to legal sanctions, especially in the cases of minors. It has been stated in the criminal law that one may be sentenced in prison up to three years, *if he says obscene words, or displays pornographic writings, videos, or presents obscene performances to the children under 14 years old, or takes or shoots pornographic photographs, films or recordings by using the children under 14 years old.* The law does not offer the same protection of the people over 14 years old, but the serious “sexual harassment” is still subject to legal sanctions, as the law regards the relatively serious “sexual harassment” as a type of “sexual coercion,” hence the possible conviction of “sexual coercion.”

2) The special protection of minors

Generally similar to the world, special protection is offered to the minors in Macau. Based on the criminal law of Macau, those who are over 14 but under 18 years old are defined as minors, and those who are under 14 years old are defined as children. For the protection of physical and psychological healthy development of the above two, special protections are offered against the sexual crime.

(a) The protection of minors over 14 but under 16 years old:

As stated in the law, one will very possibly be convicted if he has sex with a girl under 16 years old, even in the case of willingness of the female victim. But the conviction must be in line with the pre-condition prescribed by the law, which is that one has sex “by using the inexperience of minors.” The inexperience here refers to the so-called “ignorance,” that is, the illegal man lures the ignorant girl to have sex with him by using a variety of unscrupulous techniques, so that he can release his lust, or satisfy his or others’ sexuality. For the sexual behavior between boys and girls who are indulgent and act in a disorderly manner, they will not be convicted as stated above.

(b) The protection of minors over 16 but under 18 years old:

The above legal requirements are not applied to the minors over 16 but under 18 years old, who are considered relatively mature. However, it does not mean that the law does not provide them with protection. According to the Macau law, the person who has the obligation to foster or educate minors will be sentenced to prison if he commits sexual crimes to the victims by using his status.

(c) The protection of children under 14 years old:

The law offers more protections to the children under 14 years old. Due to their immaturity, the precondition of “using the inexperience of minors” is not taken as a condition of sexual crimes, which fully reflects the protection of healthy mentality of young girls.



2. The measures against the manipulation of prostitution and human trafficking

Some women are forced to sell their bodies as prostitutes and earn a reward because of economic problems. Since the ancient times, there have been criminals who make a profit by using various means like coercing and inducing women into prostitution. So the Macau law has set “sex trafficking,” “manipulation of prostitution” and other charges, to punish those who control prostitution.

At present, the prostitution business is well organized, and is even cross-regional even transnational. The method of human trafficking is often used, to force women into prostitution or sexual exploitation and to derive a large profit. As an ancient evil, human trafficking has been a global issue with the progress of human civilization and the rising awareness of human rights. Together with the drug trafficking and terrorism, the human trafficking, as a global issue, has been one of the three major international crimes.

For the problem of human trafficking, in addition to the international conventions, international cooperation, the local legislation is also needed. Therefore, Macau has set a new set of laws to further fight against human trafficking in 2008. New methods of human trafficking emerge one after another, including violence, coercion, trickery trick, using the victim’s mental fragility, and so on. Relevant provisions have been set in the new law to crack down these situations and ensure the human rights of women, children and other groups.

3. Domestic violence

In the past, women are often economically dependent on men who dominate the family. Woman is always the injured party in the unfortunate case of domestic violence. Thus, the value that women are protected against domestic violence must be reflected in the law. In fact, special regulations are offered against the related crimes. Based on the Macau’s criminal law, one will be sentenced to prison if he or she commits physical or mental abuse on the spouse or the counterpart under de facto marriages. It is noteworthy that the scope of protection against domestic violence covers both the spouse and the cohabitant. The acts of violence do not only necessarily include the physical one, but also include spiritual one.

VI. Summary

It can be seen from the introduction above that the universal value of gender equality is reflected in Macau’s legislation. At work, employment, learning and other aspects, the law provides women considerable protections to ensure that women work and study under the premise of equality. In addition, due to women’s physiological situation, the law contains special provisions to offer special protections to pregnant women, who are ensured not to lose their jobs because of pregnancy.

In the family, both men and women are ensured to enjoy the same rights and bear the same obligations, and share the family responsibilities. Meanwhile, the protections



are offered to the women who have given up careers for the family through family accommodation, support, and other systems.

For women's personal security, the law has set a variety of charges, to protect women against sexual crimes. In addition, the applicable international and inter-regional agreements, international and regional cooperation would be combined to crack down the cross-border organized manipulation of prostitution and human trafficking, and to offer the maximum protections to women's physical and psychological safety.

It is seen from above that the Macau legislature, with the "Basic Law" as the fundamental basis and the guidelines prescribed by the international and inter-regional agreements applicable to Macau, has offered considerable protections to women's rights through various forms of legislation. However, the improvement of women's rights and the protection of gender equality still remain a task of Macau, as the absolute gender equality does not occur in any country or region. While the relevant legal systems are continuously strengthened and optimized, the education, the power of government and civil society also need to be combined, to protect women's rights and fight for the gender equality.

(The author is Member of the Legislative Council of the Macau Special Administrative Region.)



Ruling Concepts of China and the Progress of Human Rights in Hong Kong

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On July 1, 1997, the Chinese government resumed its exercise of sovereignty over Hong Kong. During the 155 years before that, Hong Kong was separated from the motherland and under the colonialism rule by the United Kingdom-controlled authority. Before October 1, 1949, the Chinese mainland was in semi-colonial and semi-feudal society and the Chinese people were under autocratic rule of the imperial court of the Manchu, Northern Warlords, the Kuomintang and the Japanese invaders. People did not have any human rights, let alone the right to live and right to sufficient food and clothing. China was called “sick man of the East Asia.” As the suzerain state of Hong Kong was the United Kingdom, a traditional developed capitalism country, it transplanted a set of excellent tradition of freedom and rule by law into Hong Kong. In addition, Hong Kong also had such policies as administrative guidance policy, simple low-tax system and a free harbor, it had better economic base and superstructure than the Chinese mainland, which was still in semi-colonial and semi-feudal society. It also had better situations of human rights. In 1923, Mr. Sun Yat-sen returned to his alma mater Hong Kong University and delivered a speech. He meaningfully put forward the idea of “regarding the Western people as an example,” targeting the social gap between the Chinese mainland and Hong Kong.

In 1949, the People’s Republic of China was founded. In theory, it is a people’s republic led by the working class and based on alliance of workers and peasants. However, the ruling party also made mistakes, even serious mistakes, and experienced detours during the process of socialism revolution and socialism construction. In the summer and autumn of 1967, under the guideline of “continuing revolution under the dictatorship of proletariat,” the Chinese mainland witnessed the climax of the Cultural Revolution featuring “doubting everything, all-round civil war and chaos throughout the country.” To the outside world, it propagandized for the “world revolution” featuring “Overthrow imperialism, revisionism, reactionism, and liberating all human beings.” Influenced by the extreme leftism trend, the Britain agency in Beijing was burnt, a serious diplomatic accident. In Hong Kong, chaos of “anti-the United Kingdom and combating cruelty” also took place. At that time, the markets in Hong Kong were full of explosives, real or fake, leading to great social chaos. Both the UK-supported



authority and leftists had extremist activities, leaving a pitiful page in the history of human rights in Hong Kong.

At the end of the 1970s, the Chinese mainland started the discussion of “Practice is the sole criterion of truth,” summarized the positive and negative historical lessons in ruling the country after the new China was founded, decisively ended the “class struggle as the guiding principle” at the Third Plenary Session of the 11th Central Committee of the Communist Party of China. China entered the new era of reform and opening up featuring “focusing on the central task of economic construction.” In rural areas, farm output quotas were fixed for each household and people’s communes were dismissed, greatly emancipating productivity. In urban areas, the reforms of state-owned enterprises gradually replaced planned economy with market-oriented economy, totally changing the state of “poverty and blankness” featuring shortage of materials and supplying all products according to coupons. People’s livelihood has been upgraded from having only enough to eat and wear to a well-off society. During the process, with the changes of concepts, the revolutionary party became the ruling party and the concept of “rule by man” is being shifted to “rule by law.” Compared with the period before reform and opening up featuring constant political movements and “analyzing and treating everything from the angle of class and class struggle,” China has witnessed great improvement in its human rights (including right to live and right to have sufficient food and clothing) development.

It was in the context of reform and opening up that Deng Xiaoping and other Chinese leaders broke the traditional ideological trammels. “In order to maintain the national unification and territory integrity, maintain prosperity and stability of Hong Kong and taking into consideration of the history and reality of Hong Kong, the state decided to adopt the policy of ‘one country, two systems’ while resuming the exercise of sovereignty over Hong Kong. The state will not implement socialism system and policy in Hong Kong and remain its capitalism system and life style for 50 years.” The Central Government issued *the Basic Law of Hong Kong Special Administrative Region of the People’s Republic of China* to ensure various rights and freedoms of Hong Kong citizens, including the freedom of speech, of the press, of publication, of association, of assembly and of demonstration.”

Before Hong Kong returned to the motherland in 1997, U.S.-based *Newsweek* once claimed that “Hong Kong is dead.” However, the more than 10 years’ practice of “one country, two system” after 1997 proved that the Chinese Government totally abides by its international commitments and related laws: in the past 14 years after Hong Kong returned to the motherland, no Hong Kong citizen was detained or punished because of different political views or criticizing the government; no newspaper, magazine, radio station or website was blocked because of criticizing the Chinese Government or the government of Hong Kong SAR. In recent years, all the several thousand of assemblies and demonstrations a year get No



Objection Letter from the police; even the annual candle commemoration and demonstration that goes against the official stance of the Chinese Government related to Beijing accident in 1989 is held every year without any obstruction. Even an illegal organization of the Chinese mainland can hold high its slogans in front of the office of the Central Government in Hong Kong, Hunghom Railway Station, Star Ferry and the busy market in Causeway Bay all year round. Even the text and photos are “reactionary,” the activities are not nullified by the police or crashed by any one. Every time when the Chinese leaders visit Hong Kong, the SAR government will designate demonstration zones so that parties with different political views can express their opinions.

Undisputable facts show that with the development of Chinese Government’s ruling concepts and values, the “one country, two system” mode in Hong Kong can be implemented smoothly. The reliable and comprehensive protection of human rights of Hong Kong people is closely related to the progress and tolerance of China.

Actually, the universal values such as freedom, democracy, human rights, rule by law and market economy are the civilization fruits for all human beings, not the “patent” of the Western countries and capitalism. In 1992 when Deng Xiaoping visited south China, he criticized the leftist opinion of “reform and opening up should distinguish capitalism from socialism,” and put forward criteria in three aspects, launching the historical transform from planned economy to market economy and putting China’s economy on the fast lane. Based on the concept of “existence determines consciousness,” transformation of economic basis leads to progress of values. This substantively is to embrace the fruits of universal values so as to provide more solid and more abundant material and spiritual bases to improve China’s human rights (including the right to live and right to sufficient food and clothing). The soaring economic development and transformation of concepts of China can bring endless business opportunities for Hong Kong. Hong Kong can transfer its labor-intensive industry north to the mainland and energetically develop its service industry so as to better develop economy, improve people’s livelihood, promote harmony and encourage democracy. The Central Government has made decision that Hong Kong can generally elect its chief and Legislation Council in 2017 and 2020 respectively, consolidating the basis of social and human rights progress in Hong Kong.

In human rights realm, practices show that “a good motherland can improve Hong Kong; and a good Hong Kong can make the motherland better.” I would like to specially mention the important thought of “three represents” initiated by the third generation of leading core of the Communist Party of China. “Representing the development trend of China’s advanced productive forces” includes market economy and science; “Representing the orientation of China’s advanced culture” covers the concepts of freedom, democracy and rule by law; “Representing the fundamental interests of the overwhelming majority of the



Chinese people” naturally includes human rights. We can say the important thought or “three represents” is the ruling concept mostly close to the universal values against the background of economic globalization that can consolidate the theoretical basis of “one country, two systems.” The mainstream values of Hong Kong society are in line with the universal values; it isn’t incompatible with the socialism values with Chinese characteristics. They respect each other on mutual beneficial and win-win basis. In this regard, the Chinese mainland and Hong Kong can promote each other in human rights development for joint progress.

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Towards a More Comprehensive Outlook on Human Rights *

WANG Sixin
China

1. Preface

With the swift progress of globalization and ceaseless emergence of mass media technologies, especially new media service forms centered on the Internet and featuring globalization that are driven by scientific technologies, we can more easily catch sight of human rights practice under the guide of different human rights ideas in different countries around the world; besides, it also provides convenience for us to grasp the new trend of development of current human rights as a whole; and set the exploration of human rights and human rights practice carried out since China's opening up and reform against the magnificent background of the world's human rights cause, so as to more conveniently compare them with other countries' human rights ideas and practice, especially with the first-generation human rights of the West, which contrast sharply with China in terms of human rights ideas and human rights practice and feature many disputes as well.

Generally speaking, the development of human rights around the world today, i.e. the human rights situation of the age we are living, is a blending of classical human rights (first-generation human rights) outlook, second-generation human rights outlook and new human rights outlook. New human rights outlook, i.e. the human rights outlook proposed and held by the Chinese government which centers on the rights to subsistence and development, is advocated by more and more countries and scholars while the classical human rights outlook maintained and held by the western countries is questioned by more and more people.

The human rights ideas and concrete models for human rights protection are choices made by the western countries and China for human rights strategies and human rights roads based on different histories, culture and unique natural resources and other factors, and therefore none of them is superior than the others or is more appropriate for becoming the

* I should hereby give special thanks to Mr. Chen Zhengong for his precious suggestions on revising this article. Besides, I was greatly enlightened by speeches made by representatives such as Li Junru, Vice Chairman of China Society for Human Rights Studies, and Xu Xianming, President of Shandong University, at Symposium for "Theoretical Issues concerning Development and Innovation of China's Human Rights Theory and Practice" held on August 25 this year, so hereby thank them very much.



model. To achieve better development of human rights all over the world, different models for human right protection models guided by different human rights ideas should seek common ground while put aside differences and complement each other.

2. Three Generations of Human Rights Outlook and New Human Rights Outlook

The so-called classical human rights outlook mainly refers to the human rights outlook proposed on the basis of western classical liberalism philosophy in the 16th and 17th centuries. It highlights the basic political rights and freedom, including freedom of speech and press and property rights etc. *The Declaration of Independence*, the main outcome of outlook on human rights of this generation announced by the US for seeking for national independence and liberation, looks on equality, freedom and pursuit of happiness as natural and unalienable basic rights and freedom of all men. *Declaration of the Rights of Man and of the Citizen*, declared by France in 1789, also outlines in detail a series of political rights and freedom enjoyed by individuals.

This outlook holds that these rights are basic human rights and freedom, entitled by the god; they are natural rights; governments, countries and various systems should take the protection and promotion of these rights and freedom as their ultimate goals, or the legitimacy of these systems and state power will be weakened.

At the social level or more comprehensive level, this outlook highlights that the government should respect the people's autonomy capability, respect the basic rights and freedom enjoyed by the people, definitely believe in the people's abilities of governing themselves, protest and watch out for government power intervening in people's affairs without any reason, and thus the people are able to fully enjoy these rights.

The typical representative of people holding this outlook is John Stuart Mill, a British philosopher. In *On Liberty*, his classic works on liberalism, Mill considers that government should not intervene in individuals' free choices and actions as long as such choices and actions are not detrimental to the interests of the society or others. Accordingly, the government has no right and should not intervene in individuals' personal life so as to ensure individuals can independently grow and resist intervention of the state or other social forces in individuals' living space and freedom.

This outlook is based on the nonintervention of the government, so it's also called negative outlook on human rights.

The core contents of second-generation human rights outlook are economic, social and cultural rights. It was put forward on such a background that main western capitalist countries have completed the capitalism revolution and various law systems have fundamentally been established. After the World War II, with the formulation of international human rights



protection mechanisms and conclusion of international human rights conventions, especially with the promulgation of *International Covenant on Economic, Social and Cultural Rights* in 1966, it's universally accepted by the international society.

The central meaning of second-generation human rights outlook is that the government or state should initiatively enhance the growth of social welfare in a comprehensive manner by means of effective and reasonable policies and administrative actions so as to create as much space for each member to survive and develop as possible. The state should capitalize on all available resources, by means of optimizing allocation of resources, and developing social economy, to continuously increase the wealth base for social welfare, ensure and continuously raise the welfare level of the society, so as to guarantee the people can enjoy a series of active rights, including right to work, right to education and right to obtain appropriate living conditions.

The realization of these rights requires the state's active actions, so it's also called active rights. Besides, the rights concerning economy, the society and culture are also named active human rights.

The new outlook on human rights emerged in 1970s or so, centered on the right to subsistence, along with the right to development and right to low-density housing, and right to use resources permanently, etc. The new outlook attaches great importance to national sovereignty, highlighting the model of economic development under the guide of the government, pooling the collective strength for resolving social problems, raising the level of protecting human rights and improving the human rights situation in the country. The new human rights outlook also pays more attention to the relations between development and security, considering that promoting human rights aims at enhancing development; only development can provide solid material base for the development of human rights cause; and development also requires security, for if there is no security, the results of development can not be consolidated and increased. Thus, the balance between right to development and right to security is also one of the important contents highlighted by new outlook on human rights.

3. Dilemma Facing Classic Human Rights Outlook in Modern Times

Traditional human rights outlook is facing challenges and the new one is attracting the attention of more and more countries. Some assumptions or ideas of first-generation human rights outlook focusing only on political rights and freedom have become incompatible with the actual state of the society today, and are increasingly questioned by various countries and scholars.

For instance, the concept "All human beings are born free and equal in dignity and rights" of the West no longer accords with today's social reality. The living conditions of people born in a rich family are much better than those enjoyed by people born in slums; so



is the social welfare enjoyed by an American than that by a common Ethiopian or a common Afghan. For this reason, we should replace the important concept of classic human rights outlook “Man was born equal, and he is everywhere in chains” with “Man was born unequal, but strives for equality all the time.”

The idea that human rights are natural and entitled by the god, held by the western classical liberalism, is becoming weaker and weaker in terms of persuasive power. In recent few hundred of years, an obvious phenomenon appears that new right claims are continuously put forward and new systems on rights are continuously established and becoming richer and more perfect in practice; many comparatively specific human rights and their increasingly enriched and perfected connotation, however, are actually based on the discussion carried out by people in all stations of life, especially human rights scholars, and created by the law, instead of given by the god or some unseen force. So, it's safe to say that the natural human rights held by western classic human rights outlook don't accord with today's social reality.

Secondly, first-generation human rights outlook puts political rights and freedom first, just showing that it's a choice of the western human rights scholars and governments of the United Kingdom, the United States and other countries, or a scheme implemented during the process of understanding, protecting, and promoting human rights. Such a scheme doesn't necessary mean that the government's rights and freedom are naturally or should be superior than the rights to subsistence and development. In some sense, the objective of entitling people with rights to vote, right to free speech and press is not for the sake of these rights themselves, but for the people enjoying a better life.

Under such a circumstance, political rights and freedom don't have ontological significance but just significance of organon, i.e. protecting and promoting people's enjoying of political rights and freedom is just a way for creating a better life and more comfortable living conditions.

The western countries prioritize political rights and freedom and they even pay more attention to these rights and freedom when they are making policies and human rights output. Why can't China and other developing countries prioritize the rights to subsistence and development in light of such basic conditions according to their own history, culture and natural resources? Why will other countries adhering to roads featuring unique human rights development that are different from those for western countries be strongly rebuked by the West or even intervened in by means of diplomacy and force?

China takes the right to subsistence and the right to development as the foothold and starting point for human rights policies and human rights legislation as well as various activities of the government, as the top priority of human rights cause; and it's not inferior to human rights value of the West at the value level of human rights; more importantly, it has nothing to do with the problem that one is superior to the other or what's right and



what's wrong. They are just two models for human rights protection. No one has the right to consider itself to be the tutor of human rights and speak highly of its own choice while condemn the other's violates the spirit of international human rights conventions.

Undoubtedly, its external meaning is obvious, i.e. any country has the right to explore the road of human rights development featuring its own ethnic and national characteristics in light of its own conditions and without violating international human rights conventions and the basic spirit and principles established in these conventions, as well as construct its own outlook on human rights and theory concerning human rights.

Look on and judge the human rights situation of various countries with this point of view and standard, the difference existing in human rights protection of various countries should be categorized as difference, not gap. On this occasion, China should explore its own human rights theory and adhere to its human rights development road more justly and forcefully. Meanwhile, we should refute various groundless accusations against us made by the West with more confidence and solid position.

Thirdly, western democratic systems have their inborn flaws, which is best demonstrated by Greece, the origin of democracy, that is facing the destiny of bankruptcy. On the one hand, the credit crisis facing the government is sufficient to throw the nation on the verge of bankruptcy; on the other hand, the government is incapable of saving itself and the nation by means of cutting expenses, including various social welfare; consequently, the credit of Greece is repeatedly downgraded by the international society since the outbreak of the worldwide financial crisis.

The fundamental reason for this situation is that in order to obtain the ruling position and gain more votes than its political rivals in the process of competition, the ruling party racked its brains to make all kinds of promises for satisfying unlimited desire of voters for welfare regardless of the actual conditions of the country. But they tended to forget that the social wealth created by the nation and its predecessors during the terms are limited and the nation's natural resources are also exhaustible. After they came to power, they found that there were not so much wealth for use in the country and there are not so many resources for the government to improve the people's social welfare situation. Under such a circumstance, the government had to increase its promises to the public, and on the other hand, the government can't satisfy the increasing desire of the public for a better future and richer material life. If this conflict can't be resolved, the crises in so-called democratic countries such as Greece, at least in a short time, will not be eliminated.

This phenomenon repeated itself in the western countries, indicating that it's a political destiny that is not easy to get rid of by two-party or multiple-party politics. Two-party or multiple-party politics under the western democratic system, although boasting its advantages, sees the contradiction that can't be overcome. For example, the contradiction



between upgrading political promises made for obtaining the ruling position and limited capability and social resources to fulfill such promises will easily lead to the bitter experience of Greece.

The development vitality of the western world was weakened after the financial crises. One of the reasons is that tremendous social resources required by increasing welfare security of welfare society can not meet unlimited demands of the public for welfare.

As for western society increasing the welfare of all people, there are indeed many things worth our learning. During the long-term process of historical development, they have indeed accumulated rich experience, of which they always boast of when they have human rights dialogues with us. However, everything in the world has its two sides, so does upgrading of welfare level. When the development of the society provided smaller and smaller space for raising the welfare level, especially when the welfare level dropped increasingly seriously instead of rising due to economic crises worsening, the western developed countries tend to see social chaos, leading to a great deal of destructive actions; thus the human rights protection and promotion level of the nation or government will suffer comparative retrogression.

A large-scale riot happened in streets of London recently; France and other European countries have constantly seen riots, some of which even spread through the whole country in recent years, and some European countries saw growing opposition to foreign people and to immigrants from other regions, especially those from the Middle East, and European extreme right-wing forces was reawakened; all these phenomena show that European countries, which always take themselves as guard of human rights traditionally, also face massive human rights crises.

In light of the circumstance that they themselves have all kinds of serious problems concerning human rights, European countries should pay more attention to and dissolve the human rights problems of their own countries, instead of making unwarranted charges or irresponsible remarks on the human rights roads and human rights conditions of China and other countries.

4. Heading for a More Comprehensive and More Related Outlook on Human Rights

Criticizing the classic first-generation human rights outlook and identifying its essence and inherent defects is of extreme theoretical and realistic significance for our human rights cause both in terms of theory and today's reality. However, the author thinks that it's far from enough for us just to take the above-mentioned step. It's true that there are some differences existing in human rights ideas and models for human rights protection between China and the West, but they should not become the reason for us to reject the valuable experience obtained

by other countries, especially the western countries in developing their human rights ideas and models for human rights protection. The more desirable attitude is that we should make every effort to find out those worth learning from others, so as to continuously enhance the development of human rights cause during the process of keeping on learning other's strong points and correcting our own shortcomings.

As for China, the current development model pays too much attention to the interests of the State, government and collective, and less to the protection of personal rights and interests, leading to constant occurrence of violation of personal interests. However, the western countries always attach great importance to individualism or protection of basic human rights of individuals in aspects of human rights ideas and models for human rights protection. If relevant policies or measures are introduced in China's laws and policies, they may play a correction role for the practice or phenomenon of violating basic human rights of individuals existing in current practice. Besides, realizing such a substantive transformation in human rights protection will be of great significance for effectively responding to the accusation of the western countries led by the US and establishing a sound state image of China.

Secondly, the author doesn't support the proposal that puts the outlook on human rights and models for human rights development of the East against those of the West or separates them. The first-generation human rights outlook and models for human rights development adhered to by the western countries led by the US, or the right to subsistence and right to development highlighted and top prioritized by the Chinese government are both reasonable and have their own inherent logic. Just as mentioned above, China needs to learn human rights outlook and models for human rights protection of the western countries, and vice versa. Only when the West and China make up for each other's deficiencies and continuously fix the problems concerning their own human rights ideas and models for human rights protection, can they enhance the development of human rights cause of the whole world in a better, more comprehensive and effective manner. With the process of globalization speeding up and the relevance of human rights causes of different countries and regions increasingly strengthened, it has become more urgent and more important for all countries and regions to learn from each other and complement each other in terms of human rights ideas and models for human rights protection.

Thirdly, human rights are universally related and impartible. The right to subsistence and right to development held by the Chinese government and political rights and freedom, such as right to vote and freedom of expression, highlighted by the western countries as well as a series of other basic human rights outlined in international human rights conventions, are all related to each other and impartible. The practice separating the basic human rights outlined in international human rights conventions not only disaccords with the basic spirit



of a series of human rights conventions joined by China, but is quite harmful for guiding the practice with such an outlook on human rights.

The author thinks that there are somewhat differences in the human rights ideas and models for human rights protection between the western countries and China, but for protecting human rights and further promoting human rights ideas, China and the western countries should all refer to a series of human rights standards acknowledged and protected by international human rights conventions and the instructions, reports and decisions announced in official documents that can provide universal guidance made by UN Human Rights Council over human rights issues.

Human rights issues in the western countries or in China should all be discussed within the frame established by UN Covenant on Human Rights and human rights protection mechanism. We should take human rights conventions and the results achieved by the UN in protecting and promoting human rights as the value guide and practice direction for China's human rights cause. Because China is not only one of the members of the international community, but one of the countries originated and established such major human rights conventions as the Universal Declaration of Human Rights, and the member of many international human rights treaties. Besides, only by such ways, can China's human rights cause be accepted by the international society, and a better external environment be created for China's peaceful rise.

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Three Questions on Human Rights in China

YE Xiaowen
China

Many foreign friends recognize China's outstanding development in recent years, but suspect the human rights conditions of the country ruled by the Communist Party of China (CPC). They often ask three questions: How can the country ruled only by the CPC promote democracy? Can the atheist ruling Party be friendly to religious people? And how does the CPC protect human rights?

I. How do We Promote Democracy?

The CPC makes every effort to strive for democracy for the Chinese people, or to enable the Chinese people to be the masters of their country. When the new China was founded, even John Leighton Stuart, then U.S. Ambassador to China, admitted that in general, no matter for the Chinese people (especially farmers) or for Chinese and foreign observers, the CPC could leave such an impression on them: It devotes itself to the cause of the people; and it genuinely hopes to promote China's democratic cause, and wishes China to get a really independent and powerful position in the big family of the world.

After the CPC took the power, it first stressed the importance of democracy. Mao Zedong noted that we must be democratic in order to avoid the cycle of "becoming prosperous and then being toppled suddenly." Through people supervising the governments, the governments do not dare to slack off; only when all the people take responsibilities can we avoid the results of being toppled.

During the process of promoting socialism modernization, the CPC also stressed democracy. Deng Xiaoping stated that the purpose of constructing socialism modernization is to catch up with developed capitalism countries economically and create better and more pragmatic democracy than that in capitalism countries politically.

We must strive for "higher democracy," because: We organically unified adhering to the leadership of the CPC, making the people master of their country and ruling by law and established the people's congress system, the system of multi-party cooperation and political consultation under the leadership of the CPC, regional autonomy of ethnic minorities and self-governance of grassroots masses. These are the institutional guarantee of democracy. We not only attach importance to election democracy by establishing and improving the



systems related to voting and election and enhancing the rights to vote and the rights to stand for election, but also created consultation democracy. China has the world largest regular platform of consultation democracy – people’s political consultative conference of various levels, where representatives of various parties, stratum, circles, ethnic groups and domestic and overseas Chinese participate in political consultations through political consultation organizations according to the requirements of political consultation, democratic supervision and participating in deliberating and administration of state affairs. Combining election democracy with consultation democracy is the innovation of democracy forms.

We should make efforts to make our democracy “more pragmatic,” because: Most developing countries are facing not only the problem of democracy, but also the problem of how and in what form can the democracy be realized. Russia and east European countries once followed the Western democracy models, hoping to learn from the West through radical reforms. After many detours, the politicians and people there realized that though democratic politics is well worth pursuance, if democracy can not simultaneously promote economic and social development, it will lead to social discontentment and unrests, and the regimes will be of lower lawfulness. The “democracy” that leads to social unrest will finally harm the common people. The CPC closely combines sustaining economic development with improvement of people’s livelihood, harmonious and stable social orders, complete legal construction and active, stable and orderly democratic construction so as to provide a comprehensive and powerful law-based protection and social basis for people’s democracy.

Our democracy should be “higher and more pragmatic,” because our democracy construction can keep pace with the era. Currently, China is experiencing rapid economic and social development and is in the key period of reform when the economic system is being profoundly reformed, social structure is experiencing profound changes, the interest pattern is being profoundly adjusted and ideological concept is profoundly changing. The CPC should face the profoundly changing international and domestic situations, face the heavy task of reform, development and stability, face the new hopes of enabling people of various ethnic groups to lead a better life and face the new situations and new problems among the Party members and in the Party building. The four “profoundly” and four “face” require promoting and strengthening the advantage building, including actively promoting in-Party democratic construction and energetically enhancing unity of the Party, to increase in-Party democracy, promote people’s democracy, enhance in-Party harmony and promote social harmony.

II. How do We Unite Religious People?

How can the atheist CPC be friendly and unite religious people? The reasons are: The CPC earnestly, comprehensively and correctly implements the policy of freedom of religious beliefs. Being honest, the CPC can convince others and itself, and can issue earnest measures



to urge others and itself to implement related policies.

First, this is determined by the basic view of the CPC. Believing that matter is primary, objectiveness is primary and existence is primary, the CPC is fully convinced that the development and changes of objective matters are determined by their internal rules; any external interferences that violate the internal rules or any simple handling of complicated problems are ineffective. All but the subjective ideology are objectiveness and the existence of religions is also objective. As a universal and long-term phenomenon in people's spiritual life, religions have their social roots and recognition roots for their occurrence and development with their objective rules that are not subject to people's will. Religions will exist for a long term in socialism society and may be longer than the class and the state. We are materialists, and should recognize and respect the objective existence and objective fact. We should have a long goal and focus on the current situation so as to do the religion work according to the rules.

Second, this is required by the profound principle of the CPC. The profound principle of the CPC is to serve the people wholeheartedly; that is, to work for the majority, unite the majority and rely on the majority. All the efforts made by the CPC are to realize and maintain the basic rights of the vast people, which, of course include people's rights to freely choose their religious beliefs. The people (including religious people) are the creators of the social material wealth, and their practices are as well the sources and impetus of social spiritual civilization development. The conformity of the Marxism religious outlook and Marxism mass outlook means correctly looking at and treating religious people, believing that the masses can liberate themselves, making every effort to unite the masses around the CPC and struggling for their profound interests.

Third, this is the necessary work in guiding religions to play positive roles in China's social development. Religions are the long-term existences that are not subject to people's will, and the large amount of religion believers are the basic masses we must unite and rely on. Thus, we should guide religions to play their positive roles, instead of letting them exert negative roles. Atheists and religion believers have the same profound interests politically and economically. The differences in ideology and belief are not that important. We should unite and cooperate in politics and respect each other in beliefs so as to give play to the positive roles of religions in promoting social harmony.

Fourth, this conforms to China's history, culture and tradition. China does not have any national regime combining religious and political rules or religious wars like that in the history of European countries. China has the tradition of being tolerant to various cultures. China attaches importance to the sutras and doctrines of several religions, the cultural information from the life multiplication of human race accumulated from religious morality and arts, the experiences and philosophies of the historical accumulations from them, their



excellent elements of ethnic cultures and the trails of the spiritual civilization development of the human race. The policy of freedom of religious beliefs is in line with China's history, culture and tradition, and the requirements of religious people. The policy is also accepted by the majority of the people who do not believe in religions.

In China today, religious people and those who do not believe in religions and people of different religions unite each other harmoniously. Religions are playing positive roles in practices.

III. How do We Protect Human Rights?

People should enjoy the rights as human beings; by putting people first, we mean to protect the human rights. Based on the assertion of *the Declaration of the Rights of Man and of the Citizen* in France in 1789 that "Liberty, property, security and resistance to opposition are the natural and imprescriptible rights," there are three ways of realizing human rights with different characteristics: First, inspiring soaring individual consciousness, advocating liberty of personality and stressing protecting citizens' liberty from the tyranny of the government, which was formed in the United States and France during the French Revolution; second, the government actively interfering into social and economic life, which was formed during the Russian Revolution and soviet regime period; third, striving for sovereignty and protecting human rights, which was formed during the process of the third world struggling for national liberation and national independence. Though with different stresses, these ways reflect such logic: Rights can never go beyond the economic structure of a society and the cultural development of a society restrained by the economic structure.

The CPC protects the human rights because of its profound principle of serving the people wholeheartedly; more importantly, the CPC can also select the right way to realize human rights during the process of striving for liberation and promoting China's economic and social development consciously according to historical logic and China's national conditions.

The CPC led the new democratic revolution and has promoted the great human rights movement featuring toppling the oppression of the "three big mountains" and making the people masters of their country. After the founding of new China, the CPC gives top priority to ensuring the collective human rights such as right to live and right to develop because of the fact that China has a big population, poor development basis and great external pressure. This doesn't mean the CPC has neglected individual rights of citizens. Then, during the more than 30 years after China's reform and opening up, how does the CPC protect human rights?

First, the CPC protects human rights by reiterating its profound principle and clarifying its ruling concept. After bringing order out of chaos, the CPC stressed that realizing the people's will, hope and interest is the basis of developing the Party and the foundation



of ruling the country. Power, which is authorized by the people, should be used for the people and efforts should be made to care for the people and seek interests for the people. The CPC ruling the country means to lead and support the people to master the power of administrating the country by democratic election, democratic decision-making, democratic administration and democratic supervision so as to ensure people's extensive rights and freedom according to law. Starting the 15th National Congress of the CPC, the Party sets "respecting and protecting human rights" as an important goal of the Party and state development in the new century and new phase.

Second, the CPC protects human rights in the process of ruling by law and establishing a law-based socialism country. "The state respect and protect human rights" has been included in the Constitution. China's legal system has made detailed stipulations on the political rights, economic rights, social rights and cultural rights of citizens from different angles so as to ensure the citizens to enjoy extensive, genuine and universal human rights and basic freedom in laws and institutions.

Third, the CPC protects human rights in the process of promoting scientific development and constructing a harmonious society. The traditional human rights protection was limited either by the priority of citizen rights, or the priority of government administration. The Scientific Outlook on Development requires breaking through the either-this-or-that mode and establishing a brand new and balanced way of realizing human rights according to historical logic and China's national conditions: respecting the universality of human rights; giving top priority to protecting people's rights to live and rights to develop in the process of protecting human rights; ensuring all the social members' rights of equal participation and equal development according to law on the basis of promoting sound and rapid economic and social development; protecting citizens' freedom by protecting the public order; promoting all-round, coordinative and sustainable economic and social development by putting people first and energetically promoting harmony so as to gradually realize comprehensive development and emancipation of the human race.

China's human rights cause will get constant progresses with China's economic and social development.

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A New Mechanism to Promote and Protect Human Rights – On the Establishment of a National Human Rights Institute in China

ZHANG Wei
China

Respecting and protecting human rights is the important achievement of human society progress, the common pursuance of peoples worldwide, and the lofty goal for which the Chinese Government and people have been struggling for a long term. In March, 2004, “the State respects and protects human rights” was solemnly written into the Constitution of the People’s Republic of China. In March 2006, “respecting and protecting human rights to promote all-round development of the human rights cause” was written into the 11th Five-Year Plan for the National Economic and Social Development. In 2007, “respecting and protecting human rights” was included into the Constitution of the Communist Party of China at the 17th National Party Congress. At the 60th anniversary of the issuance of *the Universal Declaration of Human Rights* in 2008, Chinese President Hu Jintao specially pointed out at his letter to China Society for Human Rights Studies, “After the establishment of the new China, Chinese society has achieved world-recognized huge progress and Chinese people’s fate also experienced world-shaking huge changes; China’s human rights cause has also achieved historical development. Especially during the 30 years after China’s reform and opening up, the CPC and the government regard respecting and protecting human rights as an important principle of ruling the country...” In 2009, China’s first National Human Rights Action Plan, which was modified 10 times, was released to make a comprehensive plan for the development of China’s human rights cause.

On the morning of March 14, 2011, the Fourth Session of the 11th National People’s Congress adopted the Resolution of the Fourth Session of the 11th National People’s Congress on the Outline of the 12th Five-Year Plan for the National Economic and Social Development (draft). The 12th Five-Year Plan stresses more on putting people first, all-round, coordinative and sustainable development, giving overall consideration to all factors, protecting and improving people’s livelihood and promoting social equality and justice. Meanwhile, designers of the plan also clearly realized that China was still a developing country with a population of 1.3 billion. The problems such as unbalanced, unplanned and unsustainable



development are still prominent with increasing social contradictions. During the rapid development of social reforms, the social contradictions in China in the current stage will surely pose great challenges for the protection of individual rights. For this purpose, the Plan specially points out in its Chapter 55 “Promoting Legal System Construction in an All-Round Way” that efforts should be made to “strengthen human rights protection and encourage all-round development of human rights cause.”

Indeed, improving legal system and human rights protection mechanism is the vital link in promoting human rights cause in an all-round way. For this, legal professionals should undertake more social responsibilities. In 2004, Professor Xu Xianming organized professors of China University of Political Science and Law to complete the expertise opinions on Constitution amendment. After that, he led a joint research with the Raoul Wallenberg Institute on National Human Rights Institutions at China University of Political Science and Law, attended by nearly 100 invited domestic and foreign experts and scholars. They held several dozens of symposiums and more than seven years of scientific researches to explore the effective mechanisms of accelerating the resolutions of prominent social contradictions. At the beginning, some experts proposed to establish a special commission such as a human rights commission inside the people’s congress so as to prevent the issuance of laws that violate human rights from the drafting of legislations. As the time passes by, experts and scholars for the symposiums universally believe that China is necessary to accept the suggestions of some UN treaty-based bodies and establish an independent national human rights institute to promote and protect human rights¹ according to the guiding opinions of UN Paris Principles.

I. Various Suggestions of Human Rights Treaty Bodies on Establishing the State Department of Human Rights in China

China has ratified or acceded to more than 20 international treaties of human rights. In 1997, the Chinese government signed the International Covenant of Economic, Social and Cultural Rights; in 1998, China signed the International Covenant on Civil and Political

1 Please refer to Zhu Jingwen: “Levels of Human Rights Protection: Connection of International and Domestic Communities – Paris Principles and Problems Related to the Establishment of China’s National Human Rights Institute,” speech at the international symposium on “International Symposium on National Human Rights Institutions, October 17, 2004; Xu Xianming, Zhang Liwei and Zhang Wei: “Summary of the International Symposium on National Human Rights Institutions,” *Human Rights*, Issue 6, 2004; Han Dayuan: “Obligation of the State on Human Rights Protection and Functions of the National Human Rights Institutions,” *Legal Forum*, Issue 6, 2005; Xu Xianming: “On the Necessity of Establishing a National Human Rights Institution,” *Human Rights Research* (vol 6), Shandong People’s Publishing House, 2007 Edition; Chen Shiqu: “Establishing a National Human Rights Institution Is the Trend,” *The Beijing News*, April 22, 2008; Wan Xiang and Yang Shuai: “On the Relations Between the National Human Rights Institutions and Judicial Departments,” *Law Review*, Issue 5, 2010; Zhang Wei: *The Characteristics of National Human Rights Institutions*, The Tribunal of China University of Political Science and Law, 2010 Edition.



Rights. In March 2001, the Standing Committee of the National People's Congress ratified the International Covenant of Economic, Social and Cultural Rights. According to the Covenant, various member states have the obligation to submit government reports on the implementation of the covenant to expert committee of the covenant; the committee independently examines these government reports according to regulations of the covenant and publishes related opinions. These opinions do not have legal binding effects, but can guide the development of human rights cause of various countries.

(I) Committee on the Rights of the Child

After reviewing China's first report in May 1996, the United Nations Committee on the Rights of the Child, in its comments, was the first to recommends that China "consider the possibility of setting up an independent institution such as an Ombudsperson for children's rights. Such a mechanism can play an important role both in monitoring institutions working in the field of the rights of the child, including in the areas of welfare, education and juvenile justice, as well as in contributing to the more rapid identification of emerging problems in these fields with a view to their constructive solution"¹ Obviously, the model for China's reference considered by the Committee on the Rights of the Child at that time was very similar to the model of Ombudsman, which first appeared in north Europe. But as time passes by, the Committee on the Rights of the Child made more detailed and accurate proposals in the second report targeting China, and clarified the standards that should be followed while establishing such an institution.

In the conclusion opinions targeting China (including Hong Kong Special Administrative Region and Macau Autonomous Region), the Committee noticed that "various ministries and commissions in the Chinese mainland can accept complaints from the public. But the Committee also showed concerns on the human rights organizations of a country without an independent and clearly authorized supervision on the implementation of the Convention. It also regrets for the lack of an independent and clearly authorized national human rights institution to protect rights of the children in the Chinese mainland, Hong Kong Special Administrative Region and Macau Special Administrative Region."²

The committee proposed state party to establish national level organizations in the Chinese mainland, Hong Kong and Macau; the committee also clearly instructed the country to monitor children's rights and the implementation of the Convention in the central, provincial and local levels according to the principle of increasing the position of the national

1 United Nations Committee on the Convention of the Rights of the Child: *The 12th Meeting of the Committee on the Rights of the Child Reviewing the Reports of States Parties According to Article 44 of the Convention – the Final Opinion of the Committee of the Rights of the Child: China, 1996, CRC/C/15/Add.56, Paragraph 26.*

2 United Nations Committee on the Convention of the Rights of the Child: *The 14th Meeting of the Committee on the Rights of the Child Reviewing the Reports of States Parties According to Article 44 of the Convention – the Final Opinion of the Committee of the Rights of the Child: China, 2005, CRC/C/CHN/CO/2, Paragraph 16.*



human rights institutions (Paris Principles) endorsed by Resolution 48/134 of the UN General Assembly on December 20, 1993. The Committee reminds the state party to pay attention to the No. 2 general comment (2002) of the Committee on independent national human rights institutions, pointing out that such human rights institutions should be authorized to accept, investigate and handle complaints from the public, including complaints from individual children and be capable to provide sufficient funds, human resources and materials. In Hong Kong Special Administrative Region, the organization can be a special branch of the existing Office of the Ombudsman.¹

(II) Committee on the Economic, Social and Cultural Rights

In May 2005, the Committee on the Economic, Social and Cultural Rights reviewed the first report of the People's Republic of China (including Hong Kong Special Administrative Region and Macau Special Administrative Region) on the implementation of the Covenant (E/1990/5/Add.59). In the opinions and suggestions for China, the Committee recommended the state party adopt a national human rights action and report the information of the plan in protecting economic, social and cultural rights of the state party in the next regular report. In this regard, the Committee proposed the state party to establish a national human rights institution according to the Paris Principles.²

For the major concerns of Hong Kong Special Administrative Region, the Committee specially reiterated that Hong Kong does not have a human rights organization with a wide authorization; but the Committee noticed that Equal Opportunities Commission of Hong Kong has the similar functions.³

Obviously, though the Committee on the Economic, Social and Cultural Rights did not list the functions and powers for national human rights institutions as the Committee on the Rights of the Child did, it did require the institution established on the basis of the Paris

1 United Nations Committee on the Convention of the Rights of the Child: *The 14th Meeting of the Committee on the Rights of the Child Reviewing the Reports of States Parties According to Article 44 of the Convention – the Final Opinion of the Committee of the Rights of the Child: China*, 2005, CRC/C/CHN/CO/2, Paragraph 17.

2 United Nations Economic and Social Council: *The 34th Meeting of the Committee on the Economic, Social and Cultural Rights Reviewing the Reports of States Parties According to Article 16 and Article 17 of the Convention – the Conclusion Opinion of the Committee of the Economic, Social and Cultural Rights: the People's Republic of China (including Hong Kong and Macau)*, 2005, E/C.12/1/Add.107, Paragraph 41.

3 United Nations Economic and Social Council: *The 34th Meeting of the Committee on the Economic, Social and Cultural Rights Reviewing the Reports of States Parties According to Article 16 and Article 17 of the Convention – the Conclusion Opinion of the Committee of the Economic, Social and Cultural Rights: the People's Republic of China (including Hong Kong and Macau)*, 2005, E/C.12/1/Add.107, Paragraph 78. Some non-governmental organizations in Hong Kong are persuading Hong Kong Special Administrative Region Government to establish a human rights commission according to the Paris Principle. For more information, please refer to Hong Kong Human Rights Monitor, *A proposal to the Establishment of Human Rights Commission in Hong Kong – A NGO Consultative Version*, No. CB(2)1069/06-07(01 Document of) Legislative Council, November 2006; also see Hong Kong Human Rights Monitor, *A Report on the Establishment of A Human Rights Commission in Hong Kong – A Submission to Forum Asia for Asian Pacific Forum*, 10 Aug. 2007, www.hkhrm.org.hk.



Principle as “a National Human Rights Commission.” Viewing from the name, we can see that the committee has abandoned the north European model put forward by the Committee of the Rights for the Child in 1996 and preferred the model of “human rights commissions” adopted by various countries in Asian-Pacific region.

(III) International Law Obligation that should be Implemented by the Convention on the Rights of Persons with Disabilities

Optional Protocol to the *Convention on the Rights of Persons with Disabilities* was adopted by the United Nations on December 13, 2006 and was publicly signed starting on March 30, 2007. China signed the Convention on that very day and completed the ratification process on August 1, 2008. Item 1 of Article 33 “National Implementation and Monitoring” requires “States Parties, in accordance with their system of organization, shall designate one or more focal points within government for matters relating to the implementation of the present Convention, and shall give due consideration to the establishment or designation of a coordination mechanism within government to facilitate related action in different sectors and at different levels.”

Besides establishing a coordination mechanism within government, Item 2 of Article 33 of the Convention further puts forward that “States Parties shall, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention. When designating or establishing such a mechanism, States Parties shall take into account the principles relating to the status and functioning of national institutions for protection and promotion of human rights.” According to the stipulation, states parties of the Convention should plan various functions and positions of the organizations according to the Paris Principle while establishing the independent supervision organizations. For those countries that already have the National Human Rights Institutions established according to the Paris Principles, they can choose to grant the task of monitoring the implementation of the *Convention on the Rights for Persons with Disabilities* to persons with disabilities to these already established organizations, or choose to establish independent specialized organizations according to the Paris Principle. For the countries without human rights organizations, they also face political options. They can choose to establish national human rights institutions with extensive functions and powers, or only establish independent institutions of monitoring the implementation of the *Convention on the Rights for Persons with Disabilities*. No matter what options they choose, establishing independent national human rights institutions based on Paris Principle will make active contribution to the promotion and protection of human rights.

Due to the importance of the civil society (non-governmental organizations)



participating in the state human rights departments stressed by the Paris Principle, Item 3 of Article 33 specially stresses that “civil society, in particular persons with disabilities and their representative organizations, shall be involved and participate fully in the monitoring process.”

Chinese Government persistently and actively promotes and drafts the Optional Protocol to the *Convention on the Rights of Persons with Disabilities*. We have reasons to believe that the Chinese Government and the National People’s Congress will start from the general situation and establish an independent national human rights protection mechanism to monitor the implementation of the Convention according to the Paris Principles in light with China’s reality. But it is still uncertain whether China will take this opportunity to establish a national human rights institution that can promote and protect human rights in an all-round way so as to supervise and carry out the implementation of UN human rights-related treaties in China. To a large extent, it is a political option. But a national human rights institution authorized with extensive functions and powers can widely improve and promote the process of human rights construction in China.

II. Views on Establishing a National Human Rights Institution in China

The Paris Principles encourage various countries to plan and design national human rights institutions according to their respective realities. Based on this, the author of this article has views on the following aspects on establishing the national human rights institutions.

(I) Planing the Work Earnestly

The process of establishing a national human rights institution is of vital importance to ensure the legality of the department and its successful operation. We can say that the process of establishing a state department of human rights is equally important as establishing the institution and should be given top priority by the state. Hence, the process should be headed and led by the top government department. The whole process should be transparent and open and should be participated and discussed by people from all walks of life such as NGO members, lawyers, educators, scholars, government officials, judges, deputy of the people congresses and people from various parties. People widely participating in legislation can not only win confidences from the government and the people to the department, but also provide sound social basis and supports for the department for its future daily operation. In general, some certain government departments can be authorized to help establish guidance committees consisting of people from various sectors, organize legislation consultation activities, promote publicity of activities and stimulate the motivation of establishing a national human rights institution, etc. Legislation consultation activities should involve all the important issues related to the national human rights institution, including not only the



situation of domestic human rights, legislation basis of the national human rights institution and powers and functions of the institution, but also the members of the institution and methods of member selection and appointment, internal organization and management models and office venues, etc.

Viewing from the history and experience of establishing national human rights institutions in various Asian-Pacific countries, we can see that inadequate consultation usually leads to insufficient legal functions of the established institutions, lack of wide social coverage and shortage of resources. In addition, when an institution is established without adequate consultations from various social groups, the vast people may think the department is only for the interests of some individuals or groups, instead of protecting the rights and interests of everyone without discrimination. Obviously, the national human rights institutions without wide social supports and confidence cannot effectively implement its duties.

(II) Establishing the National Human Rights Institution according to the Constitution or the Basic Law

It is the best option to establish a national human rights institution on the basis of the Constitution, the highest legal hierarchy of a country. It provides the highest legal protection for the national human rights institution; more importantly, this practice highlights the fundamental value orientation of human rights of the Chinese people, and will be widely recognized and praised by the international community. In order to maintain the stability of the Constitution, we can consider modifying the Constitution by stipulating establishing a national human rights institution in the Constitution and then formulate separate laws to make detailed stipulations on various affairs related to the establishment of the institution. The second option is to formulate a separate law according to the Paris Principle to establish a national human rights institution, such as “Law of the State Human Rights Commission;” we can also consider to adopt a “human rights act,” and establish a national human rights institution based on the Paris Principles while summarizing the human rights that should be promoted and protected according to law. No matter which of the above-mentioned measures will be adopted, all the laws of establishing the national human rights institution should be in line with the requirements of the Paris Principles.

(III) Maximizing the Scope of Human Rights under Protection

Another key element we should consider before establishing the national human rights institution is to clarify the scope of the human rights promoted and protected by the national human rights institutions. The wider the scope of “human rights” is set, the more comprehensive the duty and power of the national human rights institution will be; wider scope can also reflect the determinations of human rights promotion and protection and values of the country that is to establish the institution.



The Constitution of the People's Republic of China clearly stipulates citizens' basic rights and obligations in Chapter Two. Meanwhile, the Central Government of the People's Republic of China also undertakes the international obligation of protecting all the people on Chinese soil according to the international human rights treaties it ratified and joined. The rights protected by the above-mentioned domestic laws and international human rights treaties constitute all of the existing rights we have. The national human rights institution should be authorized to protect all the above-mentioned rights.

Can the international human rights treaties that China does not ratify or join be protected by the planned national human rights institution? If we consider promoting and protecting all the human rights, the answer should be yes. Nevertheless, the national human rights institution that has the function of promoting the government to ratify or join international human rights conventions can at least make corresponding contribution for ratifying or joining these conventions. For instance, it can research the possible inadequacy of domestic laws in light with the standards of international treaties and put forward modification opinions and suggestions.

(IV) Attaching Importance to the Protection of the Independence of Personnel and Financial Affairs of National Human Rights Institutions

The national human rights institutions should be independent from the government, any social group or individual. This is the important premise for the institution to carry out its normal work of promoting and protecting human rights. For this purpose, we should clarify the elements under the legislation framework that can ensure independent operation of the institution when we plan the establishment process of the institution. These elements should be in areas such as funds and materials distribution and management, appointment and removal of members and employees of the institution, and the relations between the institution with the people's congress, the government, judicial department and NGOs.

If we establish a national human rights institution totally according to the Paris Principles, it will be a brand new try for China's current political and legal framework.

The institution itself is an abstract concept and its operation is totally determined by the quality of its employees. Thus, we must earnestly deal with the issue of selecting and appointing members and employees of the institution. We should specially stress open and transparent process of personnel selection and wide social participation so as to win sound reputation and personnel basis for the institution. Selection and appointment of leaders of the institution should also be careful since their social reputes and human rights values will directly influence the image and reputation of the institution.

(V) Authorizing Extensive Functions and Powers to the National Human Rights Institutions

In power division, it is undisputable to authorize the national human rights institutions



with functions and powers in areas such as education, research and consultation. But it will be widely disputable whether we should authorize the institution with the powers of investigating human rights infringement cases and accepting individual complaints. In Asian-Pacific region, all national human rights institutions have the functions and powers to investigate and accept complaints, which also win universal affirmation from the international community. Today when China is experiencing rapid economic development, the probability of contradictions and conflicts of the country also keeps increasing. The CPC and the government constantly encourage exploring new mechanisms of solving social contradictions. Thus, the author of the article believes that we can start solving the problem from solving social contradictions, namely, authorizing the national human rights institution to investigate human rights infringement cases of people's common concerns. On the one hand, this can help clarify facts, rectify mistakes and punish criminals; on the other hand, we can educate government officials and the masses through launching activities such as investigations, consultations and dialogues, so as to profoundly understand how to better promote and protect human rights.

While considering the institutional functions, we should start from the benchmark that this institution can effectively implement its functions and powers. In the preliminary stage after the institution is established, its functions and powers can be only in areas such as publicity, education, research and consultation; we can make some limitations on the functions and powers of the national human rights institution. For instance, it can not accept and deal with individual complaints on human rights. On this basis, the institution can win social recognition through solidly implementing its existing functions. Meanwhile, with the formation of the environment of human rights culture, the national human rights institution can be authorized with new functions and powers of promoting and protecting human rights. Authorizing too many functions and powers that cannot be realized to the institution will reduce its social credibility to a large extent. Thus, we must avoid such situation.

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Experience of China in Respecting and Guaranteeing Human Rights

ZHANG Xiaoling
China

Over the 60 years since the foundation of the People's Republic of China, especially over the 30 years since the reform and opening-up, China has made outstanding achievements in human rights. With the progressive trend of world civilization in mind, the Communist Party of China (CPC) and the Chinese government have made a series of headways in the theoretical study and practical issues of human rights development and accumulated rich experience, by giving fully display to the enormous advantages of the socialist system. Summarizing and straightening out the experience will be of great significance to the advancement of human rights cause in China.

1. Respecting and Guaranteeing Human Rights as an Important Ruling Philosophy for the Communist Party of China and the Chinese Government

The foundation of the People's Republic of China marked the independence of the Chinese nation and the liberation of people in China. The Chinese people have become the master of the country and the society and started the course of pursuing a happy life under CPC leadership, in which there are successes, and setbacks. Since the implementation of reform and opening-up in 1978, CPC gradually established respecting and guaranteeing human rights as a fundamental philosophy of governing and rejuvenating the country on reflecting the lessons and experience.

In 1991, the White Paper *Human Rights in China* was promulgated in China, systematically elaborating the basic views of China on human rights. In 1997, the political report of the 15th National Congress of the CPC unequivocally related ruling by the CPC to respecting and guaranteeing human rights for the first time, pointing out that, "As a ruling party, the Communist Party leads and supports the people in exercising the power of running the state, holding democratic elections, making policy decisions in a democratic manner, instituting democratic management and supervision, ensuring that the people enjoy extensive rights and freedom endowed by law, and respecting and guaranteeing human rights." In 2002, "respecting and guaranteeing human rights" was written into the political report of the 16th National Congress of the CPC as a key objective for construction of socialist spiritual



civilization. In March 2003, the Constitution Amendment was carried with landslide majority on the second meeting of the 10th National People's Congress, and "respecting and guaranteeing human rights" was written into the Constitution, solemnly iterating the political and legal status of respecting and guaranteeing human rights in China in its fundamental law. From then on, respecting and guaranteeing human rights has become a political concept and value aim of China.

In the 21st Century, the CPC put forward the scientific outlook on development featuring people orientation. This is a major change and a step forward in the philosophy of ruling and governing the country in China. People orientation requires that the rights of the people, especially those of the greatest majority of the people, be taken as the superior value orientation, emphasizing that people are the end, not the means. Chairman Hu Jintao pointed out emphatically, "The fundamental connotation of proposing people orientation consists in serving the people heart and soul, running the Party for the public good and exercising the state power for the benefit of the people, and in always taking the fundamental interest of the vast majority of the people as the basic starting point and objective of all endeavors of the Party and the Country."

In 2007, CPC Secretary-General Hu Jintao proposed the new requirements of "entitling the fruits of development to the people" in the 17th National Congress of the CPC, pointing out that "human rights should be respected and protected, and the right of equal participation and development of all members of the society should be protected according to the law." This is the political manifesto and development guideline for human rights in China.

Establishment of respecting and guaranteeing human rights as a ruling philosophy for the Party and the Country marked a new level of recognition of the essence and law of socialist construction in China by the CPC. It will play an important role in guiding the development of human rights cause in China. The achievement with world acclaim in human rights causes is inseverable from the establishment and continuous development of the philosophy.

2. Construct Socialist Human Rights Concept with Chinese Characteristics by Promoting Theoretical Innovation with an Eye to Progressive Trend in World Civilization and the Realistic Conditions of China

The socialist cause with Chinese characteristics is undoubtedly an unprecedented human rights cause with unrivalled difficulties, in depth and scope. Such an enormous systematic project, or rather, a historical project, requires systematic theoretical guidance.

The CPC and the Chinese Government takes into full consideration of the progressive trend of world civilization, the rights awareness and demands of the vast majority of the people under the context of developing socialist market economy, as well as dialogs,



exchanges, cooperation and contentions in human rights around the world, and incessantly deepens recognition of the socialist human rights concept with Chinese characteristics, making new breakthroughs in major theoretical study and practical issues over the connection between respecting and guaranteeing human rights and the ruling tenet of the CPC, as well as all the areas of socialist construction with Chinese characteristics, and formulating a socialist systematic human rights concept with Chinese characteristics.

First, people orientation and respecting and guaranteeing human rights is upheld as the fundamental value orientation for ruling and governing the country. This is the starting point and objective of socialist human rights concept with Chinese characteristics. Second, socio-economic and cultural rights and civil and political rights are taken as two inseparable components of the human rights system. The socialist human rights concept with Chinese characteristics does not negate civil and political rights. On the contrary, entitlement to economic, social and cultural rights is the very foundation for realizing equal civil rights and political rights in the real sense of the word. Guaranteeing civil rights and political rights is the requirement of people as the master of the country, as well as the fundamental objective of socialist democratic political construction in China. Third, the right to survival and development is taken as foremost human rights. This is a basic proposition of the CPC and the Chinese government on human rights issues. The right to survival is the right of people to live with decency, and it covers the basic contents of the rights to life, and economic, social and cultural rights. In view of the concrete circumstances of China, it is a requirement of realities to take the right to survival and development as the most important human rights, for development of human rights in the largest developing country in the world. Fourth, human rights embody rights and obligations. Socialist human rights concept with Chinese characteristics advocates the sustaining essence of Chinese civilization “Do not do unto others what you would not want others do to you.” Human rights are not absolute. And individuals should not infringe upon the rights of others or the public good while exercising their own rights. Therefore, human rights must include obligation to other people and the society. The fundamental rights and freedom of citizens should be exempted from random restriction by any individuals or departments, aside from laws, which restrict human rights for their better realization, not annihilation. Fifth, human rights unify individual rights and collective rights. Individual rights are the basis for collective rights, and collective rights are a guarantee for individual rights. Human rights not only encompass individual rights, but also include collective rights. Upholding human rights as the unification of individual and collective rights is an important feature of socialist human rights concept with Chinese characteristics. Sixth, the core of human rights is equality. Equality is at the core of socialist human rights concept with Chinese characteristics, without which there would be no socialist system. Equality is not only a principle, but also a right. Equality is at first a requirement on



the country, to embody equality in dignity, value, rights, opportunities and responsibilities in its system. The Constitution of China has clearly stipulated the fundamental principles for human rights at the very beginning, namely, the principles of equality before law, equality between the two genders and equality among different nationalities. Seventh, human rights are the precondition of rule of law. Rule of law is a guarantee for human rights. State powers belong to the people and are subject to restriction and supervision of civil rights, to guarantee that public powers serve civil rights. Socialist rule of law is an embodiment of the volition of the people. Governing the country according to laws means governing it according to the volition of the people and the fundamental objective is to maintain human rights of the people. Without socialist rule of law, respecting and guaranteeing human rights will be nothing but words. Eighth, the universal principle of human rights should be integrated with the respective circumstances of different countries. While acknowledging the universality of human rights, governments and peoples of different countries should be entitled to determine priorities and implementation mode in the process of promoting and protecting human rights. Such integration aims at better promoting human rights. Ninth, human rights are essentially an affair to be managed internally by countries. Admittedly, human rights have a dimension of international protection. However, its international protection is based on cooperation and undertaking of international obligations by sovereign countries. Countries should bear the foremost responsibility in protecting human rights. However, divergences between countries on human rights issues are normal; they are a reflection of diversity worldwide. China adamantly opposes popularization under cover of human rights issues of values, political standards and development modes by any country, and dedicates itself to international dialogs and cooperation on human rights on the basis of equality and mutual respect.

The basic content of socialist concept of human rights with Chinese characteristics conforms to basic requirements of international conventions on human rights, including *Universal Declaration of Human Rights*, *International Covenant on Civil and Political Rights*, and *International Covenant on Economic, Social and Cultural Rights*. It reflects the superiority of socialist system in China. It is a condensation of the excellent tradition of the Chinese civilization, a theoretical summarization of the rich experience of Chinese people in innovative human rights practice, a systematic recognition of the regularity for development of socialist human rights in China, and an important part of the socialist theoretic system with Chinese characteristics, and will play an important role in guiding the development of socialist human rights practice in China.

3. Highlight Key Points, Strengthen Guidance, Fully Advance Human Rights Cause in All Areas

Guided by the socialist human rights concept with Chinese characteristics, the CPC



and the Chinese government have carefully masterminded development of socialist human rights cause in China, and obtained considerable achievement via highlighting key points, putting legislation and People's livelihood first, and strengthening guidance for full-scale advancement.

First, a legal system has been established for guaranteeing human rights, with the *Constitution of the People's Republic of China* at the core. The Constitution comprehensively stipulates basic human rights and freedom entitled to the citizens. With the Constitution as the basis, China has stepped up legislative efforts related to protection of human rights, established basic systems for guaranteeing civil, political, and economic, social and cultural rights. By the end of 2010, China has formulated 236 prevailing laws, over 690 administrative regulations, and over 8,600 regional laws and regulations. The socialist legal system with Chinese characteristics has taken shape, and all areas of social life and all aspects of human rights protection have their respective laws.

Second, *The National Human Rights Action Plan of China* (2009-2010) has been formulated. This is the first national plan with human rights as the theme, and a phase policy document for promoting the development of human rights causes in a comprehensive manner. It is a solemn pledge made by the Chinese government in the area of human rights, also a systematic arrangement for developing human rights causes in China based on investigation into the characteristics and rules of human rights causes in China. It will be of great significance. By the end of 2010, all the objectives of *The National Human Rights Action Plan of China* have been realized according to schedule, marking a new stage for developing human rights causes in China.

Third, the right to survival and development has been promoted to the foremost status, and great achievement has been made. On summarizing experience and lessons and from the actual circumstances of China, the CPC and the Chinese government have abided by the principle of "economic construction as the central task, development being of overriding importance and the first priority in ruling" and put realization of People's right to survival and development at an emphatic position. From 1978 till now, the living standard of people in China has witnessed two historical leaps, namely, from poverty to adequate food and clothing, and then on to relatively well-to-do. Over 200 million people have been lifted out of poverty, realizing the UN Millennium Development Goals ahead of time. China has contributed vigorously to the poverty reduction cause of the world.

Average lifespan has been greatly improved to 73.5 years old, reaching the level of moderately developed countries. The level of literacy education has been constantly improved. As of the end of 2010, nine-year compulsory education had covered 100% of the population of schooling ages. Over recent years, efforts have been redoubled to tackle realistic issues that people are most concerned about and that are most pertinent to their



rights; systematic arrangements for guaranteeing and ameliorating People's livelihood have been improved, and efforts have been strengthened to promote employment and equality of basic services. System of subsistence allowances has been further improved, effectively ameliorating People's right to survival, development and their economic, social and cultural rights.

Fourth, political system reform has been actively and steadily advanced to enrich the forms of democracy and guarantee and expand the civil rights of the citizens. The People's Congress System, the Political Consultative System, System of Minority Autonomous Region and grass-root democracy system are an embodiment of the widest People's democracy in China, and the basic form and most important guarantee of political rights for the citizens. Grass-root democracy in China featuring democratic election, democratic decision-making, democratic administration, and democratic monitoring has taken root in the rural and urban areas. To guarantee People's right to know and to freedom of speech, China has been promoting openness of political affairs via various measures.

The popularization of the Internet has made it an important channel for the people to exercise their rights of participation, expression and supervision. The government has placed considerable emphasis on the supervisory roles of the Internet, and the email addresses and telephone numbers of the vast majority of government agencies are publicized on their websites so that the public may easily give feedback to the work of the government. Over the recent years, further legislative, enforcement, judicial and policy efforts are adopted to strengthen protection of human rights. For instance, the *Measures for Internment and Deportation of Urban Vagrants and Beggars* was abolished in 2003, and *Administrative Measures for Assisting Vagrants and Beggars with No Means of Support* was promulgated; the Supreme People's Procuratorate initiated in 2004 a campaign to investigate infringement on human rights by workers of government agencies; judicial protection of human rights was further strengthened, and Open Trial System, People's Juror System, Defense System, and Death Penalty Review System were established or improved; from 2007 on, the power of reviewing death penalty was solely trusted with the supreme People's court, greatly reducing capital punishment. By these ways judicial aid system, legal aid system and lawyer system are improved.

4. Strengthen Human Rights Education and Gradually Promote the Human Rights Awareness of the Leadership Cadres and the Entire Society

The human rights cause is a cause for the entire citizenship, closely related to the rights and interests of all individuals. China has a feudalist history of over 2,000 years and the despotic cultural tradition of feudalism still exerts considerable influence on the society. Under such social background, and in face of considerable divergences in human rights in the



international community, strengthening human rights education and promoting the awareness of respecting and guaranteeing human rights of the society, especially the leadership cadres, so as to mentally clarify what human rights are, and how to respect and protect them, are very important for the development of the human rights cause in China.

First, strengthen human rights education to public functionaries, especially officials at various levels. With state powers in hand, they bear important responsibilities and obligations in respecting and guaranteeing human rights. Their awareness of human rights determines to a great extent the development of human rights in the country. As the main channel and main front of training for officials, the Party School of the Central Committee of CPC began offering courses on human rights long ago. It has generated good results through education of officials at senior and medium levels on human rights and socialist human rights concept with Chinese characteristics, introduced laws and regulations for human rights protection at home and abroad and investigation into the theoretical and practical problems about respecting and guaranteeing human rights. Party schools and administrative schools at various levels, and relevant official training institutes, especially political and judicial departments have launched literacy and legal training on respecting and guaranteeing human rights. After education and training over a long period of time, the human rights awareness of officials at senior and medium levels and public functionaries has been obviously improved, and their capability to respect and guarantee human rights heightened.

Second, step up with human rights education for youths. Youths are the future of our nation and our country. Cultivation of human rights awareness across the society should be emphasized from youths. This is a basic project for human rights construction. The first *National Human Rights Action Plan* specifically proposed requirements and measures in this regard. The Ministry of Education established human rights education bases in relevant institutes of higher learning. At present, more and more universities are beginning to offer courses on human rights law and human rights education. The number of human rights research institutes is on the rise, and human rights research and exchange activities are becoming deeper and broader. In elementary and secondary schools, human rights education of various forms is being launched in view of the realistic circumstances of the youths.

Third, launch human rights education for the public. Radio, television, newspapers, internets and other mass media are used to publicize and popularize human rights knowledge. For instance, *Human Rights* magazine and China-humanrights.org published and sponsored by the China Society for Human Rights Studies have played a positive role in heightening the awareness of the public in protecting their rights.

After years of education and guidance, the awareness of respecting and guaranteeing human rights among public functionaries and the entire society has been obviously improved, and the social atmosphere of honoring practices of respecting and guaranteeing human rights



and shaming practices of infringing on human rights is beginning to take shape. Planned and purposeful human rights education has played a positive role in promoting the development of human rights cause in China.

5. Actively Launch Cooperation and Exchanges, as well as Dialog, on Human Rights to Promote Mutual Understanding and the Development of International Human Rights Causes

The human rights cause of China is an open cause, and its development is inseverable from the development and progress of international human rights causes. The reasons are twofold. First, its development must conscientiously carry out obligations stipulated in international covenants on human rights and learn from other countries in protecting human rights. Second, countries differ in understanding, view and practice of human rights due to difference in social system and historical culture. Therefore, dialogs and communications are necessary to promote mutual understanding and the healthy development of international human rights causes.

First, we have participated in the work of the Third Committee (i.e., the Social, humanitarian and Cultural Committee) and Human Rights Council and attended *Universal Periodic Review* from the fourth round on to the tenth round, prompting the human rights council to handle human rights issues in an objective, fair and non-biased manner, carry out open and honest conversations and communications with different countries, illustrating the development of human rights cause in China, the challenges faced and the objectives set, and accepting feasible suggestions proposed by countries in view of China's realistic circumstances.

Second, on the basis of equality and mutual respect, we have carried out dialogs and exchanges with European countries, America, UK, the Netherlands, Germany, Australia and other countries on human rights, promoting mutual understanding and playing an active role in promoting China's relation with them.

Third, we have actively launched human rights exchanges and cooperation with NGOs, institutes of higher learning and research agencies. The China Human Rights Society has played an important role in overseas academic exchanges on human rights. Exchanges and cooperation between relevant institutes of higher learning and their human rights research institutes and their overseas counterparts are growing. Those effectively promote overseas human rights communication and cooperation.

While the achievements and experience of China in human rights cause is praise-worthy, we should also be aware of the fact that the fundamental circumstance of China at the initial stages of communism remains unchanged and that China is still a developing country. With the development of socialist market economy, the relation between different interests and



social contradictions will become even more complex. In addition, due to the influence and restrictions from natural conditions, and historical, cultural, economic and social development, the human rights cause in China still faces many challenges. For instance, the legal system for human rights protection is yet to be perfected; human rights awareness of the society, especially some officials, still wants improvement; there are still poverty, unduly large income gap, employment discrimination, and problems in food safety, rights protection of the disadvantaged, equal rights to education, and environmental rights. Due to all those factors, there is a considerable gap between the development status of human rights cause in China and the expectations of the people.

On the basis of summarizing past experience, we should further deepen our recognition and understanding of the ruling philosophy of respecting and guaranteeing human rights, deepen the recognition of human rights concept with Chinese characteristics, improve the human rights awareness of the entire society, especially of public functionaries, deepen our investigation into the causes of human rights problems facing the public, conscientiously study international experience in guaranteeing human rights and actively propose countermeasures and suggestions. We should do our part in promoting full development of human rights cause in China.

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