

Nexus between International Regime and Local Practices on Human Rights: A Case Study of Taiwan

Chou, Chih-Chieh, Ph.D.

Professor of Political Science Department National Cheng
Kung University Chairman of the Commission on
Taiwan-China Dialogue Chinese Association of Human
Rights

Abstract

This paper examines the development of international human rights regime (IHRR) and its interplay with sovereignty through the process-oriented approach, as well as the impact of international human rights notions on Chinese societies by focusing on Taiwan. As such, it reviews human rights practices by Chinese societies, emphasizing the process of interactions between international human rights norms and local and traditional cultures. Further, we analyze the evolution of the mind-set, means, and prospects for Chinese response to international norms. Its findings support that (1) the process of international human rights can be categorized as three overlapping phases: internationalization of domestic-oriented human rights affairs, legalization of human rights values and norms, and domestication of international law. As such, (2) the key to examining the nexus between multilateral norms and local practice is to focus on the functioning of IHRR with human rights protection, and its influences on national sovereignty through norm legalization and domestication. Furthermore, (3) the confrontation between universalism and relativism in human rights is compatible rather than conflicting. Based on universalizing human rights instruments at the global level, it might be more practical and crucial to develop localized norms at the regional level. The locally cultural-matched norm is therefore more likely to attract state compliance within the region. As for case studies, (4) Human rights protection in Taiwan is comprehensively considered *de jure*, but less implemented *de facto*, owing to the populism and over-mobilization hampered by consolidation of civic culture, the growth-oriented economy jeopardizes the promotion of sustainable development, and the economic gaps which are in line with the social cleavage deepens the North-South and urban-rural gaps. Obviously, government's consistent implementation through practical policy and regulation is more significant than an NGOs' criticism and promotion in civil society. More significantly, (5) two Chinese societies across the Taiwan Strait should be confident to acknowledge the possibility of co-existence and a co-development between Western human rights values and Chinese traditional culture. Stemming from Taiwanese experience, the Chinese mainland and Taiwan can link mutual views on human rights through frequent and institutionalized dialogue, and further formulate and facilitate the Chinese discourse of human rights in regional and global stages!

Keywords: international human rights regime, norm legalization, norm internalization, democratization, universalism, relativism, Taiwan (ROC), cross-Taiwan Strait relation, Chinese discourse of human rights

I. Introduction

Human rights mean the fundamental rights naturally enjoyed by a person after he or she is born. Human rights are applicable for every one born as a people and shall not vary against different background or in different regions (Fo-Chuan Chang, 1993: 4). However, due to the profound idea of giving top priority to the national sovereignty before the World War II, it was very difficult for the international community to intervene into human rights affairs, which were considered as the domestic affairs. The international community adopted compromise policy towards the practices of aggression and infringing human rights of ambitious countries, indirectly leading to the outbreak of World War II. Nazi Germany and Japanese warlords committed extremely cruel enormity to European and Asia-Pacific countries and peoples during the war time. Hence, after the war, all the leaders of major countries stressed the importance of maintaining the world peace and protecting human rights (Newman and Weissbrodt, 1996: 5). In other words, after the World War II, the concept of human rights maintained the trend of legalization and internationalization and was gradually recognized universally by various countries (Chih-Chieh Chou, 2001:15). After the United Nations was established in 1945, a series of international treaties on human rights and other related documents were formulated to affirm the existing human rights in the form of law. Thanks to a series of important international laws and regulations on human rights such as the Charter of the United States, Universal Declaration of Human Rights, and International Covenant on Economic, Social and Cultural Rights, human rights were escalated from an abstract concept into a concrete legislation request. After related covenants of the United Nations were adopted and came into effect, human rights have become the important reference and basis for various countries to implement and formulate human rights policies. The international human rights regime (IHRR), consisting of international human rights instruments and laws, treaty supervising bodies, UN and relevant IGOs and international and local NGOs, has taken shape. Through signing and ratifying these covenants, various countries domesticated them, providing substantive domestic legal protection for human rights protection and practices (Chih-Chieh Chou, 2006: 212). For this reason, human rights have become one of the goals of global governance.

In fact, viewing from the aspect of constructivism in global governance and international relationship, we can find that international norms and systems have an in-depth influence upon the activities of a sovereignty state. Human rights topic is of no exception because a country is among the social network formed by various interplay of different countries. Such network shaped the international outlook of a sovereignty state and its position and role in the international community (Finnermore 1996, 2). Thus, human rights development after 1945 fundamentally reshaped the notion of national sovereignty, giving birth to the concept of humanitarian intervention in the international community. Though national sovereignty is still the basic principle of international laws (that means consent of a country is needed), an increasing number of countries are creating more international regimes through consents of national sovereignty to restrain the operation of national sovereignty coming with it. With the expansion of international human rights concept, a state will also gradually allow many different international systems to share the jurisprudence related to human rights topics. The world has formed the attempt of the international community indirectly protecting human rights.

On the contrary, realism opinions always suspect the restraining force of international norms and regime on a country, and believe that a country substantively lacks of the strong motives of cooperation on human rights with other countries. Meanwhile, international and domestic human rights groups and organizations do have the capacity of forcing a country into compliance (Naylor, 1998; Pape, 1997; Morgan and Schwebach, 1997:27-50). According to traditional realism, a country's concession to international norms of human rights is an approach for the country to gain short-term profits and improve its international legitimacy. On that occasion, the country can only rely on soft sanction measures and legal obligations most of which cannot be implemented. Realism opinions believe that various countries sign and ratify human rights laws and regulations on the purpose of improving their international legitimacy and authority of speech, and avoiding any multilateral sanction caused by continuous human rights infringements. For instance, Stephen Krasner analyzed the relative rights and interests of a country with hegemonic stability theory, which can fully explain the differences in the achievements of human rights protection. He noted that given the British Empire had the exclusive advantages on the sea, the slave trade would not have been abolished in the 19th century; during the period from late 19th century to early 20th century, the protection of minority ethnic groups in Central Europe failed on the verge of victory. The reason is that then power states did not want to implement the laws and regulations they formulated (Krasner 1993: 143, 166). Thus, for realists, the prior motive for a country to take action in the international community is to maintain or improve its political power to other countries on the international political stage, no matter the actions are taken in unilateral or multilateral forms, or by means of alliance, consultation, governance, armed conflicts or wars.

Thus, to establish the mechanism of global governance on human rights, we should construct global and regional IHRR. More importantly, the international community and other transnational actors should gradually socialize the actions of a state so as to make it under the restraint of international norms through exerting political, economic and social pressures, philosophies and discussion, and carrying forward and standardizing the domestication process. However, the process also involves the interplay between the subjectivity of national sovereignty and normality of international norms in the international system. In other words, it is a coordination process between multilateral norms of human rights and their philosophical values and local sovereignty and cultural traditions. Some people even expanded the above-mentioned topic from the coordination between human rights and sovereignty to the argument between universalism of human rights and relativism.

In this article, I will discuss the influences of the development of international human rights norms and regimes after the World War II upon the Chinese societies through mainly analyzing the human rights practices and difficulties in Taiwan based on the process-tracing history analyzing methods, and the responses of the non-western societies to the conflict or compatibility between international human rights norms and local and traditional cultures. Thus, in the article, I will discuss the following topics in order: the article first talks about (1) the core concept and value of human rights; then (2) reviews of the evolution of the multilateral human rights governance mechanisms constructed by international human rights laws and

regulations led by the United Nations; after that, the article (3) analyzes the interplay between national sovereignty and international human rights from the angle of international relations and international laws; then, the article (4) inspects the arguments of the international human rights academician circles and practice circles on human rights relativism and universalism and putting forward the solution of constructing local human rights regulations and regimes in regional level. The above-mentioned review and inspection influence the channels and motives of Chinese societies in the process of abiding by international laws and regulations on human rights; (5) human rights protection in Taiwan is almost complete in terms of forms and laws and regulations; however, in practice, there still exist the soil of political mobility influencing civil culture, the expectation of economic growth overtopping sustainable development and the rich-poor gap deepening the differences between the urban and rural areas and between the south and the north; the article continues to discuss (6) how China should link up the neo-Confucianism with human rights value to resist the core value of local culture of the pressure from the universalizing human rights norms, and actively construct the human rights value with Confucian characteristics. Finally, the article take China as an example discusses the difficulties and opportunities in human rights of the Chinese societies including Taiwan. In the attempt of constructing localized human rights discourse, the Chinese societies across the Taiwan Straits have accumulated enough confidence to realize that the western human rights concepts and Chinese traditional culture can not only co-exist, but also support each other. Experience from Taiwan also shows that we can join the human rights values of the two Chinese societies through across-the-straits exchanges and dialogues. In the predictable future, both Chinese societies can establish their common Chinese discourse of human rights so as to make joint efforts in interpreting the human rights values and practices of the Chinese societies in the international communities.

II. Interactions between International Human Rights and National Sovereignty: Legitimacy of Multilateral Norms vs. Authority of Sovereign States

The adoption of the Charter of the United Nations in 1945 and Universal Declaration on Human Rights in 1948 has changed a person's political position in the international politics. The state is no longer the only awarder of individual rights. Members of the United Nations agree unanimously that individuals are not cared in the status of group members (minority or special ethnic groups), but protected in the status of human race (Cassese, 1990: 289). However, human rights norms not only involve in the prohibition of violence, but also cover the responsibilities of the states. Human rights norms are the fundamental regulations that must be established in the process when people hope to possess dignity and seek various goals in a peaceful environment in the complicate, rapid-changing and high interdependent society (Freeman 1996: 358). Hence, the United Nations, since establishment, has been attaching great importance to the internationalization and legalization of human rights value, promoting the formation of international human rights regime. According to the definition given by Donnelly (1982: 210), regime is the product of political forces to cope with improper standardization and treatment of the state. Donnelly (1982: 210-211) further expanded the opinions of Keohane and Krasner, believing that the emergence of international human rights regime originated from the increase of the moral demands in the international community; meanwhile, the main countries also

would like to provide international systems to keep the acts of states that go counter against human dignity at bay. The goal of constructing the regimes is to formalize international affairs related to human rights and standardize acts of states.

Besides the global human rights regime led by the United Nations, several regional organizations also lend support the construction of regional human rights regimes. Some international NGOs are committed to the initiation and legalization of specific human rights programs. These efforts can be divided into two groups of initiatives-based and implementation-based attempts. The former is devoted to the universalization and international legalization of human rights norms while the latter stresses on the effectiveness of the norms and practices of states (McAdam and Rucht, 1993: 56-76; Chou, 2008). Like Donnelly mentioned, compared with the time after 1945, there were almost not any international human rights regime before 1945. It is the most surprising development that most international human rights regimes can gradually strengthen themselves in the past 30 years (Donnelly 1989: 153). Thus, the regimes of global and regional human rights norms have exerted substantive influence upon the legal system and diplomatic practices of sovereignty states. Human rights is no longer in the jurisdiction inside a state, but one of the topics related to international relations. Many human rights concepts have become international norms and world-recognized rights also have the trend of being legalized and domesticized. Entering the 21st century, accumulation of various human rights has clearly become the goal protected by international laws.

As mentioned above, after the end of the Cold War, various parties predicted that human rights would be the fundamental constitutive requirements of national sovereignty. Though the 9/11 attack is the challenge of the assumption, we still believe that it is reasonable to be optimistic at the strengthening international human rights norms after observing the development of international laws. International human rights jurist Bassiouni believed that traditional sovereignty-based opinions did not recognize the multilateral protection of human rights of the international community, a practice that is invalid nowadays. Currently, many treaties have been applied; many countries use international customary laws; and the general principles of international laws also exert binding forces on the state (international laws consist of agreements, consuetude, domestic laws and compulsory laws) (Bassiouni, 1993: 238). Thus, international laws have diversified legal procedures to prosecute human rights infringers. Cassese also insisted that according to the existing international regimes of human rights protection, the norm beneficiaries can actively request protection of his or her rights; compared with other international institutions that supervise international laws to ensure it should be followed, the existing regimes also made satisfactory achievements. We do not need to be frustrated because of the small number of international supervision organizations (Cassese, 1986: 102-103). In addition, legal rights can be established on the basis of international customary laws. Whether or not a country is a party of human rights treaties, it must perform its obligation of protecting international human rights. International customs can support the following arguments: since all the UN members accept the standardization on the obligation of human rights stipulated in article 55(c) and article 56 of the Charter of the United Nations, the follow-up human rights treaties only need to further explain these obligations (Byers, 1999: 43-44).

However, the conflicts between human rights and sovereignty emerged. The conflicts are often used to assess the roles and definition of powers in the procedures of international customary laws. Byers noted that a state should intervene into all the affairs happened within its territory through exercising powers; while international community uses customary rules to challenge the exclusive powers of the state. This is the dispute on exclusion (Byers, 1999: 45). However, the divergence and argument mainly among scholars of international laws and international relations tend to hamper multidisciplinary researches (Toope, 2009: 91). After Hans Morgenthau describe the divergence in mid-1940s, an increasing number of scholars of international relations suspect the effectiveness of international human rights laws. Morgenthau believed that the order of international laws is fragile in the international system in anarchy, and international statute laws tend to be controlled by power (Morgenthau, 1978: 279-288; Hurrell, 2000: 328). Especially for realists, owing to its decentralization essence, international laws may become an inefficient mechanism when human rights conflicts sovereignty in international relations.

Though previous opinion devaluated the influence of international norms upon the acts of states, international legal system is not a standardization mechanism that is simply regarded to be lack of compulsory measures. It is actually the mechanism of formation of legal relations (Allott, 2000: 74). When realists observe the effectiveness of powers in researching international laws, they usually neglect the fact that international norms can also form power relations. Viewing from the angle constructivism of international relations and scholars of international laws, we can see that legal rules and relations are both important, because they constitute the game rules of power and politics. But its great contribution is that it stabilizes and legalizes the power of particular actors (Hurrell, 2000: 330). Hurrell's criticism directly challenges the realism principles. He continued:

While analyzing powers, neo-realists make incorrect assessments to the importance of norms and laws. They mistakenly regard norms, regulations, systems and values as the reflection of material strength. Power is still the analysis focus of international relations. However, power is a kind of social attribute and we should put it together with other typical social concepts (such as reputation, authority, validity and justice) to better understand power. This is indeed a great contradiction, because realists neglect the social facets and they cannot completely and convincingly explain the core argument that they look up to as a standard (ibid).

Thus, analysis on the development of international human rights norms should explain the role of international human rights regime in forming the country-to-country power relations. After the World War II, the international human rights develop amid the struggles and competition among sovereignty states, international organizations and particular political activities and every development stage involves power, interests and political wills. The Cold War is a good example when human rights was occasionally manipulated as a tool by powerful states like the United States and former Soviet Union. The subjective wills and implementation forces of powerful states put the order constructed by international human rights regimes into heavy pressure (Chih-Chieh Chou, 2005). These states had the power to determine the consultation process of international laws and international regimes and maintain their own national interests with compulsory forces.

However, though human rights is vulnerable to the influence of cycle manipulation of power and interests, it does not mean that international human rights has lost its important position. International human rights laws have become the major legal bases for a country to deal with human rights affairs, and those who are persecuted can use the laws to resist persecutors. Human rights mechanisms can reduce the scope for a country to legally utilize its compulsory forces by means of restricting the operation of some compulsory forces (Chih-Chieh, Chou, 2006). Thus, powerful states can also be restrained by the norms established by international human rights regimes to some extent (Frost 1996:105). Under the current international atmosphere, a state should abide by and respect these obligations, at least in a perfunctory manner, and should put forward proper reason when it wants to object some obligations according to the above-mentioned norms.

For this reason, to analyze the coordination between multilateral human rights norms and local human rights practices, we do not mean to focus on the emerge or the end of multilateral human rights governance era, but to analyze whether or not global human rights norms can directly or indirectly form the validity of acts of states, and through what measures can this be achieved (Chou, 2009). In other words, the key is, whether or not international human rights regimes can promote human rights protection, and how can they influence a sovereignty state through legalization and domestication. The arguments between human rights and sovereignty always influence the development of human rights norms, but will not lead to disintegration of human rights regimes. On regional layer, human rights norms are even more active, showcasing the characteristics of region-based local cultures.

III. Dilemmas in Human Rights Localization and Domestication: Relativism vs. Universalism

Though human rights has become the universal value and has been promoted from a concept to be the substantive rights through legalization efforts, it is facing the challenges brought by the differences in the eastern and western cultural values. According to the declaration adopted at the World Conference of Human Rights held in Vienna in 1993, "All human rights are universal, indivisible and interdependent and interrelated" (Albuquerque, 2010: 145). It seems that human rights universalization has won the world recognition. However, the declaration also notes that "the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind," revealing the human rights arguments implied in cultural differences (Wu Tien Mei Chi Tzu, 2006: 281-282). Most developing countries suspect the objectiveness of the so-called universal human rights. Based on the different values derived from the national, ethnic and cultural differences, human rights protection and practices should consider the realities in different regions. While assessing human rights issue, we should take into consideration diversified backgrounds such as national situations, regions, cultures and beliefs (Weiss et al., 2009: 129-152). Usually, when a research on the human rights that does not mention particular regions, it usually means the values that are originated from the west and are gradually universalized. The reason is that the development of human rights philosophy and concepts started from the Enlightenment in the Europe, which equalizes human rights values to the western value; with the modernization and colonization, the value experienced a one-way flow from the west

to the rest of the world. After the World War II, many countries in Asia, Africa and Latin America were committed to modernization. Some countries with remarkable economic development, especially those emerging industrial countries and development-based countries, found it difficult to accept the hegemony of the western countries in interpreting human rights concepts.

International human rights norms encounter conflicts in non-western civilization areas in the process of localization, leading to the dichotomic confrontation between the western universalism relativism in non-western areas (Shih, 2002). The former believes in the goal of promoting human rights value, insisting that human rights should be superior to cultural difference and serve as the universal value recognition. For this reason, cultural traditions of other civilizations should follow the international human rights norms centered with western values; however, relativists insist that the international human rights norms from western philosophic traditions cannot reflect the universal values and only consist of the values and concepts of western countries like Europe and the United States. Owing to the obvious differences in traditions and cultures between the east and the west, the universal human rights insisted by western countries means to force the western mainstream values into eastern traditional cultures. It is not the genuine “universal” human rights unless the international human rights norms can include the main norms of Asia value (Chou, 2008: 142-144).

Donnelly believed that modern western countries and non-western countries hold great different views on human rights for individuals. Western countries’ traditional value is to protect individual rights, insisting that all the other individuals, groups and authorities should not infringe individual rights. However, such concept that confronts the society for individual interests obviously goes counter to the tradition of non-western countries (Baehr, 1999: 13). Under the long-term feudal reign, eastern Confucianism stresses ethnics and obligations, attaches importance to rites and following the laws, and praises the practice of making individual sacrifice for overall improvement. It does not restrain the concept of human rights for individuals and believes power means intriguing against each other. Thus, eastern culture holds negative attitudes toward human rights (Yu-Ching Wang, 2007: 27-28).

Actually, the above-mentioned views are suspicious to have taken a part for the whole. But in fact, relativism and universalism of human rights can be regarded as the cultural variable. For universalists, the human rights value originated from the west is the common culture for all the people in the world without regional divergence. However, relativists pay more attention to the coherence between international human rights norms and existing local cultural traditions and norms (Shih, 2002: 13-14; Donnelly, 1999: 62; Chen, 2002: 1047; Chih-Chieh Chou, 2005). In other words, the coherence refers to the compatibility between the concepts and arguments on western human rights and the general beliefs and value system in non-western countries. Given that the concepts and value initiated by human rights groups conflict the existing local traditions and norms, it is very difficult for international human rights norms to penetrate, let alone making them exert influences. For instance, the transnational efforts against circumcision for women have made little progress in many countries and regions. The main reason is the conflict between the western value and local deep-rooted culture and beliefs (Forsythe, 2001; Chih-Chieh Chou, 2006).

Many democratic countries with prosperous economy in east Asia refused to implement some of the human rights protection in its domestic laws on the reason of “Asia value,” leading to low level of human rights universalization (Chia-Fan Lin, 2009: 9). For instance, the topic of abolition of capital punishment is currently under hot discussion in Taiwan. On December 10, 2009, “Legislative Yuan” of Taiwan ratified International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights, making them as the laws applicable in Taiwan. However, article 6 of International Covenant on Civil and Political Rights stipulates clearly that “Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.” According to the covenant, Taiwan authority should take the stance of gradually abolishing capital punishment. In addition, article 8 of the implementation law of the two covenants in Taiwan stipulates that government of various levels should review laws, regulations and measures according to the two covenants and make modification and improvement within two years after the law came into effect. However, more people are against capital punishment abolishment, leading the situation in a deadlock. Only when the western concept on human rights considers the cultural traditions, historical experience and the mainstream opinion in civil society in non-western countries during the universalization process can it be accepted by local people and exert its influence (Chih-Chieh Chou, 2005: 99).

Some cases in Africa show that universalism and relativism are not in a zero-sum game in the global human rights governance. It is good for universal global human rights laws and regulations to develop the regional human rights norms by combining with local cultures. Such norms may be favored by the countries within the regions and are very likely to be domesticized. In general, international and regional human rights laws and regulations and regimes are the value connotation and impetus of human rights universalization and sovereignty states play the key roles in domesticization of human rights norms and implementing human rights protection. The human rights situations in civil society can be an indicator to observe the governance of the state mechanism; and civil human rights groups and social movement activist are very important to supervise and explore problems on human rights, so as to ensure that human rights concepts and policies can really cover the target of traditional human rights protection – individuals. In other words, human rights values should borrow supports from international legalization to be popularized; meanwhile, various states should also implement international human rights norms in their domestic laws to enable human rights concepts to be protected and realized by means of law enforcement.

IV. Taiwan’s Pragmatist Path: Interplays among Economic Development, Political Reform and Human Rights Protection

As mentioned above, after International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights were ratified by Taiwan “Legislative Yuan” on March 31, 2009, Taiwan is now the only Chinese society with complete framework of human rights norms, attracting attentions from allover the world. In fact, after Taiwan quit the United Nations in 1971, it lost its membership in the important international organization and disjointed itself from the international human rights regime centered with the United Nations; meanwhile, it

also lost its opportunity of growing with international human rights laws and regulations. However, since Taiwan started the democratization process in the late 1980s, its human rights protection and practices have been improving. At the 2009 Human Rights Report released by the U.S. State Department, Taiwan was listed as a region of respecting human rights. Freedom House also listed Taiwan as a region with complete freedom in its 2010 report. Taiwan “Legislative Yuan” ratified International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights; meanwhile, the implementation law of the two covenants came into effect on December 10 after its leader Ma Ying-jeou endorsed them. Thereafter, the two covenants have become the laws in Taiwan and are applicable to all law enforcers and the public. So far, Taiwan has completed the work of localization of International Bill of Human Rights. This shows Taiwan has reached the international standard in human rights protection; more importantly, it indicates the concrete achievements of Taiwan in promoting the work of domesticating human rights norms and implementing human rights practices (Chih-Chieh Chou, 2009c). This move not only lifts human rights norms in Taiwan, but also promotes the implementation of human rights, making Taiwan an example of human rights for Chinese societies.

Though many human rights concepts have become international norms, the world-recognized human rights concepts still encounter various difficulties in the process of being legalized and domesticated. Taiwan is no exception. If we observe the governance performances of the state mechanism in Taiwan with human rights conditions as the indicator, Taiwan is far from full fulfillment. Human rights development can be divided into three stages: (I) political and civil rights (fundamental rights); (II) economic, social and cultural rights (rights to existence); and (III) collective rights, which is also known as rights to sustainable development, stressing on the harmonious relations among human beings, environment and other creatures (Donnelly, 1989: 210-121). Taiwan has fully fulfilled its first-stage rights in forms, but is still seriously influenced by political factors in practices. As for the second and third-stage rights, obvious urban-rural and North-South gaps have emerged in practices. We can also view the problem from different angles of human rights. Take migrated labors and foreign brides for example; they even fail to get the first-stage human rights. Owing to long-term authoritarian rules and one-sidedly promoting economic development, the state mechanism in Taiwan, that should be used to protect human rights, is now infringing human rights. Thus, for a long time, civil human rights groups and social movement activists are playing an important role in supervising and finding out human rights problems so as to constantly encourage state mechanism to improve human rights policies in an attempt to make these human rights policies cover the target of traditional human rights – individuals. However, though the “Constitution” of Taiwan stipulates the supremacy of international laws and treaties, and the government also ceremonially declares its willing to abide by the universal international human rights laws and regulations, human rights issues and protection are still the decision-making options that are very likely to be neglected when state mechanism and civil societies cannot effectively solve their different views on the overall development of the region. This is the legacy of the long-term political and economic development in Taiwan (Chih-Chieh Chou, 2010: 69).

Actually, the overall development of Taiwan is accompanied with dual crises: it gives top priority for a long time to economic development, leading to alienation and

confrontation between human and environment; the high political mobilization after democratization also causes alienation and rivalry among people. The above-mentioned problems have been seriously blocking the promotion and protection of human rights values and concepts. On the one hand, the government neglects the formation of civil society and popularization of human rights concepts in order to promote economic development, leading to the phenomena of paying attention to development while neglecting human rights, focusing the north part while neglecting the south and contorted development in urban-rural development. In south Taiwan, grave human rights problems exist in no matter the rural areas with serious population outflow and numerous small factories, or in the urban areas with many industrial zones. All the problems including the human rights of the disadvantageous groups like women, the seniors and children, the foreign-related human rights such as migrated labors and foreign brides and even the environmental and ecological rights are in urgent need of being focused and improved (Chih-Chieh Chou, 2007: 16). On the other hand, political leaders utilize their extraordinary charisma among people during democratic transition to accumulate their resources with ethnic cleavage and sense of sorrow, and seek cronyism and power abuse with the procedural democracy. They also distort law applications with their political power for special purposes. For a long time, many of the cases handled by the government were the practices of infringing human rights and public interests under the banner of “rule of law” and “professional judgment.” Under the guise of just procedures, the substantive justice has totally vanished, undermining the fundamental values of mutual trust, the concepts of right or wrong and the practices of respecting different views in Taiwan society (Chih-Chieh Chou, 2009b: 18).

Thus, reviewing and rethinking human rights conditions in Taiwan is not only the important consideration for the decision-making layer to deepen democracy, but also an indicator to observe whether or not Taiwan can establish a real polyarchic society. The reason is, the political system of a country or a region is mainly made up of upper level political society, middle level economic society and lower level civil society. The upper level political society refers to the government departments to make decision makings and provide stable internal and external environment. In a democratic society, it is there to serve the other two levels; the market-oriented economic society, mainly referring to private sectors, mainly provides profits and welfares for itself, state mechanism and civil society; the lower level civil society is actually the foundation of the whole political system by providing talented people, laborers and capital needed by the other levels, and has become the area to implement public policies and activate market economy (Easton, 1990). Thus, constructing a independent and diversified civil society that respect human rights is the key to maintain operation of political system. However, in Taiwan, the nutrient absorbed from civil societies and its sacrifice are used to promote vibrant growth of economic society and the existence of state mechanism (Chih-Chieh Chou, 2010: 70). Of course, the stability and development of the above two levels can feed back civil society; the long-term neglect of the construction of civil cultures and democratic society leads to the emergence of dual crises. In this sense, human rights protection and practices have become the best indicator to observe the above-mentioned problems (Chih-Chieh Chou, 2010: 70). Hence, the concerns and improvement of human rights protection and practices should be the key to improve Taiwan’s foreign images and establish democratic quality.

After International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights were domesticated, the stipulations of human rights protection of the two covenants have domestic legal bindings (see article 2 of the implementation law). However, if the government regards this as a stage-based task to show its attention to human rights to the international community and fails to take follow-up actions, the efforts of the government in promoting domestication of international human rights norms and attaching importance to human rights-related affairs would be narrowed down. In fact, on May 14, 2009, when Taiwan leader attended the signing ceremony of the covenants, many people, including students, protested outside that the protest law in Taiwan goes counter against the human rights covenants. This move indicated that Taiwan government cannot neglect the conflicts between the existing domestic laws and regulations and the two covenants (Chih-Chieh Chou, 2009c). In the future, so long as the people think their interests are infringed by laws, regulations and measures that are suspected to conflict the covenants, they can cite the two covenant to claim their remedies. In addition, the implementation law authorizes “the central and local governments” to review and modify the existing laws and regulations that conflict the covenants, and the work should be finished within two years (see article 8 of the implementation law). “Ministry of Justice” is responsible for human rights training, initiation and education. All these indicate that the implementation and promotion of the two covenants depend on the government departments, while the assistance and supervision of civil human rights groups and academic circles in law modification and education promotion are neglected.

Facing the dual crises, we should follow the international human rights regimes in formulating human rights laws, regulations and measures; meanwhile, the broadening and deepening of human rights values in civil society and political arena is also a necessary measure. The goals of doing these are to reconstruct individual-group relations in civil societies, strengthen power-responsibility relations in political arena, improve the quality of human rights in government official system and maintain diversified balance in overall development. Actually, it is a fact that Taiwan has become a diversified and democratic society. What the government should make efforts to do are not only to demonstrate diversified facets, but also to stress the process of practice and tolerance and to implement the spirit of human rights. The maintenance of diversified cultures in human rights protection relies on the reconstruction of individual-group relations in civil societies. In Taiwan which was dominated and distorted by economic development and political mobilization for a long term, it is more urgent to establish a harmonious society with sustainability than the China. With different beliefs, topics and status, every people may become the minority or the majority on certain occasions. Thus, respect and tolerance are the basis of deepening human rights education. Only after constructing a society that respect human rights can Taiwan go beyond the stage of form-based democracy. Administrative departments are necessary to create a human rights-based Taiwan. Law and regulation formulation and civil groups creating discussion arenas are obviously not enough. It is more important to implement institutionalization. Thus, the problems cannot be solved only by holding specific activities, planning individual budget or handing out subsidies. It is the responsibility of the government to construct diversified cultural and human rights-first soil, instead of the rhetoric of political demonstration. Only through the continuous and substantive efforts and supervision and criticism of civil groups can we really achieve the human rights-based Taiwan,

and can the island continue its reputation of human rights example for the Chinese societies.

V. China's Shifting Attitude to International Human Rights: from Resistance to Utilization

In Taiwan, a majority of people in favor of human rights universalism, believing that the human rights values developed by western countries are borderless, applicable everywhere and the common culture of all human beings. So, they have no difficulty in recognizing the values. However, the measures and channels of domesticating international human rights norms should also consider local laws and cultural traditions. For the China, human right is imported from the western countries, which is often used as a tool by the western force to expand its influences to region with non-western civilizations. Owing to the fact that human rights philosophy and concept originated from the Enlightenment in Europe, human rights value is regarded as the western value, which unilaterally flew to non-western countries with the process of modernization and colonialism. After making great achievements in reform and opening up, China, together with some eastern Asian and Latin American countries that have made progress in modernization, especially those emerging countries or developing countries, find it difficult to accept the hegemony of western countries in interpreting human rights concept. They believe the western countries use human rights as a tool to seek their national interests (Chou, 2008: 141).

Notably, starting mid-1990s, China's reaction facing the pressure of international human rights also changed from hostile attitude with the excuse of national situation to strengthening its interpretation on human rights connotation and norms by actively utilizing its increasing international position. In 1997 and 1998, China signed the two international human rights covenants; in March 2001, the Standing Committee of the National People's Congress ratified International Covenant on Economic, Social and Cultural Rights. Several impetus encouraged the China to sign the two human rights covenants, including domestic drives as well as the pressure from the international community, especially the United States and the EU. In addition, China has been a member of the UN Human Rights Council after it was established in 2007. As such, **it is needed to further observe China's efforts on actively participating in international human rights regimes and the gap generated between ceremonial compliance and normative practices.**

5.1 China's Dilemma of Linking Confucianism with Human Rights

Viewing from the angle of international situation, with the globalization effect expanding to cover all the areas of people's life, human rights has become one of the focus of discussion between globalization and localization. After reform and opening up to the outside world in 1979, China's economic development repeatedly surprises the western countries, and even makes them feel threats. China also frequently challenges the argument that western modernization experience is the only universal model. Undoubtedly, China's economic development mode combines one-party rule with market economy. All the people from the governments, academic circles and civil societies believe that China's modernization path cannot be interpreted and

illustrated with the western framework. In this sense, China's human rights discourses also have its own local culture, which is different from the western culture. Based on this, China hopes to break the hegemony discourses of human rights universalism of the western countries (Dirlik, 1995: 229-273; Chen, 1999: 213-215). The initiators of such discourses believe that the east/China has different political, economic and social structure from the west, which leads to different cultural traditions, values and naturally views on human rights.

The Confucianism has been playing a contradictory and extreme role in the process of China's modernization. The Westernization spirits of the May Fourth Movement denied the value of the Confucianism; during the Cultural Revolution, the movement of "smashing four olds and establishing four new" regarded the Confucianism as the burden of the old age and wanted to eliminate it. The "Culture Craze" started in the 1980s was known as a new wave of enlightenment movement, which began the reasonable rethinking of traditional culture (Tu, 1994: 1-34). The 1990s witness the rejuvenation of Chinese traditional culture. The Confucianism won confidence from the common people and became the core cultural element in the Chinese model, which guides China's development. However, the rejuvenation of the Confucianism was contributed not only by domestic factors, but also the stimulation from the outside, which is more important.

In his book *The Protestant Ethic and the Spirit of Capitalism*, Sociology master Max Weber also mentioned the Confucianism, believing it is a stumbling block hampering China's modernization. The modernization theory in the 1950s and the 1960s also echoed Weber's opinion under the tradition-modern dual framework (Goodhart, 2003: 935). But in the 1970s and the 1980s, American society witnessed economic success of Asian Americans. They were called "model minority" and their success were attributed to the influence of the Confucianism (Chou, 2008b: 219-229). On the other hand, Singaporean former Prime Minister Lee Kuan Yew, while making efforts in economic development, attached great importance to the values of the Confucian culture and formed Asia value through connecting economic development with the Confucian culture (Dallmayr, 2002: 173). Influenced by the nationalism emotion and the thinking of localization in 1990s, Chinese intelligentsia realized that the Confucian culture can represent the "Chineseness," and can be used as a weapon of human rights relativism for the east Asian Confucianism civilization to confront the human rights universalism insisted by the western countries. Furthermore, it can be the cultural base in constructing the "Chinese capitalism" and even the spiritual source for China's modernity.

When China attempt to recover its alternative human rights outlook based on China's existing spirits and traditional culture, it focuses on its uniqueness that China is not willing to be summarized by western countries; however, it is also possible for China to overstates the cultural differences, which may lead to criticism by Sayid to the western "self/other" dichotomy. Meanwhile, China's discourse on local human rights is not totally different from the western model and approaches, which is even considered to be used to cope with the pressure from the west.

VI. Tentative Remarks: Coexistence of Local Culture and International Norms

In fact, to discuss the human rights development from the dual angle of globalization and localization, we do not mean to focus on the arrival or the ending of human rights age, but to discuss whether global human rights norms can directly or indirectly form the legality of acts of states and what ways can be used to achieve this goal. In addition, related variables in measuring the acts of a sovereignty state are also very important. Thus, combining the discussion and research methods related to international relations, comparative politics and cultural studies can probably provide wider vision and more extensive interpretation for China's discourse related to human rights, and even the practices of Taiwan of following the universal human rights values through domesticating international human rights norms.

Viewing from international politics, a state possesses the relative powers to resist the pressures from the international community. However, power itself is not adequate to compel a state to follow international norms like human rights. The power relations between the state that exert the pressures and the state that receive the pressures cannot indicate which states will follow the international norms and which states will not. Hence, it is suspicious whether external compulsory forces are the key to promote domestication of international norms in a sovereignty state. On the contrary, merging the opinion of constructivism into domestic factors can help provide a sound interpretation for the question of how international norms exert their influences (Chou, 2004: 226-227). Why are a country's reactions so different while facing the same international system and accepting similar international pressures? In this article, I believe that the internal cultural compatibility and the changes of nationalism factors are greater than the influences of domestic politics and social structures. In addition, with the universalization of western human rights values and under the current international atmosphere, China also needs to construct the human rights discourse with local characteristics for counterbalance, or at least abides by the values in a perfunctory manner, and then puts forward proper reason when it wants to object some of them according to the above-mentioned norms.

Meanwhile, as the Chinese government still regards the rights to development and existence as the prior goal in human rights protection, the civil and political rights practices still lag behind that of the international norms. Thus, even if China changes its attitude from negative resistance to gradual coordination, the country still cannot totally follow the so-called universalism. More importantly, China tends to overthrow the western universalism by holding high the banner of its local cultures of the neo-Confucianism, but still cannot go beyond the "self/other" dichotomy (Tatsuo, 1999: 28-29). Hence, China's alternative discourse of human rights is not indigenous, but based on western standards. This discourse just thinks about how to resist western discourses in this regard in a reverse manner. Thus, China's alternative discourse of human rights stresses its uniqueness that China is not willing to be summarized by western countries; however, it also possibly overstates the cultural differences.

More importantly, the local human rights values developed in China are not really indigenous that are different from western models and approaches. On the contrary, it unconsciously fall in the rhetoric usually used by the western countries to criticize China's human rights development: China's discourse on human rights is probably used by the state mechanism to cope with the pressures from the west with

cultural rejuvenation as the tool and the formation of neo-nationalism as the connotation so as to consolidate its rule. By observing the development experience of another Chinese society – Taiwan, we can find that self and other are never innocent and dependent and they stipulate and influence each other to some extent; after that, they change, shift directions, get modified and improved. Hence, in the attempt of construction local human rights discourse, the Chinese government should have accumulated sufficient confidence to realize that western theories and concepts, and Chinese traditions and culture can coexist and even support each other. Experience from Taiwan's practices shows that the human rights values in the two Chinese societies can be gradually linked up through exchanges and dialogues across Taiwan Straits.

China attaches great importance to the creation of a harmonious society. The key to its success lies in the implementation and protection of economic, social and cultural rights. Taiwan has also achieved progresses in the practices of above-mentioned human rights policies. So, the dialogues related to human rights across Taiwan Straits can cover many topics. Taking the economic, social and cultural rights for example, the topics cover social welfare, disease prevention and treatment, ecological environment, urban-rural development gap and the human rights for disadvantaged groups such as women, the seniors and immigrants. With the successive launch of activities and increasingly closer relations across Taiwan Straits, the popularity of soft values and the practices of a harmonious society have become the topic for deepening interaction across the Straits. In the foreseeable future, human rights research circles across Taiwan Straits can even begin to think about the issue of how to form the common human rights outlook of Chinese societies so as to make joint efforts in demonstrating and interpreting human rights values and practices of the Chinese societies!

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