

**POLITICAL CULTURE AND HUMAN RIGHTS IN JAPAN,  
KOREA AND TAIWAN**

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## **IAN NEARY**

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Mark Rebick  
Editor



### **Political Culture and Human Rights in Japan and East Asia**

The Bangkok declaration states that universal standards of human rights should not over-ride unique Asian regional and cultural values, the requirements of economic development and the privileges of sovereignty. (Davis 1995: vii-viii) Western commentators have been troubled by any argument that a definition of human rights should 'not over-ride' historical and cultural differences between (say) the nations of Europe and Asia. And yet, it is clear that the idea of human rights is part of a liberal tradition that derives from the historical, cultural and religious tradition of Europe. On the other hand, it is also clear that there is an indigenous liberal, and even social democratic, tradition that exists in many Asian societies. Indeed, were that not so it would be hard to explain the many Human Rights NGOs that are active in Asia. Meanwhile that Asian liberal tradition co-exists with a number of other elements within the political culture that may influence how those rights are perceived and therefore implemented.

Until the 1990s attempts to discuss the relevance of human rights to non-western societies - those outside western Europe and North America - argued within parameters set by universalism and relativism. On the one hand, there was an essentialist view that regarded 'rights' as the basis for the common conditions of

human existence, not contingent on culture, tradition or history. On the other hand, the relativist argues that standards of evaluation are (must be?) internal to traditions and that human rights are normative standards internal to the western cultural tradition which cannot be assumed to be relevant to the traditions of non-western societies and, indeed, perhaps should be assumed not to be.

However, approaches to social research which focus on discourse suggest a third, and perhaps more flexible way, to think about how tradition is understood and human rights are implemented in both western and non-western societies. For example, Gaete comments:

Human rights do not exist as heavenly and pure principles but as a specific discourse with ambivalent rules of formation. It is this discourse that must be subjected to interrogation. How are its meanings generated, who controls them, what statements are or can be censored? Are human rights reflexive, that is, do they control the statements interpreting them? What are the limits to the domain where statements on human rights are formed. (Gaete: 4-5)

Traditions change. At any one time they are faced by rivals and critics both internally and externally, in response to which they adapt in a number of ways. A 'tradition' may acquire a reflective understanding of its practices, which might lead it to question the coherence of its doctrines, the inherited interpretation of authoritative texts, or who the interpreters should be. Such a re-evaluation can take place either as the tradition encounters new communities, or when changes in material circumstances cause new issues to emerge. Through this process each generation brings new understanding to its own tradition, particularly when confrontation with a rival tradition opens up the discursive space for critical reflection. (Lee 1995: 77)

The context for current discussion about human rights is the post 1945 international legal discourse which universalises the liberal conception of the relation of the individual to the state, giving the individual a status which transformed her from an object of international compassion into a subject of international rights. This threatens to undermine the authority of the traditional state by maintaining that its treatment of an individual is a matter of international concern. The foundation of this new international law is the 1948 Universal Declaration of Human Rights - the first of a series of texts that urged states to adopt and put human rights into practice. But with this, as with any other legal text,

the truth of a text does not lie in the text itself or in the intentions of its author but depends on the conventions and practices of competent readers, that is readers with authority and a right to appropriate the text...Interpretations count as valid when they are seen as valid by competent members of the legal community. (Gaete 1993: 31)

How the 'competent readers' do this in any society will be strongly influenced by the dominant political culture of the society in which they operate. So, let us begin with a working definition:

A political culture is a more or less harmonious mixture of the values, beliefs and emotions dominant in a society...that influence support for authority and compliance with its basic political laws.

(Rose 1985: 127-8)

In this definition I would like to stress the 'more or less' for we are not talking here of a fixed set of ideas, nor one that will be consistent; there may well be contradictory and cross-cutting elements within it.

The purpose of this essay is to suggest that if we are to appreciate how human rights principles are understood in East Asia we need to ask what are the main elements of political culture - the set of principles concerning the exercise of rule - which have constrained and influenced the efforts of those who have constructed and reconstructed the state in Japan and East Asia, and also ask who have interpreted and who are now implementing notions of human rights. Essentially what I want to do is to 'unpack' the summary of the Bangkok declaration with which I began this essay to suggest that it refers to three elements which make up the political culture of the three Asian states I am interested in:

Asian Patterns of Power and State Formation;

Confucianism;

The Performance Principles of the Development State.

Each of these elements is based on principles which are unsympathetic to the idea of human rights and their implementation. However I want to suggest further that if we are to understand the emergence of human rights in East Asia we need to consider a fourth element, the Liberal Tradition. Here I want to argue not simply that liberal democracy and human rights are as important for Asia as they are for the west but

further that liberal ideas are already part of the 'tradition', the political culture of Japan, Korea and Taiwan.

For the purposes of understanding the interpretation and implementation of human rights in East Asia, these are the four strands of tradition. Let me take each of these in turn:

### Asian Patterns of State Power

This part of the discussion follows closely Lucian Pye's comments on the Asian concept of power and in particular his observation of the different notions of 'primitive power' in Asia and the European tradition. (Pye 1985: 32-8) He defines 'primitive power' as 'the crude use of force to intimidate'. Traditional Asian cultures unlike those in Europe have not located primitive power in the past, as something that has been overcome by the progress of civilisation. Rather, the past is the location of ideal forms of authority. It is the era of the rule of the Sages, who in the Chinese tradition taught the people the arts, governed with perfect justice and even tamed the barbarians more by benevolence than by the force of arms. Within the Japanese tradition too the remote past is the period of the Age of the Rule of the Gods. 'Primitive power' on the other hand, is 'an ever lurking danger in the future' when the power of the state has broken down. (Pye 1985: 34)

Nearer the modern era, in Europe the main fear has been the use made of 'primitive power' by the state, the absolutist state, and a main concern of the last 2-300 years has been to contain it. It is largely in opposition to absolutism in various forms that the drive to constitutionalism thrived. This took various forms: the resistance to the attempts at absolutism by the Stuarts in England led to Civil War, the Glorious Revolution and the political philosophy of Locke; the more thorough-going absolutism in France led to the critical tradition of the *philosophes*, Rousseau and the French Revolution; rebellion against the unrepresentative control of the British resulted in the American revolution and the democratic discourse of the US constitution. The point here is that within the process which led to the formation of the modern state in Europe there were two processes at work. Firstly, the centralisation of the power of the state which was part of the modernising struggle of the state against the remaining feudal fragmentation of power. But, secondly, at the same time there was a powerful and clearly articulated intellectual and social

movement which insisted on the need to inhibit state authority to allow spontaneous social forces to achieve creative goals.

These latter ideas inform the struggle against absolutism within Europe which set explicit boundaries around the development of state organs and built up the notion of the liberal state. In this context liberalism is described by a contemporary political philosopher as,

..the attempt to define a private sphere independent of the state and thus to redefine the state itself...the freeing of civil society - personal, family and business life - from political interference and the simultaneous determination of the state's authority.  
(Held 1995: 13)

Notions of rights were developed within that process, particularly in their 'active' or 'positive' sense of rights against the state. So rights, in this sense, are an integral part of a political culture that was a contingent product of a set of trends that has emerged in Europe since the seventeenth century.

This is not the place for a review of East Asian political history but within the political traditions of each of the three states there are examples of pre-modern or early modern state creation - the first decades of Yi dynasty Korea, in the early years of the Tokugawa period, and the first 2-30 years of the Ch'ing dynasty in China - when the newly established regimes had to build up sufficient state power to enable them to ensure order and, of lesser importance, justice in society, which in effect meant to suppress primitive power. It is to these and earlier examples that the nineteenth and twentieth century state builders would refer.

The problem in Asia in this pre-modern, or early modern period was how to build up sufficient state power to enable it to carry out its goals effectively. The challenge faced by Asian states was how to acquire, and then retain, effective political power, not how to deal with demands for its curtailment. The problem was how to keep primitive power in check and any erosion of authority was always regarded as dangerous. There was within these Asian developments no countervailing trend which sought to inhibit state authority or to create or justify the 'freeing of civil society', or if there was it was weak to the point of insignificance.

## Confucianism

This problem of the creation of state power is one which, following Pye, we would argue, has been faced by most Asian states in a similar way but in East Asia, of course, the process of state formation has often been accompanied by the utilisation of Confucian thought to legitimise the newly created regimes. Confucian ideas were not only dominant within China but also in various forms in Korea and Japan as well. The so-called 'Confucianisation' of Korea can be traced to the way the literati, in the service of the newly established Yi dynasty, attempted a thorough transformation of society. (Kendall and Dix: 2) The situation in Japan in the early seventeenth century was similar to that in Korea 300 years earlier with the difference that in Japan, 'pragmatism won out over propriety in the adoption of the neo-Confucian paradigm'. (Wolf and Smith 186) Although the study of Confucianism in Japan was not the subject matter for the selection of officials, neo-Confucianism was adopted by Tokugawa officials and propagated by the intellectual classes.

Confucian thought is composed of many strands and defies simple summarisation. For our purposes, that of understanding the background of human rights ideas, we can point to three ideas basic to traditional Confucianism which put it in stark contrast to liberal, rights-based approaches to the individual and his relation to the community. In contrast to the liberal concept which sees individuals as moral equals, Confucian tradition is based on the notion of 'moral inequality': that human worth is evaluated on familial and social status such that some members of society - officials, fathers, husbands - have greater moral worth than others. Secondly, there is the view that priority should be given to group interests and that no recognition is given to the right of the individual outside of or against the group. Thirdly, a preoccupation with private, personal interests is considered selfish or immoral so in case of a dispute it is better to compromise than to assert one's rights to get one's dues in full. Rights, then, are simply not relevant.

However the Confucian tradition is a broad church. If Confucianism is a virtue based morality there is (and can be?) no concept of rights in its ethical and therefore political thought. But, as Lee Seung-hwan shows, even if there was no single word to translate the English word 'rights', 'Confucian philosophers had an ability to understand the normative relations that Westerners describe by alluding to the word "rights."' (Lee 1992: 242) Although he does accept that the ethical system did discourage 'the individualistic claim of equal rights of man *qua* man', partly due to the

communitarian ideal of priority of common good over individual good, and partly due to the ideal of social harmony which emphasises the virtues of concession and yielding rather than competition and self-assertion. (Lee 1992: 256).

Similarly one might argue that there is a notion of limited government in Confucian thought, that the powers of government are limited to actions permitted by the Way such that the state should not, for example, take over or regulate the work of merchants, peasants or craftsmen. Moreover the exercise of power was to be constrained by the obligation to rule with benevolence, to be concerned with the well being of the ruled. We should not confuse authoritative rule, which Confucianism seeks to promote with authoritarian rule which it does not. A political morality which promotes virtue among the people need not be authoritarian. However the role of the common people within this model of the polity is largely passive, if the rulers adhere to the Way they will be submissive and diligent, if not they are likely to be resentful and recalcitrant. There is no room for them to contribute to the process of politics. Moreover even among the ruling class there was a largely unilateral relationship between the ruler and his officials, with the latter having very limited scope to remonstrate with his superiors, and certainly no rights to do so. (Shils 1996: 61-4)

There were disagreements among Confucius' closest followers and like any lasting tradition there were and are different tendencies within it and a flexibility to respond to changing times. Particularly within the neo-Confucian tradition, there is a basis for regarding the idea of the inherent goodness of man as equivalent to the inherent dignity of man or the intrinsic worth of the individual which might become the basis for restrictions on the extent of state power. Thus Chen Te-hsiu (1178-1235) could argue that it is the duty of magistrates to hold human life dear and see that abuses cease. (de Bary 1988: 191) Or, Lu Liu-liang (1629-83) that there 'can be no mandate from heaven for any ruler or regime that violates the basic life-giving principles constitutive of human nature'. (de Bary 1988: 195) However, in general, the Confucian emphasis is not on the free autonomous self but rather on the social qualities of life, and thus there is less possibility for the individual to have a claim on the group or against the state.

In the previous section we commented on the way the liberal tradition emerged within the process of the development of the modern state in the west and how one part of this was the 'freeing of civil society'. Not only did this not happen in the development of the state in Asia, but the Confucian tradition was a major impediment to it doing

so, as no distinction was made between family ethics and state ethics. Let us follow Hegel in defining civil society as 'the sector of society beyond the family and short of the state' which is mainly though not exclusively related to the market. Now, there are clearly some problems with this. Neither the conceptualisation of the state nor the family can be taken for granted and the extended *ie* system in parts of Japanese society and the lineage groupings in Korea and China stretch further into the realm of 'civil society' than Hegel or most modern Europeans would think of the family as doing. However it still is useful for my purposes to enquire whether there is any element of civil society within Confucian thought.

Within the classical statements of Confucianism there is no concern with the functioning of the market, nor the processes of exchange and trade, nor a political order composed of institutions and activities distinct from the family and state which are the site for political contention. But, even if we can agree with Edward Shils that, 'Confucius is entirely silent regarding the institutions of civil society' (Shils 1996: 71), we can nevertheless find some elements of constitutionalism in later neo-Confucian thought. As de Bary has pointed out, at the beginning of the Ch'ing period a neo-Confucian, Huang Zongxi (1610-1695), put forward a constitutional programme founded on the notion that all, even the ruler, should be subject to law.

As Huang put it "should it be said that 'there is only governance by men, not governance by law', my reply is that only if there is governance by law can there be governance by men. Since unlawful laws fetter men hand and foot, even a man capable of governing cannot overcome inhibiting restraints and suspicions." (qu. in de Bary 1995: 22)

So while Confucian and neo-Confucian thought largely went along with the statesmen of East Asia and legitimated the use of law to control the common people, there was some suggestion in the writing of Huang of the need for law to act as the basis of a system which could act as a countervailing force against the arbitrariness of the ruler, thus creating the space for activity between the family and the state; for civil society. He even makes clear his desire to create a (discursive?) space for the public discussion of important matters.

Moreover neither Huang nor de Bary are exceptional. Chang Hao suggests that there was within the Confucian literati of Ch'ing dynasty 'a quest...for an organisational autonomy vis à vis the authority of the imperial rulers'(Chang Hao 1996: 90) that existed alongside the central strain of thought that adhered to models of 'cosmological

kingship and kinship based feudalism'. The threat from the west and the encounter with western liberal modernity caused a shift in the internal balance in the Confucian intellectual heritage discrediting the latter and highlighting the potential of the former.

Some may argue that scholars sympathetic to the liberal tradition simply select from the Confucian tradition to take out of context those elements which appear to provide a basis for democratic rights-based ideas. This, I think, misinterprets what is taking place. As Inoue explains, there are in Confucianism two competing tendencies: those who want to politicise morality and identify themselves with political power and use it to impose their ideas on their rivals in an authoritarian way; and those who have a moral commitment to the cultivation of the critical spirit against persecution which encourages moral autonomy and independent political agency. Confucianism has developed through conflicting interpretations of its own tradition which is rich enough to lend itself to a liberal interpretation. (Inoue: 39) It has to be accepted that in Korea, China and Japan it was not the liberal interpretation of Confucianism that attracted the attention of the ruling groups but rather its potential for legitimising their control and dissuading the subjects from protest.

Outside China neo-Confucian ideas were adapted to fit in with the indigenous traditions. In Japan they were adopted by a samurai elite whose tradition emphasised physical courage. There was, then, a tension between the Confucian ideal of government as a matter of morals and ethics and the reality of the need for military skill and strategy to keep the potentially rebellious retainers in check. There were also occasions when there was tension between loyalty to family and to authority. However, as Pye points out, within the decentralised political structure this could often be fudged by accepting the importance of loyalty to the authority that the family acknowledged. Thus, for example, the question of whether the father should have priority over the demands of the lord was usually only one of theoretical significance. As developed in Japan, the Confucian legacy helped legitimise a paternalistic form of elitism in which power was associated with efficiency and utility, in Pye's words, a 'goal directed concept of power'.

Korea adopted Confucianism at the start of the fifteenth century but there is considerable evidence that though Korea adopted a centralised state structure quite unlike its decentralised feudal neighbour, there was an 'intermediate society' between family and state. The basis of this society was the Confucian literati who 'in power', that is serving at court, could control monarchical power to defend the people from

abuses by the state and 'out of power', as community leaders lead the largely self governing local agencies and villages. Moreover these backwoods literati were not isolated individuals but became part of nation-wide networks which on occasion together would face the state. To be sure there were occasions when instead of acting as guardians of the people they degenerated into exploitative rulers. But when this happened it would trigger movements demanding reform and as Confucian literati and their ideology encountered new trends including western ideas in the nineteenth century the framework of ideas did develop elements of pluralism. (Cho 1997: 34)

Significantly the first organised response of the three East Asian states to the threat posed by the arrival of the imperialists was to go back to the values that had guided the creation of their regimes. In Japan the Tempo reforms (1841) were based mainly on orthodox Confucian prescriptions, the Tung-chih restoration of the 1860s in China was an attempt to ward off modern domestic and foreign threats by reasserting the values of Confucian ideology, while at more or less the same time the Taewongun in Korea was responding to the internal and external threat by trying to re-establish the fundamental requirements of a Confucian order. Each of these attempts failed because the requirements of the modern state ran directly counter to the requirements of the Confucian order. For a time Confucian solutions were discredited, but this did not eliminate Confucian values from the systems and they re-emerged in various forms in the twentieth century. When they did, they were in a conservative version regarded as an antidote to the liberal influences from the West.

State builders of Japan in the early twentieth century looked to the Confucian tradition for support in creating a civic ethos that would create 'good Japanese' (and Koreans) as willing, obedient and informed subjects. However the 'Confucianism' which was part of the prevailing moral discourse was not liberal Confucian humanism that can be traced through Huang but the much more authoritarian strain or at least parts of it. As Yamashita comments the Japanese authorities 'found Confucian ethical discourse eminently usable' if used selectively with little or no mention of notions of benevolence (jin/jen) or righteousness (gi/yi). Thus, 'Confucian terminology ...was carefully misread to serve the needs of the state'. (Yamashita 1996: 152) But those who look at the creation of values through discourse suggest that this is nearly always the case as the 'competent readers' decide what is appropriate to current political needs in the culturally relevant texts .

So, although the Confucian heritage is more complex than some of its late twentieth century advocates might allow, there is no doubt that when adopted by newly established regimes it has been used to legitimise state power and undermine the legitimacy of protest. The overwhelming emphasis has been on duties and very little has been said about rights.

### The Developmental State

In the 15 years since the publication of Johnson's seminal work on MITI which elaborated the notion of the developmental state, there has been extensive discussion of its implications for strategies of economic development. However I want to argue that the development state model is more than just a way of explaining economic development and, as such, occupies a key position in the thinking of the state makers of Japan, Korea and Taiwan and, of course, in the hopes and expectations of the citizens of these states.

The key feature of the developmental state is that the state takes on the role to lead the drive to industrialisation in order to achieve clear political ends. Moreover within this strategy the economic and social policies believed to be necessary to achieve these political targets have priority. The central notion in the economic planning is that market forces will not produce the preferred outcomes. What criterion is used to judge this? The political aims of the state and these may change slightly over time. Thus, in the nineteenth century, the principal aim of the Meiji government was to build up sufficient political and economic strength to enable Japan to resist the feared invasion by one or more of the imperialist powers. When the Anglo-Japanese Alliance of 1902 made that improbable, the aim changed to that of wanting to be treated as a first class power and post-war that was redefined in terms of economic recovery and, later, economic pre-eminence.

Similarly in Taiwan policies directed at economic growth since the 1950s have aimed at creating economic development in the service of the political ends of the KMT. This began as the 'mainland recovery mission' but gradually during the 1950s the emphasis switched to 'first build Taiwan'. In South Korea the creation of the system of 'guided capitalism', as proposed by Park Chung Hee in 1963, was the key element of his plan to 'rescue the Korean nation from communism and the brink of starvation'. In both states the attempts to organise opposition were suppressed on the grounds

either that they would be interpreted as a sign of weakness by the enemy and thus provoke attack or that they would weaken the development process by, for example, discouraging investment.

In each of these examples, in order to achieve its political objectives the state had not only to intervene in the economy more actively than its West European equivalents, but it had to create a political and social structure which was conducive to its political objectives and which could minimise resistance to their achievement. Thus we see the creation of what has been labelled 'soft authoritarianism' in each of these states which sought to create and then sustain a national consensus about the need for economic recovery to serve the regime's political aims. There was always a slip over from the economic to political and social policy. Just as government had no faith in the market producing the preferred pattern of distribution of material resources so it did not trust the political system to generate its preferred pattern of political and social values no aspect of social, economic or political life was left to chance.

Recent work by Sheldon Garon has demonstrated how both in the period before 1945 and since then, the Japanese state has engaged in a number of policies of 'social management', from the early welfare programmes which aimed 'to discourage the Japanese people from developing a consciousness of the "right" to receive relief' (Garon 1997: 49) to the campaigns of the New Life Association which from 1955 to 1970 was funded by government to foster public spiritedness, propagate social morality and fire prevention thought and remove the sources of juvenile delinquency' (Garon 1997: 169) Interestingly this campaign started at the same time as MHW was making cuts in social welfare provision in order to save money and to 'reinforce the work ethic and to limit the notion of a right to a minimum standard of living. (Garon 1997: 220) There is no similar work on Taiwan or Korea but it is clear that the repression of the groups independent of the state until the late 1980s prevented the formation of social welfare organisations that might have encouraged demands for government to recognise welfare rights.

So we can see the economic development policies accompanied by, for example, strict constraints in the scope of permitted political discourse in Japan 1900-1945 and in some areas even since then, in Taiwan 1947-1991 and in Korea 1961-1992. And, of course, clear limitations were placed in the development of ideas of rights and the possibility of their implementation especially where they were in the form of claim rights against the state whether these be claims that the state should act to provide

social and economic services or refrain from acting to inhibit political and civil liberties.

### Liberalism in Asian States

The fourth element in this description of the political culture which has guided the thinking of the East Asian state makers and the expectations of their citizens derives from European ideas that can loosely be labelled 'liberal'. The introduction of liberal ideas was accompanied by the spread of socialist ideas which in mainland China would prevail over bourgeois liberalism. This, however, was not the case in the three states I am interested in. There, the socialist and social democratic ideas have differing degrees of influence but have always formed only the minor tradition. I want to briefly sketch out how I see the incorporation of a liberal tradition in each of Japan, China and Korea.

#### Japan

At one level liberal thought was studied in Japan as just one more aspect of western civilisation along with the postal system, ship building technology and the techniques of oil painting. J S Mill's 'On Liberty' was translated by a model Confucian scholar, Nakamura Masanao, in 1872 and became a best seller. (Wilkinson 1983: 108) Ideas of French origin guided those who were involved in the creation of the new criminal code published in 1882 to replace that produced ten years earlier which had been based on Chinese and traditional Japanese precedents. (Beasley 1989: 642) Later that decade a constitution was promulgated which combined some of the ideas about rights that derived from the French tradition with notions from Germany about 'social freedom,' which suggested the need for a framework of law which could moderate the struggle between capital and labour and harmonise their competing interests. For present purposes what is important is that the Meiji constitution did contain a constitutional commitment to a series of rights of the subject. It is true that most of these guarantees are qualified by the phrase 'within the limits of the law' but perhaps what should impress us more is that, only twenty years after the end of the rule of the feudal regime, a written constitution had been adopted which expressed even limited commitment to the notion of rights.

In part, of course, the reason for this was the demands that were made by the Popular Rights Movement which was inspired by the liberal ideas introduced into Japan in the

1870s. Based on a loose coalition of former samurai, farmers and urban commoners and with the support of the early newspapers, liberal influence spread into rural areas such that at one point in the 1870s there were over 600 debating societies, many in rural areas. A campaign demanding a democratic constitution generated 60 petitions and 250,000 signatures by the end of 1880. Then press and libel laws silenced the dissident journalists; restrictions on freedoms of assembly inhibited the development of the movement and the announcement in October 1881 that the Emperor would grant a constitution before the end of the decade effectively robbed the movement of a clear target. This we can see as an early example of the assertion of the values of the strong 'developmental state' over the nascent liberal 'tradition'. Liberal activity continued through the 1880s, at times inspiring violent opposition to central government activity but in the short term at least it accomplished little.

During the last three decades of the nineteenth century the Meiji state builders occupied themselves primarily with the task of building up state power, with devising a structure that was to be the basis of the developmental state and thus there was little tolerance for groups which sought to set explicit boundaries around state organs. Moreover the Meiji oligarchs were creating a state structure that legitimised its activities with reference to the indigenous foundation myths, authoritarian Confucian values and also by reference to the performance principles of a developmental economy. The success of the state was proven both in terms of its ability to deal successfully with the foreigner, either peacefully as in the Anglo-Japanese Alliance or in war as in the Russo Japanese War, and in terms of its ability to deliver economic development.

At the start of the twentieth century then, when the leading bureaucrats were turning to authoritarian Confucian values once more to strengthen the moral component of, for example, government approved school textbooks, there could be said to exist a small, though resilient liberal tradition in Japan. This would blossom in the 1920s accompanied by the development of socialist and social democratic movements which also criticised the activity of the state. By the mid 1930s it was clear that they had failed to have any major impact on the state structure. The justification for the suppression of the indigenous critical tradition, however weak, was expressed in terms which mixed ideas derived from the three elements of political culture described above. But equally the liberal tradition was strong enough such that it could not be eliminated. There can be no doubt that the main reason that the constitution proposed by the US Occupation in 1946 was so readily adopted and has

been so resilient to change was that there was already in place by then a set of ideas sympathetic to the liberal concept of the state that was at the centre of the new constitution.

### China

It was not only in Japan that liberal ideas established healthy roots. The victory of the CCP on the Chinese mainland and the authoritarian nature of the regime on Taiwan until very recently has obscured the fact that during the first forty years of the twentieth century Chinese political philosophers engaged with European political thought and absorbed important parts of it into their thinking, including ideas about human rights. There is not room to develop this idea very far but it is possible to demonstrate that there is not the degree of incompatibility between liberal thought and Chinese thinkers as is sometimes supposed either by Lee Kwan Yew, the rulers of the PRC (or Edward Heath). Moreover this was not simply because of the direct impact of liberal ideas imported from the west. As we have already mentioned, the failure of Confucian orthodoxy to protect China from imperialism had already shifted the centre of balance within neo-Confucian thought such that it was more receptive to new interpretations of the canonical works.

Liberal and human rights ideas arrived in China somewhat later than in Japan. It was only in the first years of the twentieth century that translations of works by Rousseau and J S Mill became well known to Chinese intellectuals. Moreover these ideas often came via Japan where, by this time the initial enthusiasm for human rights ideas had waned and conservative notions were more influential whether they be social Darwinism from the west or new readings of Confucianism. Nevertheless human rights ideas were widely discussed among Chinese intellectuals and as in Europe there was much disagreement about the form and content of human rights. The Chinese in common with other East Asians have tended to react to western human rights ideas rather than articulate their own indigenous theory, but there do seem to be two distinctive features of the Chinese approach to rights. Firstly Chinese advocates of human rights place little or no emphasis on notions of 'God given' rights or natural law, preferring to emphasise the idea of 'rights inherent in man's nature' and the close relations between the protection of rights and the importance of human dignity. Secondly, in the early 1900s when human rights were being discussed for the first time the main political problem was less protecting the citizen from the strong state than how to restore the enfeebled state so that it would be able to resist imperialist incursion. Human rights were not criticised because of their foreign origin, nor were

they seen as a ploy to weaken Asia still further; on the contrary the guarantee of rights was seen as a way to promote trust between rulers and the people. (Svensson 1996: 87) Human rights advocates regarded them as an essential pre-requisite for the creation of a society and polity able to resist the west.

Sun Yat Sen (1867-1925) was probably the most influential Chinese political thinker and activist outside the Communist Party. He spent a long period of his life outside China; in Japan, the USA, Hong Kong and Europe. He was well informed about the state of contemporary political thought and attempted to devise a set of ideas that could guide China out of the state of economic weakness and political confusion of the later nineteenth and early twentieth centuries. He had no doubt that China could and would progress to acquire a democratic government and accepted that Chinese people were deficient in democratic knowledge, but he insisted that they were capable of being trained for democracy. However Sun rejected the idea of inherent and inalienable human rights as unsuited to China and in his lectures on 'The Three Principles' of Peoples Livelihood, National Independence and Peoples Rights he distinguishes between people's rights and human rights. At its first National Congress in 1924 the KMT endorsed the concept of people's rights which 'not only derived from citizenship but...also were dependent on political allegiance, in that political opponents were deprived of these rights'. (Svensson 1996: 229)

There was a significant authoritarian element in his ideas, particularly the notion that it would be necessary for the Chinese people to undergo a period of 'military rule and political tutelage' before they would be ready to practice democracy for themselves. It would take, he optimistically suggested in the period 1905-23, six years for them to learn the democratic way of life. In later documents this commitment to a definite time scale disappeared and in 1923 he adopted the model of the Soviet concept of monolithic rule by one party. This provided the basis for the creation in 1928 of a system in which the party was superior to both the government and state which were to be reconstructed under its direction. Can we see here the 'Asian' recognition of the need to build up state power combined with the 'Confucian' notion of the need for the superior statesman to show the commoners the way?. Whether or not, within this structure there was no safeguard for civil rights.

This provoked protest from a group of liberal intellectuals who created the Human Rights Movement. Hu Shi, for example, produced a series of articles in which he challenged the KMT's suppression of free speech and argued for a constitution which

included human rights and gave the citizen legal protection against the state. (Svensson 1996: 210-2) Others went further. Lo Lung-chi spent seven years in the US and UK and was strongly influenced by Laski in advocating that human rights enable man to 'be himself as his best'. He argued that human rights were an essential condition for the development of man's moral being as well as for his physical existence. Rights such as the freedom of speech make it possible for individuals to contribute their thought to the general well being. Meanwhile to suppress an individual's freedom of speech is to destroy not only the life of the individual but also the life of the community as a whole. I think here we can see an attempt to balance the notion of the 'western' stress on the role of the individual and the Confucian norm of the community always taking priority. Talking about the state he wrote,

The function of the state consists in its protection of human rights - the maintenance of conditions essential to being man. Whenever it fails to secure these essential conditions, the state will lose its function and I will no longer be obliged to obey it.

(Lo Lung-chi, 1930 quoted in Tan 1972: 229)

Although significant contributors to the intellectual debate of the early 1930s, the liberals were squeezed between the authoritarian KMT and the CCP which was no more sympathetic to human rights. Nevertheless they still managed to occupy a precarious position as a 'third force' throughout the war years. Indeed Zhou Jingwen in 1941 criticised the KMT human rights violations in the belief that protection of human rights would encourage people to better contribute to the war effort. (Svensson 1996: 265)

We should note here Chinese contributions to the foundation of international law on human rights. As one of the Allied Powers China was represented at the preparatory meeting for creating of the United Nations charter in 1944 at Dumbarton Oaks where, against the wishes of the US and UK, the Chinese representative argued for the inclusion of references to non-discrimination and equal rights. Later P C Chang, vice chair of the drafting committee of the Universal Declaration of Human Rights, successfully spoke against the inclusion of references to God or natural law in the final draft. (Svensson 1996: 43) At more or less the same time a constitution was produced for the Republic of China which in its preamble lists 'the protection of peoples rights' as one of the aims of government and includes a chapter on the Rights and Duties of the People. It must also be mentioned however that Article 26 also

allows restrictions of these rights in order to 'avert an immanent crisis, maintain social order or promote the public interest'.

To summarise a complex story, understanding of human rights in China in the first half of the century was characterised by an emphasis on human dignity, an association with a utilitarian defence but an acceptance of their universality. Few questioned the compatibility of human rights with Chinese culture, and even those who did not accept the rights arguments did so from positions which would be familiar to European conservatives or Marxists. There was some acceptance of the importance of social and economic rights particularly following criticism from the communists but even then, even at the time when economic development was at a low level most emphasis was on civil and political rights.

### Korea

Japanese colonial policy in Korea favoured Confucian ideas. A grant from the Japanese emperor in 1911 enabled the renovation of the central academy of Confucian learning in Seoul. Thereafter semi-annual ceremonies were held in the temple attached to the academy and scholars were sent out to lecture on Confucian ideas across the country to improve morals and to drum up support for Japanese rule. From the Japanese point of view this policy was not entirely successful. The first head of the academy gave prominent support to the March 1 movement and there were some Confucian lecturers who were critical of the colonial regime. Nevertheless in the 1930s there was increased support for Confucianism: for example, the creation in 1932 of a College of Confucian Classics to train lecturers, but we would note the insistence after 1938 that all Confucian ceremonies should include an oath of allegiance to Japan. (Jacobs 1985: 242-3)

This policy was untypical of the Japanese approach to Korea. Whereas the Japanese ruled Taiwan with some consideration for the indigenous socio-political tradition, Korea was subject to much harsher oppression and restructuring. Whether a cause or consequence of this, the Korean response to Japanese colonial rule was more robust - an intense nationalist struggle for independence compared to the relative compliance of the Taiwanese whose most radical demands were for 'home rule' within the Japanese empire.

There was, of course, an anti-establishment tradition in Korea that could be traced back to the Tonghak rebellion of the second half of the nineteenth century. Though violently anti-foreign, and therefore hardly a vehicle for the transmission of liberal ideas as usually understood, among the Tonghak ideas was an insistence that all human beings should be accorded utmost respect, equality and concern. In particular, as all converts to the new religion 'now possessed Hanami's [God's] spirit, they were morally obligated to treat each other as equals regardless of age, sex and social status'. (Jacobs 1985: 239) Although the originator of the movement, Choi Jai-wu was executed in 1864, his ideas were developed by his followers to emphasise the need for the overthrow of society so people would be freed from feudal fetters and exploitation, and an ideal society be built in which everyone would be able to enjoy their natural rights of freedom and equality. (Noh 1997: 10) Tonghak leaders proposed the freeing of slaves, they criticised the discrimination against women and spoke for women's right to equal respect. (Noh 1997: 13) The Tonghak movement was strongest in the south east of the country and in 1894 the movement had developed into outright rebellion with the rebels taking control of the three provinces and the city of Chonju. In the area controlled by the Tonghak, local government was put into the hands of the peasantry and the first steps were taken to carry out their social reform strategies. It was not long however before the Korean military with Chinese and Japanese help retook Chonju and suppressed the rebellion.

There was a small group in Seoul whose ideas were influenced by Christian and liberal ideas imported mainly from the USA. They created the Independence Club in 1896-8 but its strong anti-establishment views caused it soon to be closed down. Still its formation marked the start of an admittedly weak liberal tradition. Christianity always had an influence that went beyond its numbers. At the end of the nineteenth century there were 42,000 Catholic converts but it was the Protestant forms of Christianity that would be more influential in the longer term. Christian churches were believed by the Japanese to have been implicated in the independence movement of 1919 and many clergymen were arrested. There was no brutal anti-Christian policy in the 1920s, in part it is said, because the governor general's wife was Christian and partly because the world was largely indifferent to protests from Korea. In general the liberal Christianity of the inter-war period did not do much to inspire resistance to the colonial powers and the 'social gospel' was known to only a few.

The Tonghak movement changed its name to the Ch'ongdogyo in 1905 and for a time it supported the Japanese attempt to take over the peninsula in the belief that this would facilitate liberation. When this proved to be wrong the religion adopted an anti-Japanese line and they were instrumental in organising and carrying out the March 1 declaration of independence and the subsequent demonstrations. This made it a target for the Japanese. During the 1920s the movement adopted tactics of passive resistance but this did not save it from repressive measures in the 1930s. (Jacobs 1985: 241)

The massive anti-Japanese demonstrations of 1919 plus the relatively tolerant attitude of the colonial authorities in the 1920s saw the development of a broad social movement composed of youth groups, peasant organisations and labour unions all of which were influenced to a greater or lesser degree by nationalist and socialist ideas. There was plenty of debate over what were the most appropriate tactics for these groups and the nationalist or revolutionary movement as a whole. Both wings of the movement sought a just and equitable society but Japanese colonialism was regarded as the main source of injustice. With the exception of the *Hyongpyongsa*, there was little awareness of the need to consider the importance of human rights within Korean society. (Neary 1987, Shaw 1991) In the context of the themes we are interested in this produced a legacy of 'oppositionism' - it was not difficult after liberation to persuade particularly the young to take to the streets to protest about political injustice. On the other hand there was only a weak liberal tradition which was either willing or able make a case for human rights protection.

Nevertheless the government in South Korea adopted a constitution in 1948 which included sections on the rights and duties of the people which was similar to that being introduced at the same time in Japan and Taiwan. It is true that at more or less the same time the National Security Law was also passed giving the government broad powers to intimidate its critics and others who sought to exercise their constitutional rights. Moreover the incipient civil war of the late 1940s and open warfare from June 1950 did not permit the easy exercise of human rights. But the constitutional statement still amounts to a point of departure for the development of post war thinking about human rights.

Thus Japan, Korea and Taiwan acquired new constitutions in the late 1940s each of which has sections on the rights and duties of the citizens. It is true that these constitutional commitments have not counted for much at times during the last fifty

years as the authorities in Taiwan or Korea have suspended their citizens rights. Nevertheless what I want to argue is that this commitment by the state to liberal notions was more than simply a paper commitment, it was based on an intellectual tradition and social developments of the previous 50-100 years. It was, of course, only one part of the developing political culture and not one which would be dominant though it has proved to be remarkably persistent in the face of many countervailing pressures.

### Human Rights in Post-war East Asia

In all three countries there was a significant section of the intellectual community which had a sophisticated appreciation of the origins and consequences of the idea of rights and a broad section of the population which had some experience of involvement in popular movements. At the same time, there were demands made on the citizens of these countries not to assert these rights; demands that were justified on other grounds - the need to create an effective state, the need to promote economic development, the need to protect the state from external aggression. Moreover these demands derived directly from that political culture which had been built up in part during the period before 1945 and which was consolidated soon after in the rapid polarisation of international affairs during the 1950s. The need to create a strong state, to ensure rapid economic development cut across the nominal commitment of government to ensure human rights standards were maintained. 'Traditional' values, mostly Confucian in inspiration, were dusted off to legitimate state activity during this time. Indeed the Korean example of the Park regime shows very clearly how a set of historically rooted ethical ideas could be mobilised to support state authority and its policies.

The 'Cold War' in Asia had a curiously ambivalent role in the development of post war political culture. On the one hand it increased the alarm about the possibility of attack by one of the communist countries, Soviet Union, North Korea or China, and thereby provided justification for preventing the free exercise of civil and political rights by the citizenry. On the other hand, the very rhetoric of the 'free world' ensured that these three governments maintain their commitment to democratic processes and rights based standards of governance at some stage in the not too distant future. The 'siege states' of Taiwan and Korea were able to resist democratic demands until the 1980s. In Japan citizens have been able to exercise political and civil rights since the

1950s, but even in Japan there has not been an enthusiastic embrace of the human rights standards that have emerged in international discourse. This becomes particularly apparent when we look at the level of the implementation of rights ideas in such areas as the treatment of children and patients. In each of these three states one can see how the implementation of policy in these areas is guided by a complex political culture within which the liberal, rights affirming tradition is only one part, and one which is often submerged by the other sectors. These states have often sought to incorporate or mobilise intermediary organisations to serve their own corporate interests. Labour unions have been particularly prone to such state sponsored manoeuvres.

There is a further strand of the political culture that, for the purposes of this essay I have chosen to understate: the socialist and social democratic tradition that was particularly important in the development of demands for social rights in Europe. The liberal rights tradition is one which is characterised by the demands that the activities of state organs be restricted within certain limits and permit the free creative development of market forces. Demands for social rights are directed to the state requesting its intervention often to rectify a situation created by the operation of market forces.

Marx was not alone in realising that civil rights amounted to freedoms for the bourgeoisie and did little or nothing for the propertyless classes. During the late nineteenth and twentieth centuries social movements have urged the state to take action to protect the most vulnerable and demanded that the state provide social security, education and welfare. The constitution of the Weimar republic was the first to recognise these 'social rights' and they were later included in the post war constitutions of Italy and France and, of course, Japan. Hasegawa talks of the description of 'Basic Human Rights' in the 1947 Japanese Constitution as 'the sum of the legal experience of human rights in capitalist countries since the eighteenth century'. (Hasegawa 1985: 122) It is significant that the constitutions adopted by the RoK and RoC - where social movements have been less active - are far less fulsome in their definitions of the 'social rights' of the citizens which it is the duty of the state to intervene to protect. And yet, the state in each of the three countries we are interested in has chosen to intervene to extend 'social rights' when it was thought in accordance with the requirements of the developmental priorities.

The social movements, which in Europe have done so much to persuade the state to actively protect and promote the interests of the socially weak, have been effectively held in check in all three states until the end of the 1980s. Welfare concessions have been made more often to preempt the formation of effective social movements than in response to demands from well organised social groups.

Since 1948 the international arena has seen human rights standards elaborated in a number of ways, not only the two covenants of the 1960s on Economic, Social and Cultural Rights and the Civil and Political Rights but also the more specific application of these standards to the position of children in the Covenant on the Rights of the Child (1989) and the developing discourse on the rights of patients that is emerging in such forums as the World Medical Congresses. These have usually taken the form of urging states to intervene within social relationships to protect the weak against those with power. How governments, professionals and citizens understand, interpret and implement these emerging standards will obviously be influenced by the way 'competent readers' re-evaluate their traditions and this in turn will be influenced by the changing balances between the elements of political culture.

Social movement organisations from East Asia - and most other parts of the world - are actively engaged in ensuring that their governments do become enmeshed in the emerging international discourse on rights that has been encouraged by United Nations organisations and other transnational bodies. These bodies have no power to enforce standards but they have effectively created a climate in which governments cannot ignore rights issues, even if there are some which do not take them seriously. Inevitably the social movement organisations, the state actors and those caught in between are influenced in the ways they understand and implement rights by their political culture. However what I have been concerned to argue here is that part of that culture is a liberal tradition which has a clear understanding of 'rights' and that even the most important strand of political culture, Confucianism, is not as unequivocally hostile to notions of rights as some would argue.

Now I want to make clear that I am not claiming that these four elements amount to an exhaustive description of the political cultures of any of these three states, nor that they are in any way identical. There are other elements such as the Buddhist heritage or the shamanistic and Daoist traditions that may condition approaches to the individual/community dichotomy or contribute a non western understanding of the notion of human dignity. It may well be, as Mushakoji suggests, that an increased

emphasis on endogenous values hitherto occluded by the hegemony of developmental-state/Confucian ideas will create an endogenous discourse against patriarchal technocracy quite distinct from that in the West. (Mushakoji 1997: 175)

This has not happened yet. If it does, it will mirror developments in the post modern west where humanistic holism and eco-democratic humanism is emerging as the new alternative to the techno-rationalism of advanced capitalism. This would give further support for Inoue's argument that the importance of liberalism is that its pluralist sensibility can bridge the west/Asia gap showing the internal diversity within Asia and highlight the common problems showing the importance of the human rights enterprise for both the west and Asia. (Inoue 1998)

This is speculation. All I am trying to suggest at this stage is that the political cultures of Japan, Korea and Taiwan share certain common features, partly as a result of shared cultural heritage, partly a consequence of the way they have entered the modern era. More particularly I want to argue that by disaggregating the concept of culture, in particular political culture, it is possible to explain the different responses to human rights in the same society at the same time by different groups and in the same society at different times by the same group. Most particularly I want to make the point that liberal ideas, and to a lesser extent a social democratic tradition, have become part of the political culture of these states and should not be regarded as alien influences. The extent to which human rights have become part of the everyday political discourse, the degree to which they are accepted by the 'competent readers' of the legal community or the other communities in Japan, South Korea and Taiwan varies, but there can be no doubt that human rights are present and have a growing presence. This model and this approach, I believe, provides a framework for the larger task of understanding aspects of the implementation of human rights in Japan, Korea and Taiwan in the 1990s.

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