

## HUMAN RIGHTS IN EAST ASIA: AN EVALUATION

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### I. INTRODUCTION

In this paper, three countries of East Asia - the People's Republic of China, Japan, and the Republic of Korea - are evaluated regarding their achievement of internationally recognized human rights. The results reported here are summarized from a larger empirical study<sup>1</sup> in which the author offered a concise set of categories for measuring accomplishments across the whole range of human rights, delineated the political context in which East Asian nations practice rights, and examined the actual behavior of both governmental and nongovernmental actors on numerous specific rights. In an issue of the Internationales Asienforum devoted to the specific question of the refugee problem in Asia, this piece serves as a complementary approach. Rights are particular, as refugees and others who enjoy or are denied those rights will attest. At the same time, the quest for intellectual synthesis and the need for an overall understanding of conditions in the implementation of rights policies demand the kind of broad analysis offered here. The search for an appropriate instrument with which to estimate the quality of national performance on human rights standards has been an important theme of students and practitioners of this issue area in international politics; this treatise is an application of one such instrument to a region of the world with common cultural traditions and diverse forms of contemporary political development.

### II. INTERNATIONAL HUMAN RIGHTS

Achieving human rights is a process in which political systems support people whose human dignity is threatened or violated by individuals, groups, or institutions. Such systems include a variety of political actors: not only governmental groups (e.g., legislatures, courts, police, administrative agencies), but all those elites and non-elites, both individuals and groups, whose actions

enhance or infringe people's rights. Furthermore, the political systems relevant to human rights do not exist in a vacuum; they are affected by historical, cultural, and intellectual currents. Students of history, philosophy, theology, law, and public policy have examined those currents in terms of the origins<sup>2</sup>, nature<sup>3</sup>, and extent<sup>4</sup> of human rights.

Human rights are political issues, not just legal or philosophical ones. Furthermore, human rights are international political issues<sup>5</sup> because the international community has itself defined human rights as a matter of its fundamental concern, on the same level as maintaining the peace and promoting economic welfare<sup>6</sup>. A long process of historical evolution, catalyzed by the horrors that occurred during the Second World War, mobilized the political will of world leaders to enshrine as one of the purposes of the United Nations the achievement of "... international cooperation in promoting and encouraging respect for human rights..."<sup>7</sup>. Since 1945, the general provisions of the United Nations Charter have been supplemented by numerous international commitments to human rights, especially the Universal Declaration of Human Rights<sup>8</sup>, the International Covenant on Economic, Social, and Cultural Rights<sup>9</sup>, and the International Covenant on Civil and Political Rights, with its Optional Protocol<sup>10</sup>. These international instruments provide the language which is taken for granted in international political discourse on the subject of human rights, but they do not themselves provide a convenient tool for research. Their provisions frequently overlap<sup>11</sup> and sometimes seem to be at odds<sup>12</sup>. Furthermore, these instruments do not identify a list of inviolable rights<sup>13</sup>, a set of priorities among rights, or a method of resolving situations of apparent conflicts or trade-offs among various rights. The measuring device needed for an over-all assessment of current human rights achievement is a list of rights that is both comprehensive and comprehensible: sufficiently large and detailed to include all the major arenas of human activity that are covered by international standards; sufficiently concise and clear to be understandable by someone who wants to know the general conditions of human rights in a society.

Experimentation and reflection have led me to the conclusion that such a list of rights cannot simply be a list of n specific rights. The number of particular items which are called "rights" legitimately in international instruments - to say nothing of those "rights" which are merely rhetorically claimed by various people - is simply too large to investigate each one individually; and the value of doing so would be slight in light of the limitations noted in the previous paragraph. Human activity and political processes are too complex to reduce the domain of inquiry to a bald list of particulars. I suggest instead a set of human rights values or ideals which, taken together, sum up the full range of human actions into which such specific rights fall<sup>14</sup>. The following chart is a summary statement of those values and the specific internationally recognized human rights which fall under them.

Chart I: Global Human Rights: A set of ten values which summarize those rights currently recognized by the international community

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1. Integrity: All born free and equal in dignity and rights (UDArt.1)  
 Nondiscrimination rights (UDArt.2)  
 Right to life, liberty, security of person (UDArt.3)  
 No death penalty for persons under 18 and for pregnant women (CPArt.6, Par.5)  
 No involuntary medical or scientific experimentation on person (CPArt.7)
2. Well-being: Right to property (UDArt.17)  
 Right to social security (UDArt.22)  
 Right to work (UDArt.23, Par.1)  
 Equal pay for equal work (UDArt.23, Par.2)  
 Right to living wage for self and family (UDArt.23, Par.3)  
 Right to rest, leisure, and holidays with pay (UDArt.24)  
 Right to adequate standard of living, including security in unfavourable circumstances (UDArt.25, Par.1)  
 Special protection for mothers and children, including equal social protection for children born out of wedlock (UDArt.25, Par.2)
3. Education: Rights to education, including elementary, technical, professional, and higher (UDArt.26, Par.1)  
 Education directed to full development of personality (UDArt.26, Par.2)
4. Sociality: Freedom of movement and residence within one's country (UDArt.13, Par.1)  
 Right to leave any country, including one's own, and to return to one's country (UDArt.13, Par.2)  
 Right to asylum (UDArt.14)  
 Economic, social, and cultural rights for personal dignity and free development (UDArt.22)  
 Right to form and join trade unions (UDArt.23, Par.4)  
 Free participation in cultural life (UDArt.27, Par.1)  
 Protection of moral and material interests in one's cultural products (UDArt.27, Par.2)  
 Right to strike (ESCArt.8, Par.1)
5. Legality: Right to recognition as person before law (UDArt.6)  
 Equality and non-discrimination before law (UDArt.7)  
 Guarantee of remedy before national tribunals for nationally guaranteed rights (UDArt.8)

No arbitrary arrest, detention, or exile (UDArt. 9)  
 Equal legal protection of rights in fair, impartial hearing (UDArt. 10)  
 Presumption of innocence until proved guilty (UDArt. 11, Par. 1)  
 No guilt or punishment from retroactive laws (UDArt. 11, Par. 2)  
 No imprisonment for inability to fulfill contracts (CPArt. 11)

6. Participation: Freedom of peaceful assembly and association (UDArt. 20)  
 Right to participate in government, directly or through representatives (UDArt. 21, Par. 1)  
 Right of equal access to public service (UDArt. 21, Par. 2)  
 Popular basis of government expressed in free and periodic elections, with universal and equal suffrage, and secret ballot (UDArt. 21, Par. 3)

7. Esteem: No slavery (UDArt. 4)  
 No torture or cruel, inhuman, or degrading punishment (UDArt. 5)  
 Humane treatment of prisoners (CPArt. 10, Par. 1)  
 Aim of penitentiary system is reform and rehabilitation (CPArt. 10, Par. 3)

8. Affection: Legal protection against attacks on honour and reputation or interference in privacy, family, home, or correspondence (UDArt. 12)  
 Right to a nationality (UDArt. 15)  
 Right of and protection for marriage and family (UDArt. 16)  
 Parents' rights in education (UDArt. 26, Par. 3)  
 Rights of identity to ethnic, religious, or linguistic minorities within states (CPArt. 27)

9. Freedom: Freedom of thought, conscience, and religion (UDArt. 18)  
 Freedom of opinion and expression (UDArt. 19)  
 Duties to community (UDArt. 29, Par. 1)  
 Limits to rights based on justice (UDArt. 29, Par. 2)  
 Human rights not to be exercised contrary to purposes and principles of the United Nations (UDArt. 29, Par. 3)  
 No right to destroy others' rights (UDArt. 30)

10. Community: Right to social and international order conducive to realization of human rights (UDArt. 28)  
 Rights of self-determination of peoples (ESC and CPart. 1, Par. 1)

Free disposal by peoples of their natural wealth and resources (ESC and CPart.1, Par.2)  
 National control over economic rights of non-nationals (ESC Art. 2, Par.3)  
 No propaganda for war (CPart.20, Par.1)  
 No advocacy of hatred inciting to discrimination or violence (CPart. 20, Par.2)

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Note: I have summarized in this chart all the specific rights mentioned in the Universal Declaration of Human Rights, as well as those provisions in the International Covenant on Economic, Social, and Cultural Rights, and the International Covenant on Civil and Political Rights which significantly add to or differ from the provisions of the Universal Declaration. The abbreviations used in this chart are as follows:

UD - Universal Declaration of Human Rights

ESC - International Covenant on Economic, Social, and Cultural Rights

CP - International Covenant on Civil and Political Rights

Art. - Article

Par. - Paragraph

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### III. EAST ASIA

Historical and cultural links among China, Korea, and Japan are the basis for narrowing the scope of this study to those three nations. But political divisions of China into the People's Republic of China (PRC) and the Republic of China (ROC), and of Korea into the Republic of Korea (ROK) and the Democratic People's Republic of Korea (DPRK), complicate inquiry into even that smaller set of nations. Because of the difficulty of obtaining sufficient accurate information on the DPRK (North Korea) and the slight value of adding the ROC (Taiwan) to the analysis, I will focus on three countries as constituting "East Asia" in this study: The People's Republic of China (variously referred to as PRC, China, mainland China), Japan, and the Republic of Korea (variously referred to as ROK or South Korea). This microcosm of East Asia is a diverse and fertile field for inquiry, while it retains a certain identity and cohesion in cultural and geographical terms.

The time frame of this study is the "contemporary" period, although I will attempt to situate East Asia within its cultural heritage and historical context. Because of the limitations of this survey, "contemporary" refers to slightly different years for each of the three countries under examination. For the PRC, this term refers to the period since 1949, when the Nationalists (Guomintang) were driven from the mainland and the communist regime was

consolidated in Peking. There have been major shifts in policies and practices within China during this period - as in the Great Leap Forward, the Cultural Revolution, and the post-Mao Four Modernizations - but there has been enough continuity to warrant treatment of the whole time span as a unit.

Contemporary Japan dates from 1952, when the Allied (principally American) forces who had occupied the country since the end of World War II relinquished the supreme authority which they had held. The transfer of sovereignty was based on the San Francisco Peace Treaty of 1951, to which China and the Soviet Union were not parties. The basis for Japan's internal political regime had been established by its post-war Constitution, completed in 1946, and in force from 1947. The main lines of its external relations have been set by its continuing military alliance with the United States since 1952.

Drastic political changes in the ROK have influenced the achievement of human rights there in dramatic fashion since World War II. Formally, the 1948 Constitution remains in force, with major revisions adopted in 1962, 1972, and 1980, and minor amendments in 1952, 1954, 1960, and 1969. The country also experienced a major war (1950-1953) and several extraordinary shifts of regime (1960, 1962, 1979). The tremendous political changes in the country suggest the appropriateness of a narrower temporal focus for the ROK. My primary attention will be on the Pak<sup>15</sup> regime under the Yusin ("Revitalizing Reform") Constitution (1972-1979).

East Asia is geographically and culturally separated from the western world in which those notions of rights developed that are now formulated in international instruments. This does not mean, however, that there is no concept of human rights in the East Asian tradition or that standards of human rights are not universal or that international standards do not provide appropriate criteria for comparative research. In fact, the constitutions of East Asia share a large number of specific guarantees of rights that overlap with those enumerated in the international instruments. This suggests both the powerful impact that emerging global consensus on rights' standards has had on particular countries and the fundamental compatibility of some of the basic notions of human rights with the traditional societal norms of the region.

A common cultural mode that westerners often note in East Asia is the precedence of the group over the individual in the hierarchy of social values. Strong family ties are legendary in the traditional societies of China, Japan, and Korea. Insofar as contemporary conditions have affected that bond, it is often by mere substitution of a new group allegiance. In China, that may be to the political or work unit; in Japan, to the firm or the place of work. In South Korea, familial and ethnic bonds remain very strong. While there may be differences of degree between East Asia and the West in the balance between the individual and society, it is worth noting that articles 29 and 30 of the Universal Declaration show that the West, too, has perceived the need to identify certain prerogatives of society over against the individual in that carefully formulated synthesis.

Traditional ethical thought in East Asia is relational and this-wordly in

character. Under the influence of Confucianism in the region, the ethical approach is on the particular rather than the universal. Similarly, the "families of law" and meaning of law in the region are different from those in the West<sup>16</sup>. In both East Asia and the West, law must be viewed in relation to politics and morals; and so the application of law - including human rights law - is affected by moral and ethical traditions as well as by current political conditions. Public esteem for conciliation and arbitration, as opposed to litigation, is higher in East Asia than in the West. Traditionally, moral consideration of persons and circumstances has been considered preferable to hard-and-fast legal rules. While the tilt in the balance between individual and society, between law and morals, may differ slightly between East Asia and the West, the balance achieved in East Asia is positively conducive to certain types of rights, as the analysis below will show.

Throughout East Asia, the approach to law and public conduct allows for societal and even governmental intervention in human development. Despite considerable political differences among the three states, certain common patterns of governmental interventions are found in China, Japan, and South Korea. Fundamental principles such as self-reliance, national security, and democracy (however interpreted) serve as bases for public morality in East Asia. Governments throughout the region educate their citizens to such principles and strive to enforce social unity and harmony around them.

#### IV. PARTICULARITIES IN THE POLITICAL AND SOCIAL CONTEXT

Although human rights have become issues of global politics, the particular socio-political milieu in each of the three states of East Asia is an important independent influence both on the degree to which rights have been achieved at all in those states and on the priorities and manner of implementation of rights in each country. I have pointed out some similarities in the political cultures of China, Japan, and South Korea that are rooted in common traditions. But their modern political systems diverge according to patterns that significantly affect the achievement of human rights in the three societies. Let us consider some of those particular factors here.

##### China

The PRC is a massive continental power which includes numerous nationalities within its borders and recognizes structurally five "autonomous regions". The designation "People's Republic" attempts to capture the ideas of democracy, socialism, and leadership by the communist party, features of the polity which are reflected in its dominant ideology and governing documents. The Peking

regime claims the island of Taiwan, whose local ethnic population is ruled effectively by mainland Chinese of the Nationalist Party (Guomindang), under the title "Republic of China". The regimes in both Peking and Taipei claim that Taiwan is part of China and that all China should be under one government; each claims legitimacy for this task.

China's government has adopted a vague form of communist ideology, which it calls Marxism-Leninism-Mao Zedong Thought and which it has interpreted freely to support current policy directions. The Chinese Communist Party (CCP) has itself repudiated many rigid features of that ideology since the third session of the Eleventh Party Congress (December 1978). Two elements in this ideology which would seem to contribute to national achievement of several human rights standards are the tenets of economic egalitarianism and widespread political participation. The emphasis on economic equality would lend weight to public policies designed to protect the economic rights of those in special need: workers, peasants, mothers, children. Although mechanisms of control are centralized in the current phase of communism, the basic ideology would support notions of democratic input into political decisions and public life generally and of an ultimate decline in the role of authority structures.

Features of China's ideology with broad and long-term negative impact on the achievement of human rights would include the class analysis of human relationships (a tenet on which the regime has waffled in recent years) and the monopoly of power in the CCP. Treating human beings merely as members of classes rather than as persons with equal dignity strikes at the very heart of notions of human rights. China's monolithic communist party cannot and ought not to try to eliminate those aspects of human nature that lead to the emergence of plural political viewpoints everywhere; such an effort would simply destroy that spirit of tolerance and that variety of institutions which allow all rights to flourish, economic as well as political.

China has adopted several constitutions under the Communist regime: 1954, 1975, 1978, and 1982. There have been a number of differences in these documents significant for the legal status of human rights on China, but there is not enough space to consider all of them here. In general, one might suggest the following caution: although there is an obvious tendency for provisions in China's constitutions to be used to legitimize arbitrary and authoritarian rule by the CCP, we should not overlook or dismiss the official recognition of specific rights enunciated in those same documents. Leaders of the CCP have expressed both an awareness of basic human rights issues and some degree of commitment to seeing certain rights achieved in China, although always under the ultimate control of the Party. While China's political documents, including its constitution, have adopted most of the language of international human rights, governmental prerogatives and public needs dominate social choice processes. This tilt affects very specific policies, such as those concerning the family, the work force, and education.

## Japan

The absence of any regime classification (such as empire, kingdom, republic, people's republic, federation, or union) in the national title of Japan reflects the special character of this nation-state. The present regime is a constitutional democracy which nevertheless maintains an Emperor as "symbol of the State and of the unity of the people"<sup>17</sup>. Japan is an island nation, ethnically and linguistically homogeneous, with relatively small, scattered groups of minorities. Possessing an ancient tradition of political unity and independence, it has borrowed and adapted culture and institutions from the civilizations of East and West.

The Japanese nation-state does not have the kind of formal ideological commitment found in China, but its political ideals and institutions are in the tradition of liberal-democracy. This ideology or quasi-ideology includes emphases on political competition through a party system and on the independence of communications media from governmental control, both of which foster political freedom and diversity in fundamental ways. Procedural safeguards for the fair operation of legal and political structures are affirmations of basic human dignity within the liberal-democratic tradition.

A major strength of liberal-democracy has been its support for frameworks of opportunity for people. However, since not everyone is able to use those frameworks effectively, that ideological tradition does not always address some central questions of politics successfully: content as well as procedure, equality of treatment as well as equality of opportunity, and the exercise as well as the possession of rights. Japanese liberal democracy borrowed heavily from American political thought and practice after World War II and has maintained this link through continuing political and military ties with the United States.

Japan's current constitution was drawn up in 1946 under anomalous circumstances: Japan had been defeated in World War II and was being occupied by Allied, principally American, forces after the war<sup>18</sup>. Despite a strong American flavor to the document, it remains unamended to this day. Chapter III (articles 10-40), entitled "Rights and Duties of the People", includes many of the specific rights listed in the international instruments discussed above, as well as others. In force since 1947, Japan's human rights provisions are the oldest continual constitutional guarantee in East Asia today.

The "public welfare" standard found in articles 12 and 13 (and elsewhere in Japan's constitution) demonstrates how specific rights within a particular political system are a blend of abstract principles and other milieu factors<sup>19</sup>. In Japan, as in China, there is a tilt in favor of the group or of society as a whole rather than the individual. In the socio-political sphere, Japanese are generally more willing to acknowledge the claims of social groups and the government over the individual than in many western countries. For example, in the case of freedom of expression, the consciousness of the Japanese concerning the meaning of the constitutional rights and the inertia of social habit

set the stage for police, administrators, and courts to make specific determinations in the dialectic between the rights of expression and the 'public welfare'<sup>20</sup>. Resulting constitutional interpretations have laid great weight on 'dimensions of sociality and responsibility'<sup>21</sup> in observance of this right.

In regard to the universalistic-particularistic dichotomy in approaches to ethics, representative Japanese philosophers and ethicists, such as Sagara, Ienaga, and Watsuji, emphasize particular human relations as the basis of ethics<sup>22</sup>. This feature of the Japanese cultural milieu is in tension with the universalistic approach of the International Bill of Human Rights. These meta-ethical considerations are important to recognize, but they should not lead us to judge that it is impossible to achieve human rights in Japan or that Japanese do not contribute to the formulation of international standards in this field. One of the landmarks of international human rights is the Dissenting Judgment in the South-West Africa Cases (Second Phase, 1966) by Judge Tanaka, the Japanese member of the International Court of Justice<sup>23</sup>. His argument is a major statement of the principle of equality, or non-discrimination, in international relations.

### South Korea

South Korea is officially called the Republic of Korea, a designation which implies the notion that it has a constitutional regime, under law, in which the people are sovereign. Although the Korean Peninsula contains a highly homogeneous ethnic population, it is divided politically into two rigidly opposed regimes, each of which espouses unification of the nation on its own terms. The authoritarian styles of both North and South bear some resemblance to one another (as is also the case with China and Taiwan); but their specific ideologies, economic systems, and networks of international ties (again, as with China and Taiwan) are vastly different. The result of the claims and goals of the North Korea-South Korea and China-Taiwan dyads is considerable tension in their mutual relations.

The ideological streams found in South Korea are less precise than either China's formal communism (Marxism-Leninism-Mao Zedong Thought) or Japan's informal liberal-democracy. Elements of liberalism are found in the political and social ethos of the country, partially attributable to the ROK's close relationship with the United States. A less clear ideological mold, which we might call "modernizing authoritarianism"<sup>24</sup> (or authoritarianism, for short) is also found there. The characteristic locale for an ideology of authoritarianism is a "modernizing state" (or "developing country") whose government has been unable to attain certain economic or social objectives that it was striving for or whose top politician(s) or political-economic-military elites want to consolidate their power. In South Korea, as elsewhere, it is often difficult to distinguish such an ideology from opportunistic rationalization; but since efforts are made to justify, or at least expound, such action-

oriented belief systems, I will treat South Korean authoritarianism as one ideological stream which mingles with another (liberal-democracy) in this concrete case.

Positive aspects of this modernizing authoritarian ideology for human rights achievement are its emphases on the socio-economic progress of society and the individual and on the establishment of socio-political discipline to protect real freedoms in the face of threats from private or external sources against the larger society. Authoritarian practice is definitely not as good as its promise in these regards, but then the same could be said of the other ideological forms. A strongly negative aspect of the theory itself is its enshrinement of arbitrary, personal power in the hands of select rulers, which is almost the antithesis of political rights and is the antithesis of guaranteed rights. Constitutionally and legally sanctioned rule by people who are in no real way accountable to law, legal-political institutions, or society itself is part of this authoritarian ideology, under which political means becomes ends in themselves, as when rulers prolong a military or social emergency for an indefinite period.

In light of this ideology, it is not surprising to find that Pak Chông-hŭi introduced constitutional revisions through a national referendum of 21 November 1972. The adoption of this strongly authoritarian ("modernizing authoritarian") document marks the beginning of the primary temporal focus in this analysis of South Korea. This Yusin ("Revitalizing Reform") Constitution includes most of the items found in the principal international human rights documents. However, a conceptual tension between extending and limiting rights permeates article 32<sup>25</sup>. While paragraph 1 shows an open-ended, universalizing tendency, the categories "national security" and "order" in paragraph 2 have the aura of South Korea's modernizing authoritarian ideology; and "public welfare" is restrictive of individuals for the sake of society, a cultural expression like that of the "public welfare" standard in Japan.

The Yusin Constitution has a special emphasis on issues of national unification and its economic, social, and security prerequisites. The most authoritarian features of this governing document are found in articles 53 and 54, which grant the President power to take emergency measures, mobilize the military, and proclaim martial law<sup>26</sup>. Even before the Yusin Constitution was adopted, President Pak declared a "State of National Emergency" on 6 December 1971, and martial law on 17 October 1972. An earlier legal document, the "Law Concerning Special Measures for National Protection and Defense" (adopted by the National Assembly on 27 December 1971) provided a basis for suspension of many rights in a time of national emergency.

President Pak lifted martial law shortly before his reelection on 23 December 1972; but after that time, he used emergency decrees based on article 53 to suspend the civil and political rights of those who opposed his regime or the Yusin Constitution. He also used a national referendum on 12 February 1975 to mobilize support for his Revitalizing Reform System. The politico-legal structure of South Korea showed these authoritarian characteristics until

26 October 1979, the date of Pak's assassination and the terminal date of the primary temporal focus in this study. After a period of uncertain political direction in the wake of Pak's death, Chŏn Tu-hwan (Chun Doo Hwan), a leading military figure who moved into the civilian presidency, reestablished an authoritarian mode of governance, which was confirmed by the adoption of another revised constitution through national referendum on 27 October 1980.

As in China and Japan, there are general cultural elements in South Korea which spill over into political life, and especially into human rights practice. Hahn finds family-centered values to be the basis for macro-level interpretation of Korean politics and society<sup>27</sup>. Henderson describes political-cultural dynamics as a vortex, in which power is sucked into a single central point<sup>28</sup>. These features of the culture can be and, in fact, have been abused in violation of human rights standards. Governmental style and governmental prerogatives, rooted in these cultural patterns and supported by the kinds of ideology described earlier, have subjected to abuse the rights of individuals.

## V. SUMMARY EVALUATION

Since the achievement of human rights has been defined as a political process, and since this study focuses on practices found in East Asian states over a period of years (slightly different for each country), it is appropriate to characterize both the position and trend of each of the three countries in achieving human rights<sup>29</sup>. Evaluation at the end of the contemporary period yields the particular nation's position on a scale that is based on the standards of the international human rights instruments that have been identified above. This is my qualitative judgment about how well the various rights treated under the ten values have been attained. *Firm* means that a broad range of the specific rights has been established and that there is high assurance those rights will be observed. *Mixed* implies that some of the specific rights identified under the value category have been attained, while others remain unrecognized or disregarded; there is some assurance that the established rights will be implemented. *Weak* suggests that only a few rights or no right in the particular category is enjoyed; there is little assurance that even the few rights attained will continue to be observed.

Judgment about the trend in human rights achievement in each country refers to whether the general level of attainment of the particular category of rights has risen or fallen, has advanced or receded during the period under investigation. *Forward* means a trend toward a broader range of established rights or toward greater assurance that rights are effectively enjoyed. *Steady* is an evaluation that there is no tendency toward either expansion or retraction in the number of rights or the quality of their observance. *Backward* implies regression, either a narrowing of the range of established rights or a decline

in assurance that previously established rights will be enjoyed.

The evaluations of the three countries on the value of "community" reflect an overall assessment of the contributions of that country's social order to its people's enjoyment of the full range of human rights, as well as the more specific rights achievements appropriate to that category.

Chart 2: Position and Trend of East Asian Countries in Human Rights Achievement

Values	Countries		
	PRC	Japan	ROK
1. Integrity	Weak/Steady	Mixed/Forward	Mixed/Steady
2. Well-being	Mixed/Forward	Firm/Forward	Mixed/Forward
3. Education	Weak/Forward	Firm/Forward	Mixed/Forward
4. Sociality	Weak/Steady	Firm/Steady	Mixed/Steady
5. Legality	Weak/Forward	Firm/Steady	Mixed/Backward
6. Participation	Weak/Steady	Firm/Steady	Mixed/Backward
7. Esteem	Weak/Steady	Firm/Steady	Weak/Backward
8. Affection	Mixed/Steady	Mixed/Steady	Firm/Steady
9. Freedom	Weak/Steady	Firm/Forward	Mixed/Backward
10. Community	Weak/Forward	Firm/Steady	Mixed/Steady

The size and complexity of Chart 2 convey, in addition to particular evaluations, a further message about the "human rights" field, namely, that it is absolutely essential to avoid simplistic comparisons between countries on their human rights achievements. As my analysis has shown, "human rights" is a concept that embraces a broad range of particular behaviors across many basic values. None of the countries examined in this study, indeed none in the whole world, has a consistent record across all values, over time. And the purpose of this, or any other study of human rights attainments, in addition to the scientific knowledge that it communicates, ought to be the universal promotion of all rights rather than invidious sloganeering which uses the banner of human rights for political advantage.

The crucial political actors in the process of achieving rights are not only the governments of nation-states, but also nongovernmental groups (both subnational and transnational) and intergovernmental groups. The standards of attainment in the field of human rights have been articulated at the international level. But the successful penetration of those values into the lives of ordinary people depends on political trends within nations, including actions by both governmental and nongovernmental actors, who appropriate the ideals

enunciated in international instruments and implement them locally. As China has expanded its contacts with other countries over the past decade, the international community's human rights norms have gradually begun to penetrate its government and society. South Korea's government, too, has discovered that it must achieve certain minimal standards of justice within the country if it is to maintain healthy international relations. Japan's international prestige rests on its solid democratic roots and strong economy, which provide the basis for continued progress on rights issues.

Much popular writing on the theme of "human rights" focuses on facile comparisons of the accomplishments of different political systems. For example, it is asserted that there are inevitable trade-offs between the ideals of equality and liberty; communist or socialist regimes prefer to maximize the former and liberal or democratic regimes the latter. A similar contrast is made between civil/political rights and economic/social/cultural rights. Civil/political rights developed earlier, and their home is in the liberal or bourgeois democracies. Economic/social/cultural rights are regarded as features of those nations that experienced socialist revolutions in the twentieth century. The status of modernizing authoritarian regimes is treated as a corollary to such propositions: these regimes are so committed to rapid economic growth that all political liberties are subordinated to that goal, and economic equality is sacrificed in the drive to increase aggregate wealth.

My study of the actual practices of the three East Asian polities leads me to reject the dichotomies suggested by these categorizations of rights and to deny specific simplistic elements in these propositions, although the type of political system does have some independent effect on the achievement of rights. The three countries of East Asia are a microcosm of the world's political regimes: China is communist, Japan liberal-democratic, and South Korea modernizing authoritarian. Other intervening variables such as culture and economic level can account for some of the actual performance of these countries on human rights issues, but political system does provide explanatory power for many of the current conditions. The patterns and practices of the East Asian microcosm provide valuable insights into the more general question of how political systems affect the achievement of human rights throughout the world.

China's communist regime fits the model in that it has made significant progress on social and economic rights, but little on personal and political freedom. Some improvements in procedural justice probably reflect the regime's stability rather than its ideology. On the other hand, China is not outstanding on issues of equality, either economic or social. One could argue that China's failures are due to its economic level and to post-revolution instability, but that begs the question of why China's own leaders have veered away from their pristine ideology in recent years in order to improve life in their country.

Japan's liberal-democracy has provided most of the people in that country with economic and social progress, as well as civil and political rights. It is

not clear that some areas of poor performance (e.g., the dual labor market, minority issues, abortion) are linked with the type of political regime at all. In fact, when one notes the egalitarian features of the economy and society, it would seem that Japan has overcome the alleged trade-off between equality and liberty. This may be a somewhat hasty judgment, however, because longer-term values of social homogeneity and cultural harmony may account for Japanese egalitarianism. (This raises the question, of course, of the validity of political dichotomies on this topic). Japan's outstanding record on issues of education, legality, and freedom does offer some evidence, however, of the alleged advantages of liberal-democracy in such fields.

The modernizing authoritarian regime of Pak Ch'ŏng-hŭi in South Korea from 1972-1979 showed a very mixed record of actual attainments and diverse trends in the achievement of human rights. The vagaries of the modernizing authoritarian "ideology" (which rationalizes a blend of liberal-democratic ideals with raw elements of political power) do, indeed, have considerable explanatory power in identifying patterns in this patchwork. For example, South Korea's progress in well-being and education is consistent with the expected accomplishments of a regime that wants to create a strong economy and society. Likewise, regression on issues of legality, participation, esteem, and freedom betrays the failures of a government that depends on repression rather than consensus in maintaining unity. South Korea's excellent equality of well-being and firm achievements on the value of affection, however, seem to be rooted in traditional cultural ideals rather than in characteristics of the contemporaneous political regime.

The three countries of East Asia examined in this study are only a few among the many which could be classified according to the three types of political system treated here. And yet, while remaining cautious about drawing general conclusions from single cases, the evidence I have been able to gather on the actual performances of the PRC, Japan, and the ROK in achieving human rights disconfirms the popular dichotomies outlined above. The realm of human rights issues is much broader than the propaganda of competing contemporary regimes would lead us to suspect. Furthermore, those political systems which do pursue international standards of human rights show patterns of achievement that diverge from the self-proclaimed ideological goals of their leaders. Finally, factors other than political regime, such as traditional culture and economic level, offer additional clues to an understanding of a nation's successes and failures in human rights.

## Notes

- 1) David J. Wessels, *Human Rights in Contemporary East Asia: An Empirical Study*, Research Papers Series A-43, Tokyo: Institute of International Relations, Sophia University, 1982.

- 2) See, for example, Richard P. Claude, *The Classical Model of Human Rights Development*, in *Comparative Human Rights*, ed. Richard P. Claude (Baltimore: Johns Hopkins University Press, 1976), pp. 6-50.
- 3) See, for example, Jacques Maritain, *The Rights of Man and Natural Law*, trans. by Doris C. Anson, New York: Charles Scribner's Sons, 1943; József Halász, ed., *Socialist Concept of Rights*, trans. József Decsényi and Gábor Pulay, and revised by Imre Móra, Budapest: Akadémiai Kiado, 1966; Henry Shue, *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy*, Princeton, N.J.: Princeton University Press, 1980; Adamantia Pollis and Peter Schwab, eds., *Human Rights: Cultural and Ideological Perspectives*, New York: Praeger, 1979; Kenneth W. Thompson, ed., *The Moral Imperatives of Human Rights: A World Survey*, Washington, D.C.: University Press of America, 1980.
- 4) See, for example, Louis B. Sohn and Thomas Buergenthal, *International Protection of Human Rights*, Indianapolis, Ind.: Bobbs-Merrill, 1973; Myres M. McDougal, Harold D. Lasswell, and Lung-chu Chen, *Human Rights and World Public Order: The Basic Policies of an International Law of Human Dignity*, New Haven, Conn.: Yale University Press, 1980; and Paul Sieghart, *The International Law of Human Rights*, Oxford: Clarendon Press, 1983.
- 5) See, for example, Richard Bilder, *Rethinking International Human Rights: Some Basic Questions*, in *Human Rights Journal* 4 (1969): pp. 557-607; Jack L. Nelson and Vera M. Green, eds., *International Human Rights: Contemporary Issues*, Stanfordville, N.Y.: Human Rights Publishing Group, a division of Earl M. Coleman Enterprises, 1980; A.H. Robertson, *Human Rights in the World*, 2nd ed., Manchester: Manchester University Press, 1982.
- 6) United Nations Charter, Preamble, Articles 1, 55, 56.
- 7) United Nations Charter, Article 1.
- 8) Adopted by the United Nations General Assembly, 10 December 1948.
- 9) Adopted by the United Nations General Assembly, 16 December 1966; in force since 3 January 1976.
- 10) Adopted by the United Nations General Assembly, 16 December 1966; in force since 23 March 1976.
- 11) For example, the fundamental principle of non-discrimination is found in the Universal Declaration, Article 2, and in the International Covenant on Civil and Political Rights, article 2, paragraph 1. Likewise, freedom of movement and residence is proclaimed in the Universal Declaration, article 13, paragraph 1, and in the International Covenant on Civil and Political Rights, article 12, paragraph 1.
- 12) For example, the Universal Declaration identifies the right to own property in article 17, paragraph 1; but this right is not treated in either of the International Covenants.
- 13) For a carefully argued case for a set of inviolable basic rights, see Henry Shue, *Basic Rights*. In the International Covenant on Civil and

Political Rights, article 4, paragraph 2, there is a list of certain articles in that Covenant which do not permit of derogation; that list could be interpreted as a sort of minimal set of inviolable rights. However, the inferences needed to sustain such an argument are not made in the Covenant itself.

- 14) David J. Wessels, *Human Rights and Contemporary World Politics: An Analysis from East Asian Experience*, Ph.D. dissertation, Yale University, 1981. (Available from University Microfilms International, 300 N. Zeeb Road, Ann Arbor, Michigan 48106, U.S.A.)
- 15) Pak Chông-hûi (Park Chung Hee).
- 16) René David and John E.C. Brierly, *Major Legal Systems in the World Today: An Introduction to the Comparative Study of Law*, London: The Free Press, Collier-Macmillan Ltd., 1968.
- 17) Constitution of Japan, Article 1.
- 18) Masataka Kosaka, *100 Million Japanese: The Postwar Experience*, Tokyo: Kodansha International Ltd., 1972, pp.59-65; Edwin O. Reischauer, *The United States and Japan*, 3d ed., New York: The Viking Press, 1965, pp.253-263.
- 19) From the Constitution of Japan: Article 12. The freedoms and rights guaranteed to the people by this Constitution shall be maintained by the constant endeavor of the people, who shall refrain from any abuse of these freedoms and rights and shall always be responsible for utilizing them for the public welfare.  
Article 13. All of the people shall be respected as individuals. Their rights to life, liberty, and the pursuit of happiness shall, to the extent that it does not interfere with the public welfare, be the supreme consideration in legislation and in other governmental affairs.
- 20) Lawrence W. Beer, *The Public Welfare Standard and Freedom of Expression in Japan*, in *The Constitution of Japan: Its First Twenty Years, 1947-67*, ed. Dan Fenno Henderson, Seattle: University of Washington Press, 1968, pp.205-238.
- 21) *Ibid.*, p.236.
- 22) Tôru Sagara, *Nihonjin no rihô no toraekata* (The manner of grasping norm of the Japanese), in *Nihon ni okeru rihô no mondai* (The problem of norm in Japan), ed. Takezô Kaneko, Tokyo: Risôsha, 1970; Robert Bellah, *Japan's Cultural Identity: Some Reflections on the Work of Watsuji Tetsurô*, in *The Journal of Asian Studies* 24 (August 1965), pp.573-594; Robert N. Bellah, *Ienaga Saburô and the Search for Meaning in Modern Japan*, in *Changing Japanese Attitudes Toward Modernization*, ed. Marius B. Jansen, Princeton: Princeton University Press, 1965, pp.369-423.
- 23) *Dissenting Opinion of Judge Tanaka*, *South West Africa Cases (Second Phase)*, 1966, in *Basic Documents on Human Rights*, ed. Ian Brownlie, Oxford: Clarendon Press, 1971, pp.457-492.
- 24) This is not the place to engage in an elaborate typology of ideologies, but a brief indication of what I mean by "modernizing authoritarianism" is in

order. Various species of "modernizing authoritarianism" are found in countries of Latin America and Asia, in particular. The genus "modernizing authoritarianism" itself should be distinguished from other related genera, such as traditionalist royal domains (e.g., certain Arab sheikdoms), idiosyncratic autocracies (e.g., Idi Amin's Uganda), and totalitarian states (modern states with both the ideology and organization required for relatively complete control of society by the government). For a review of some of the issues linking modernization and authoritarianism, based on Latin American politics, see David Collier, *Industrial Modernization and Political Change: A Latin American Perspective*, in *World Politics* 30 (1978): pp. 593-614.

- 25) From the Yusin Constitution: Article 32-1. Liberties and rights of citizens shall not be ignored for the reason that they are not enumerated in the Constitution; 2. laws which restrict liberties and rights of citizens shall be enacted only when necessary for the maintenance of national security, order and public welfare.
- 26) Article 53 grants to the President "power to take necessary emergency measures in the whole range of the State affairs, including internal affairs, foreign affairs, national defense, economic, financial and judicial affairs..." Article 54 deals with the President's power to mobilize the military and proclaim a state of martial law.
- 27) Pyong-Choon Hahm, *Toward a New Theory of Korean Politics: A Re-examination of Traditional Factors*, in *Korean Politics in Transition*, ed. Edward Reynolds Wright, Seattle: University of Washington Press, 1975, pp. 321-355. One may note in passing that Dr. Hahm was among the ROK officials who was killed by a terrorist bombing in Burma in October 1983.
- 28) Gregory Henderson, *Korea: the Politics of the Vortex*, Cambridge, Mass.: Harvard University Press, 1968.
- 29) For the thorough empirical data that serve as the basis for my evaluations, see my studies cited earlier, at notes 1 and 14.