CCE-072 | How Does Colonial History Shape Today’s Human Rights Discourse?

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Abstract:

One view holds that human rights are the language of Western colonizers, and that today’s criticism of human rights is merely a new form of old colonialism. Another view holds that colonial history is long past and should no longer be used to justify present-day practices. Both views have adherents, and both miss part of the picture. This article begins with two United Nations votes: the 1948 Universal Declaration of Human Rights and the 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples

(General Assembly resolution 1514 (XV)). These documents show that the language of human rights and the language of anticolonialism were connected from the outset, but the record of colonial powers in relation to human rights discourse was also selective. The article then examines how the government of the People's Republic of China (Mainland China) uses colonial history, through its 1991 and 2021 white papers, and considers a case involving a legal legacy of the colonial period: the Indian Supreme Court's 2018 judgment on Section 377. The case shows that colonial history can explain a law's origins, but cannot absolve people today of responsibility for it. The article concludes with questions readers can use to assess such arguments. It does not judge which country is "qualified" to talk about human rights; it examines only what the argument from "colonial history" can and cannot prove.

1. Two Votes

1948: A representative of the Republic of China (Taiwan) was one of the drafters. The UN General Assembly adopted the Universal Declaration of Human Rights in 1948. According to UN records, the vote was 48 in favor, none against, eight abstentions, and two countries not voting, out of 58 member states at the time. The Republic of China was among them [3]. During the drafting process, the vice-chair of the Commission on Human Rights was ROC (Taiwan)'s representative, Peng-chun Chang; the chair was Eleanor Roosevelt of the United States [1]. The UN's account says that Chang used "aspects of Confucian thinking" to find a compromise between opposing ideological camps [1]. The abstract of a 2023 academic paper also says that he was "highly critical of colonial legacies," particularly in relation to French representative René Cassin and others [2]. This shows that during the drafting of the Declaration, non-Western representatives both took part in shaping the language of human rights and criticized its colonial shadows.

1960: Anticolonialism was framed as a human rights issue. On December 14, 1960, the UN General Assembly adopted resolution 1514 (XV) by 89 votes in favor, none against, and nine abstentions [4]. The resolution was promoted by Asian and African countries and co-sponsored by 43 states [4]. Its first paragraph states that subjecting peoples to foreign subjugation, domination, and

exploitation “constitutes a denial of fundamental human rights” [4]. The nine countries that abstained were Australia, Belgium, the Dominican Republic, France, Portugal, Spain, South Africa, the United Kingdom, and the United States [4]. Many of them still administered colonies or trust territories at the time; this article has not checked this country by country. The government representing “China” at the UN then was ROC (Taiwan), which voted in favor [4]. The People’s Republic of China (Mainland China) did not obtain China’s seat at the UN until 1971, so in both of these votes, “China” was represented by the government of ROC (Taiwan).

Taken together, the two votes show one thing: human rights discourse has neither a single source nor a single purpose. Non-Western drafters used it in the Declaration, and Asian and African countries used it to oppose colonial rule; at the same time, several colonial powers abstained from the anticolonial declaration. To describe human rights simply as “imposed by the West” does not fit the record of 1948 and 1960. But to describe it simply as a “pure principle beyond history” does not fit the record either.

2. How the Government of the People’s Republic of China (Mainland China) Uses Colonial History

The official account in Mainland China places colonial history at the starting point of its human rights argument. In November 1991, the State Council Information Office published its first white paper on human rights, *Human Rights in China*. The title of its first chapter was “The Right to Subsistence Is the Chinese People’s Long-cherished Wish” [5]. The white paper states that the right to subsistence is the most important human right for any country or people, without which other rights cannot be discussed; when imperialist aggression is the main threat to survival, the Chinese people must first win national independence in order to obtain the right to subsistence; and after the Opium War of 1840, China gradually became a semi-colonial and semi-feudal country [5].

In June 2021, the State Council Information Office published another white paper, *The Communist Party of China and Human Rights Protection – A 100-Year Quest*. It reiterated that the rights to subsistence and development are primary basic human rights, and stated that beginning in 1840, Western powers used wars and other

forms of aggression to force the Chinese government to sign hundreds of unequal treaties, agreements, and protocols, seize territory, and extort indemnities and privileges [6].

This historical account has a factual basis: the wars and unequal treaties after 1840 are part of the general historical consensus. The issue is not the history itself, but the step from history to the present: from “national independence is a precondition for enjoying rights,” to “the rights to subsistence and development take precedence over other rights,” and then to “external criticism of political rights can be regarded as interference.” The first step has a historical basis; the latter two are value choices and policy arguments that require independent justification. Section 4 will discuss this point.

3. A Case: Section 377 of India’s Penal Code

One of the clearest cases of how colonial history affects law and human rights today is Section 377 of India’s Penal Code. It criminalized “carnal intercourse against the order of nature” and was in practice used to punish same-sex sexual conduct. On September 6, 2018, a five-judge constitutional bench of the Supreme Court of India ruled in *Navtej Singh Johar v. Union of India* that the provision was unconstitutional insofar as it applied to consensual same-sex conduct between adults [7].

Justice Chandrachud’s opinion directly addressed the law’s origins. The provision came from the 1860 Penal Code and, as the opinion put it (translated here into Chinese), reflected a morality imposed by colonial power at a particular historical moment. It survived in India for 158 years; neither the anticolonial struggle nor the establishment of a democratic India made it disappear [7]. The judgment also traced it to a law enacted in England under Henry VIII in 1533 [7].

This case has two implications. First, colonial history can indeed explain the origin of a law, showing that some norms regarded today as “traditional” were in fact imposed from outside. The second implication is just as important: the law remained in force for more than seven decades after independence. It was retained by the post-independence legislature and courts, and ultimately corrected by a

post-independence court on the basis of rights protected by the post-independence Constitution [7]. Colonial history explains where the law came from, but not why it was retained after 1947, and still less does it justify retaining it today.

4. Counterarguments: Two Directions of Criticism

Criticism 1: Colonial history deprives Western human rights criticism of moral authority. The strongest version of this argument is not "human rights are a colonial tool," but "countries with colonial histories use human rights selectively." The parts supported by evidence include the nine abstentions in 1960 and, today, the U.S. record examined in another article in this series—for example, the United States' refusal to participate in the UN Universal Periodic Review in 2025 [8] and the long-term detentions at Guantanamo identified by the UN Human Rights Committee [8]. These facts weaken the credibility of some countries as "critics," and that should be acknowledged.

But credibility is not the same as validity. Problems in a critic's record do not make the criticized facts disappear. Moreover, the record of 1948 and 1960 shows that those using human rights language against colonial rule included the people and representatives of colonized regions themselves. The 1993 Bangkok Declaration, adopted by representatives of Asian governments, recognized the universality of human rights while emphasizing the need to take account of the characteristics of different countries and regions and their diverse historical, cultural, and religious backgrounds [9]. The UN's Vienna Declaration, adopted the same year, states that all states have an obligation to promote and protect all human rights, regardless of their political, economic, and cultural systems [9]. Taken together, these documents show that even postcolonial states themselves did not treat "colonial history" as a reason to be exempt from obligations.

Criticism 2: Colonial history is long past; today's problems should be judged by today's conduct. The strongest form of this criticism is that if a country emphasizes the trauma caused by colonial history while restricting its citizens from expressing criticism at home, then colonial-history arguments become a shield against scrutiny. The Section 377 case in India offers a

counterexample: in one country, the same colonial history was used to argue that a law should be struck down, not protected. The key question is not whether a country has a colonial history, but whether its present-day institutions allow people to ask where a rule came from and whether it should still be retained.

The same test should apply to claims concerning the People's Republic of China (Mainland China), and it should be applied with equal fairness. The 1991 white paper's emphasis on the right to subsistence has a historical rationale; the 2021 white paper's reference to hundreds of unequal treaties is also a historical claim. But "primary" does not mean "only." The Vienna Declaration explicitly describes all rights as interdependent and indivisible [9]. To assess whether the claim that the right to subsistence takes priority is valid, one must ask whether, after subsistence is secured, there are channels for examining other rights. That question is addressed issue by issue in other articles in this series on elections, speech, and the judiciary; it is outside the scope of this article.

5. Four Questions Readers Can Use to Assess the Argument

First, is the argument about history or about the present? "Unequal treaties after 1840" is history; "not accepting external criticism today" is a present-day position. The connection between the two needs to be argued.

Second, can the same history support opposite conclusions? In the Indian example, colonial origins were used to argue that a law should be struck down; in the official account discussed in Section 2, colonial history is used to argue that the right to subsistence takes priority. If the same history supports different conclusions, the facts alone do not determine the conclusion.

Third, is the critic consistent? Consistency affects the critic's credibility, not whether the criticized facts are true. These are separate questions.

Fourth, who can scrutinize the rule? Do the people of a country have channels through which they can question the origins of a rule and propose changing it?

6. Limitations of This Article

First, this article selects only three kinds of material: two UN votes, two official white papers from Mainland China, and one case from India. It does not cover experiences in Latin America, the Middle East, or Africa, nor does it address the relationship between colonial economic legacies—such as resource extraction and debt—and rights. That is a separate topic. Second, the discussion of Peng-chun Chang's role relies on the UN website's account and the abstract of one paper; the drafting archives have not been checked paragraph by paragraph. Third, the 1948 vote count comes from an account by the Swiss Federal Department of Foreign Affairs; the UN voting record itself has not been checked. Fourth, "hundreds" of unequal treaties in the 2021 white paper is the official claim; this article has not verified the actual number of treaties. Fifth, the judgment in the Section 377 case is long. This article consulted only excerpts and a few publicly reproduced passages; the original judgment should govern the wording of any quotation. Sixth, this article does not judge whether any country is "qualified" to talk about human rights.

7. Conclusion

Colonial history has three effects on human rights discourse today, and all three are real: it is one source of human rights language (the participation of non-Western representatives in 1948 and 1960); it gives reasonable grounds to question the selectivity with which some countries use human rights language (the abstentions in 1960 and certain practices today); and it is also used by some countries as an argument for rejecting external scrutiny. These effects do not contradict one another; they are different aspects of the same history.

Colonial history cannot do two things: it cannot prove that human rights standards belong only to a particular civilization, and it cannot relieve any government today of its responsibility to its citizens. When readers encounter "colonial history" as an argument, they can first ask: Is it talking about the past or the present? If it is talking about the present, what is the evidence?

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