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Introduction: ways of knowing about human rights in Asia

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Introduction: ways of knowing about human rights in Asia

Abstract

The Universal Declaration of Human Rights (UDHR) was adopted on 10 December 1948 by the United Nations General Assembly. We have thus seen 65 years of the international project of addressing human rights issues at a global level through the United Nations and associated organisations. Human rights occupy a paradoxical place in international politics. Human rights treaties address the most intimate issues of personal freedom, autonomy and self-determination, but the institutions developed for the promotion of human rights operate at a global level seemingly distanced from this intimate and individual scale. In human rights advocacy there is thus constant mediation between the individual, the local, the national, the regional and the global. In this collection of essays we consider human rights issues at the regional level – in some East and Southeast Asian nations and in their associated national and diasporic communities.

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WAYS OF KNOWING ABOUT HUMAN RIGHTS IN ASIA

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The Universal Declaration of Human Rights (UDHR) was adopted on 10 December 1948 by the United Nations General Assembly.¹ We have thus seen 65 years of the international project of addressing human rights issues at a global level through the United Nations and associated organisations. Human rights occupy a paradoxical place in international politics. Human rights treaties address the most intimate issues of personal freedom, autonomy and self-determination, but the institutions developed for the promotion of human rights operate at a global level seemingly distanced from this intimate and individual scale. In human rights advocacy there is thus constant mediation between the individual, the local, the national, the regional and the global. In this collection of essays we consider human rights issues at the regional level – in some East and Southeast Asian nations and in their associated national and diasporic communities.

There are significant gaps between the academic debates on human rights, the actual language and protocols of the bodies devoted to ensuring the achievement of

¹ This essay draws on research conducted as part of my Australian Research Council Future Fellowship project, 'From Human Rights to Human Security: Changing Paradigms for Dealing with Inequality in the Asia-Pacific Region'. Several of the essays here draw on papers presented at the Biennial Conference of the Asian Studies Association of Australia in Adelaide in 2010, and the Annual Meeting of the Association for Asian Studies in Hawai'i in 2011. We are indebted to the audiences on those occasions, the anonymous reviewers for *Asian Studies Review* and the Editors-in-Chief of *Asian Studies Review*, Peter Jackson and Michael Barr, for feedback and advice.

basic human rights, the language of activists, and the ways in which these issues are discussed in the media. The complications arising from these gaps are compounded in a transnational frame where people must find ways of communicating across languages and cultures. In this special issue, we discuss case studies of human rights advocacy in Asia, with a particular focus on strategies for communication between different cultural frames and discourses. When we refer to cultural frames and discourses, this means not just national cultures and languages, but also the cultural and discursive practices associated with particular institutions. These institutions include the judicial and policing systems, the bureaucracy, medicine, international human rights organisations, (international) non-governmental organisations (INGOs/NGOs), media and the academy. In this collection of essays we explore the changing paradigms of human rights in the Asian region and the gaps between academic, bureaucratic, activist and popular media language on human rights.

Since 1948 there have been many disparate developments in the understanding of the means for achieving human rights. The Universal Declaration has been supplemented by a series of treaties and conventions which focus on specific groups or specific forms of discrimination: women, children, indigenous peoples, persons with disabilities, those subjected to racial discrimination and xenophobia, workers, refugees, migrant workers and their families. The United Nations has declared specific foci for particular time frames, including the First, Second and Third Decades to Combat Racism and Racial Discrimination, the United Nations International Women's Year (1975), the United Nations International Decade for Women (1975–1985), the Year of the Child (1979), the International Year of Disabled Persons (1981), the International Year of Youth (2010–2011) and so on. These Years and Decades were each brought into focus through a series of United Nations

International Conferences, particularly in the last decades of the twentieth century. This series has included world conferences on Women (1975, 1980, 1985, 1995), Racism (1968, 2001), Human Rights (1993) and Population and Development (1994), with associated declarations, treaties and conventions. There has, as yet, been no comparable treaty, convention, conference or ‘Year’ on issues of sexual orientation or gender identity. Since 2008, however, there have been attempts to have the UN General Assembly pass a declaration on sexual orientation and gender identity (UN General Assembly 2008). In June 2011, South Africa led a motion for the UN Human Rights Council (hereafter UNHRC, Resolution 17/19) to investigate the situation of lesbian, gay bisexual and transgender (LGBT) citizens worldwide, and the report of the United Nations High Commissioner for Human Rights (UNHRC) was released in December 2011 (Human Rights Watch 2011; UNHRC 2011; see also UNHRC 2012).

When the UDHR was proclaimed, there were only 51 member nations of the United Nations. After the wave of decolonisation from the late 1940s to the present, the membership of the United Nations has grown to 193. In the years since 1948, many former colonies in Asia (and other parts of the Third World) have achieved independence, joined the United Nations and acceded to the major human rights treaties.² There is, as yet, no regional human rights body in Asia, but the Association of South East Asian Nations issued the ASEAN Human Rights Declaration in November 2012 (ASEAN 2012).

² The major treaties are: the Convention on the Elimination of All Forms of Racial Discrimination (ICERD, 1966), The International Covenant on Civil and Political Rights (ICCPR, 1966), The International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966), The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW, 1979), The Convention Against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT, 1984), The Convention on The Rights of the Child (CRC, 1989), International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990), Convention on the Rights of Persons with Disabilities (2006).

These actions have been paralleled by developments in the academic discourse on human rights. Academic commentators have identified different ‘generations’ of human rights: first generation rights to security, property and political participation; second generation rights to welfare, education and leisure; and third generation rights to national self-determination, a clean environment, and indigenous rights (Byrnes et al, 2009, p. 16). Academics have raised the question of the ‘intersectionality’ of different systems of inequality based on gender, class, ethnicity, sexual orientation, ability/disability and so on (Raj 2002). They have also questioned the efficacy of the concept of ‘race’ (Gilroy 2002; Wolfe 2002, pp. 51–62; Stoler 2008, pp. 191-219). In the context of assertions of ‘women’s rights as human rights’ (Tomasevski 1993; Kerr 1993; Peters and Wolper 1994; Agosin 2001), there has been extensive discussion of the gendering of international law, and the operation of dichotomies of ‘public’ and ‘private’ in the international arena (Charlesworth and Chinkin 1993, pp. 63–76; Charlesworth and Chinkin 2000).

Academics talk of ‘gender relations’ or the ‘gender order’ (Connell 2009, pp. 72–93), but bureaucrats and activists address ‘women’ and ‘men’. Academics question the very concept of ‘race’, but recognise the discrimination suffered due to ‘racism’. Or, in other words, academics try to find ways of engaging with United Nations Declarations and Conferences against racism, while retaining scepticism about the concept of race. Academics and activists seek sexual rights, sexual autonomy and sexual citizenship (Evans 1993; Bell and Binnie 2000), while the United Nations bureaucracy has, until recently, seen sexuality almost exclusively through the lens of reproduction – except, perhaps in the context of HIV-AIDS prevention campaigns (Booth 1998, pp. 115–139). In the wake of the so-called ‘Asian Values Debates’ after the Bangkok Regional Conference on Human Rights, national

leaders in international forums claimed to speak for a unified national culture, while activists making claims against a nation-state for vindication of their rights emphasised the diversity of needs within the boundaries of the nation-state, and asserted that their claims could be justified in terms of transnational norms (Cheah 1999, pp. 11–42; Cheah 2006; Langlois 2001).

There are thus significant gaps between the academic debates on human rights and the actual language and protocols of the bodies devoted to ensuring the achievement of basic human rights for all, as has been noted by Euan MacDonald.

Whatever the chosen scholastic response, however, one thing seems clear: the gap between theory and practice in international human rights is an important issue, and one that threatens to undermine both sides if some sort of *rapprochement* is not achieved (MacDonald 2004, p. 970).

Micheline Ishay, in her ambitious history of human rights, has also identified pressing issues for human rights advocacy in the twenty-first century. She identifies two possible trends:

...a negative trajectory, if we consider the ascension of nationalist forces and the weakening of democratic ones in the domestic realm, particularly after September 11; and a more positive path, should we consider the proliferation of international human rights institutions and the growth of the anti-globalization movement in the realm of civil society (Ishay 2004, p. 345).

The questions raised by Ishay and others, however, can only be answered through grounded research which is attuned to conditions at the local, regional and global level. It is interesting to note that Ishay's book has few detailed references to the

Asian region, suggesting the need for more empirical and theoretically-informed research in this region. Our essays are based on precisely such grounded research in the Asian region.

In addition to the academic and bureaucratic languages of human rights alluded to above, there are also specific languages and vocabularies deployed by activists in order to make human rights claims. All of the official United Nations conferences, for example, are usually accompanied by parallel NGO conferences (Riles 2000). Activists at these conferences need to be able to communicate with their own stakeholders while also making claims in language that will be understandable by the bureaucrats in the United Nations, national governments, and multilateral and bilateral aid agencies.

All of these groups make use of the media. The United Nations itself has a massive publications program and is increasingly making use of digitisation and electronic media to disseminate information. Aid agencies and INGOs/NGOs also use diverse media to communicate their activities. Official and unofficial channels are making increasingly sophisticated use of the new media communications technologies. Meanwhile, the mainstream media are also engaged in commentary on all of these forms of advocacy.

In this collection, we bring together some contemporary research on human rights in Asia. Our case studies focus on East and Southeast Asia, some with a national focus, some with a regional focus and some focusing on diasporic communities. Because human rights abuses often arise in situations of imperialism, colonialism and militarism – or their aftermath – they are, from the start, transnational issues. Similarly, because of the development of the international human rights

regime associated with the United Nations in the post-Second World War period, the resolution of human rights issues is increasingly a matter of international law. While the institutional machinery for dealing with human rights issues (through the United Nations) is global in scope, actions and policies on human rights are mediated through the nation-state. Human rights issues, as noted above, concern the most personal and individual issues of self-determination and bodily autonomy, so that, in order to write about these issues we must constantly move between the global, national, local, interpersonal, individual and embodied levels of analysis. All of the contributions to this issue are based on empirical and theoretically-informed research carried out in selected sites in the Asian region, by scholars with a deep familiarity with the languages and cultures of the region (for more on such methodological issues, see Mackie and Stevens [2009, pp. [257–273](#)]; Mackie and Pendleton [2011, unpaginated]).

Our essays draw on a range of theoretical and methodological perspectives. Several draw on gender studies (cf. Connell 2009). We are also interested in the intersection of different dimensions of power and difference, and how these impact on rights claims. Our contributors come from different disciplinary backgrounds, which means that each has a different methodology for researching human rights issues. For the purposes of this discussion, I define disciplines as different ways of knowing, or as different ways of organising knowledge. This is what I mean when I refer to ‘ways of knowing’ about human rights.

Historians employ textual analysis of relevant primary documents, supplemented by oral history and testimony where possible. Historical research may be a stimulus for human rights campaigns, for historical narratives reveal the stories

of past wrongs (Mackie 2005, pp. 207–217). Memory studies is also concerned with past wrongs, with narratives of trauma, and with the therapeutic use of narrative. The insights of memory studies can also lead to more complex readings of individual narratives, witness statements and legal testimony (Gilmore, 2001, p. 3; Smith and Watson, 1996 p. 14; McGregor, in this issue; Henry, in this issue). Ethnography is concerned with culture, privileging the individual and the local (Stevens, in this issue). Cultural studies is concerned with power relations and cultural representation (Erni 2010, p. 227; Couldry 2001, p. 1). Queer studies challenges unitary notions of identity and binaristic notions of male/female and heterosexual/homosexual (Offord, in this issue). Scholars in critical disability studies look at disability as being socially and culturally constructed and challenge medical ways of knowing about disability. Critical disabilities scholars and activists argue that social structures and environments need to be modified in order to deal with the needs of diverse individuals, rather than focusing on the ‘disability’ as something which must be treated, cured or accommodated (Snyder and Mitchell 2006).

Several of our contributors are interested in the relationship between academia and activism. For some scholars, activism is the object of study (Mackie 2003; Dales 2009). In other cases, academia might inform activism. In discussions of the verdict of the Women’s International War Crimes Tribunal on Military Sexual Slavery in 2000, it was striking how the concept of ‘gender’ had been mainstreamed, and had been used un-self-consciously in non-academic discussions of human rights abuses. The term ‘gender’ had moved from a specialised academic term to a ‘useful category of analysis’ for activists (Mackie 2005: 207–208; Scott 1988: 28–50).

There are also examples of activism informing academia. We could think of the outreach campaigns around HIV-AIDS education, where the category of ‘men who have sex with men’ (MSM) was useful in reaching out to those who engaged in same-sex sexual activity, but did not identify as ‘gay’ (Kawaguchi 2003). This, in turn, helped to inform academic discussion of the relationship between behaviour and identity.³ This was particularly important outside the Anglophone centres in places where there are different ways of naming the infinite configurations of gender identity, sexual preference and behaviour (Jackson 2010, pp. 88–96). These different understandings have become crucial in cases where individuals seek refugee status on the grounds of persecution of sexual minorities. Where the asylum seeker from Southeast Asia meets the Anglophone legal system in Australia, their claim for refuge will be affected by gaps in the understanding of the relationship between identity, sexual orientation, the presentation of the self and behaviour (Offord, this issue).

There are also situations where activists have developed new vocabularies in congruence with academic developments. The concepts deployed in queer theory were advanced in parallel by activists in the ‘street’ and scholars in academia (Gould 2009). At times, however, academia and activism can seem to be antagonistic. In Australia, feminist engagements with the state led to (often agonised) debates around the gendering of the state, and the proper relationship between feminist activists, feminist scholars and the bureaucracy (Yeatman 1992). Debates on feminist engagements with the state have taken on slightly different nuances in Japan (Kobayashi 2004; Kano 2011: 41–62).

³ It could also be said, however, that Kinsey’s research in the USA (1948), which focused on behaviour, without getting into questions of individual identity, had a similar deconstructive effect.

Some with activist backgrounds reflect on their experiences using the tools provided by academic theories (Song, in this issue). Some refuse the dichotomy between academia and activism, preferring to advocate ‘activist scholarship’ which fuses scholarship and activism (Offord, in this issue). Such activist scholarship has been seen in women’s history, gay, lesbian, queer and transgender history, labour history and community history. A prominent example has been the history of enforced military prostitution/military sexual slavery perpetrated by the Japanese military during the Second World War. Activist scholarship has been important in drawing attention to this issue, culminating in the Women’s International War Crimes Tribunal on Military Sexual Slavery held in 2000 in Tokyo (Kim 2001, pp. 611–617). Others make the gap between activist approaches and academic approaches the subject of their study. Even for those engaged in what they might see as ‘pure’ academic enquiry, the knowledge produced through their research may be put to use by others in the activist sphere (such as the work of historian Henry Reynolds [1987] on the relations between white Australians and indigenous peoples).

For those of us working outside the Anglophone sphere, translation is an important dimension of our work. We translate in a literal sense between one language and another, or we negotiate between different cultural spheres. We also, however, translate between academic, bureaucratic and activist language, and between disciplines (Donald and Mackie 2009). Anna Song (in this issue) reflects back on her activist experience from the standpoint of a current engagement with academic research in gender studies and legal studies. She finds feminist theory and postcolonial theory to be useful in articulating the divergent frames of reference used by diverse stakeholders in political campaigns, and speculates that such reflexivity could lead to more successful political campaigns in the future. Another way to frame

this insight is to suggest that one task of the activist is to ‘translate’ between different frames of reference in the interest of more effective communication.

Ikuko Nakane shows how translation takes on further importance in the legal sphere. In contemporary Japan, where individuals of different nationalities, ethnicities, languages and cultures co-exist, there will be occasions when those of different linguistic backgrounds come into collision with the legal system. Such cases require the support of expert translators and interpreters. Linguists can assist in the implementation of effective translation and interpretation by analysing the pragmatics of such encounters. This is a situation where academic research has real-life effects, facilitating the access to justice for some individuals. There may still, however, be a mismatch between the understandings of the police, judiciary, professional interpreters and translators, academic researchers, plaintiffs and defendants.

Katharine McGregor analyses memories of the ‘killings’ in Indonesia in 1965, drawing on recent theorisations of memory studies, and showing how individual narratives and memories can counter official histories. Narratives of past wrongs raise issues of responsibility, implication and imbrication. Where past wrongs are seen to be unresolved, memories have important contemporary political implications. Memories are also vital for Nicola Henry, who analyses testimonies of sexual violence which were not given adequate attention in the post-Second World War International Military Tribunal for the Far East (the ‘Tokyo Trials’).

The pre-natal testing of foetuses is an issue where there are competing rights claims which cannot be resolved easily. Carolyn Stevens explores these issues in an essay which draws on (auto)ethnographic research in contemporary Japan, informed by the field of critical disability studies. Stevens demonstrates that individual

decisions on whether to undertake pre-natal screening are mediated through encounters between individuals, family members, medical professionals, feminists and advocates for the rights of the disabled. Here, too, there may be gaps between the language and understandings of different stakeholders, and it is the role of the scholar to pinpoint these differences.

Baden Offord uses the theoretical perspectives of queer theory and cultural studies to write about LGBT activism in Southeast Asia. Cultural studies practitioners pay attention to power relations, a perspective which assists in understanding the challenges activists and scholars face in translating human rights principles, values and actions across and between modes of activist communication. Offord is sensitive to the positionality of the researcher (as are all of our contributors) – a particularly important issue when one conducts research across national, cultural, subcultural and linguistic borders. Offord demonstrates that diverse understandings of sexuality can have material effects in the case of claims for asylum by members of sexual minorities who have suffered persecution.

The essays collected here demonstrate the contribution that academic research can make to our understanding of human rights issues. Legal and bureaucratic discourses of human rights can be complicated and refined by the insights of history and memory studies, ethnography, translation studies, cultural studies and gender and sexuality studies. These insights can also inform activist campaigns, in the interest of more effective communication in the public sphere. We hope that these essays may be useful in illustrating the importance of translating and mediating between these different frames of reference, not only within the university, but in all of the spheres where discussion of human rights takes place.

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