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Claims-Making and Human Rights in Domestic and International Spheres

Abstract While the concept of human rights may seem basic, it is important for social constructionists to understand that the meaning of the term can vary from country to country. In this paper, I will examine the translation and meaning of human rights and human rights lawyer in Japanese. I show how the vagueness of the term is important and I demonstrate the dialectical relationship between domestic social issues and international organizations concerning human rights. I also demonstrate how the combination of powerful international organizations and domestic claims can sometimes be successful in changing a country's policy.

Keywords Human Rights; Translation; Meaning; Claims-Making; Social Constructionism

The social constructionist study of social problems focuses on claims-making activities (e.g., Best 1990; Loseke 1999; Ayukawa 2011). Many social problem claims are concerned with human rights. Although some people argue that human

rights are basic and natural to all men and women, it is a relatively recent concept that originated in seventeenth-century England. The idea spread and evolved around the world, albeit not to the same degree.

In 1948, after World War II, the United Nations (UN) assembly adopted the Universal Declaration of Human Rights. It was the first global expression of rights to which all human beings are inherently entitled, including rights of freedom, political rights, and social rights. Over the years, the UN has ratified several conventions to promote rights. At present, it continues to deal with treaties, basic rules, guidelines, and protocols concerning rights.

Although the idea of rights is a common element in social problems claims, it has not been explored in the social constructionist study of social problems.

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The differences in the connotation and meaning of the word *rights* in different countries have been ignored. As social constructionism draws attention to the importance of language, we should examine the differences in the meaning of words in various languages. A word can change meanings according to its usage in different environments.

Rights in Japanese

In Japan, the term *rights* was imported in the latter part of the 19th century, when it was translated into the Japanese language. In Japanese, rights is pronounced *ken-ri* and written by using two Chinese characters, each of which has its own meaning (Wheaton 1871). The first character, *ken*, can be read as "power to control." The second character, *ri*, can be read as "reward" or "reason." Various Japanese authorities debated which meaning—and which characters—ought to be used to convey the meaning of rights (Iwatani 2008).

The word, *kenri*, does not have all of the same connotations that the word "right" has in major European languages. In English, *right* is a synonym for correct (the French *droit* and the German *recht* have the same dual meanings). But, in Japanese, there is only a hint that the first character of the translated word, "rights," may have something to do with law, and this allusion is weak and not at all explicit. In Japanese, there is no direct reference or explicit connotation that right also means *correct*.

The Japanese word for human rights is *jinken*, and it is composed of two Chinese characters. *Jin* means "human," and *ken* means "power to con-

trol." There is no linguistic implication that *jinken* (human rights) is connected with the idea of correctness. Both Japanese terms are ambiguous and their meanings unclear, therefore they are easy to criticize and misunderstand.

In general, Japanese people do not take the concepts of rights or human rights for granted as do English-, French-, and German-speaking people. Perhaps this is an advantage for Japanese people in that they can have a critical perspective towards the idea of rights. They may objectively study and precisely define these concepts without being influenced by emotional associations. But, at times, the results of these considerations can cause profound misunderstanding. We can see criticisms, malicious words, and hatred towards *jinken* (human rights) at anonymous sites on the Internet. Many of these assertions are made by disaffected people when they express their hatred against some ethnic minorities, the socially disadvantaged, or stigmatized people. Also, they criticize lawyers who proclaim the rights of those minorities and who try to protect the rights of the people who are discredited, such as offenders, the arrested, the prosecuted, the sentenced, and prisoners.

When the word *lawyer* is connected with human rights in Japanese, there is an additional connotation. *Human rights lawyer* is usually expressed in Japanese as *jinken-ha benghoshi* or *jinken-ya-bengosh*. *Jinken-ha bengoshi* has connotations such as a "lawyer who belongs to a human rights school," or a "lawyer who is identified as belonging to a human rights faction." The term *jinken-ha bengoshi* (human rights lawyer) has a positive meaning when

it appears in ordinary newspaper stories in Japan. These *jinken-ha bengoshi* are depicted as concerned with domestic or foreign human rights issues.

There is another word which is pronounced in a similar way to *jinken-ha*, but the meaning is totally different. It is *jinken-ya*. Only the last consonant is different. In Japanese, *ya* generally refers to a person who runs an enterprise. When *ya* is used in connection with human rights (*jinken*) instead of *ha*, then the word's connotation is very negative. *Jinken-ya bengoshi* is used to revile people, including lawyers who are criticized for excessively and overzealously striving for human rights. This criticism is especially aimed at human rights lawyers who defend a criminal with excessive favor and ignore the rights of the victims, or even the interests of the society as a whole. In that case, the lawyer may be referred to as *jinken-ya*.

In online sites where anonymous people gather to chat and exchange messages, contributors can express cynicism about human rights lawyers and strongly criticize them. This often occurs when lawyers demand the abolition of the death penalty, or when they defend a criminal suspected of committing a brutal crime. These critics feel that the human rights lawyers are only interested in the rights of the alleged criminal, and use clever legal arguments to protect the guilty party, while completely ignoring the rights of the victims.

Japanese society does not appreciate the concept of human rights in the same way as Western countries, especially when we compare the role of the human rights lawyers in Japan to those in Western

societies. In the United States, the terms of human rights lawyer and civil rights lawyer are synonymous (although it seems that there is some cynicism and skepticism towards civil rights lawyers) and held in esteem. In Japan, there is no verbal differentiation between a civil rights lawyer or a human rights lawyer nor are there legal categories of class action or punitive compensation. Most Japanese human rights lawyers are idealists and quite poor, living on low incomes.

In the Japanese Constitution, there are several articles that refer to human rights. Article eleven states: *The people shall not be prevented from enjoying any of the fundamental human rights. These fundamental human rights guaranteed to the people by this Constitution shall be conferred upon the people of this and future generations as eternal and inviolate rights.*

The words *human rights* function as authentic warrants for claims, and it is ironic that cynical contributors to the Internet attack and blame professionals who work to protect the Constitution. However, it is because of the ambiguity of the language that people are able to interpret or misinterpret the human rights concept. Japanese people have the advantage of an abstract language and can take a phenomenological perspective, but it is perverse when they put human rights in negative terms.

Just as in the Japanese language, important concepts and words, such as human rights, can be misunderstood; it is important to be careful of the usage of the key concepts in other societies and languages. While researching the connotations of other important notions such as justice, social, or

claim, the social constructionist researcher must be conscious of their various meanings and subtleties in different languages.

Rights in Japanese Claims-Making

The Council of Europe is very influential in terms of human rights in the world beyond Europe. It tries to establish standards for human rights, democracy, and rules of law, and attempts to execute the conventions, principles, and rules it established, and to promote and instill these values. Although it is not a member of the Council of Europe, Japan is an observer nation, and has participated in and ratified some treaties of the Council of Europe.

One important institution of the Council of Europe is the European Court of Human Rights. The rulings of that court are influential not only for member countries but also for other non-member countries around the world. The European Court of Human Rights takes cases in which actions or situations are considered to have broken the rules of the European Convention of Human Rights. The European Court of Human Rights has a monitoring system to confirm that the court's decision is implemented in the relevant party nations and in countries with ratified conventions.

The status of observer gives the Japanese government access to information on the issues the committees of Council of Europe are discussing and processing (Tonami et al. 2008). The Japanese Ministry of Foreign Affairs knew that the European Court of Human Rights found that discrimination against children born out of wedlock who seek her-

itage rights was against European Convention of Human Rights as early as 1979. The Council of Europe recommended that the Japanese government end such discrimination. Other information concerning this issue was also known by the Ministry of Foreign Affairs. The Convention of the Rights of the Child was adopted at the General Assembly of United Nations in 1989. It became effective in 1990, and the Japanese government ratified it in 1994. However, the law in Japan did not change immediately. In 2009, a claim was denied when only one Japanese Supreme Court judge argued that inheritance law was unconstitutional. It was not until 2013, when the next case was brought before the Supreme Court, that there was a unanimous decision that the article of the heritage law, which denied a child born out of wedlock his or her inheritance, was unconstitutional (Saiko Saibansho 2013).

This inheritance law which gave all children the same rights to inherit was considered unremarkable in Western countries. This is due to the fact that there was a high number of children, up to one third, who were born outside of marriage and the laws concerning their legal status had been revised to adapt to the situation.

Historically, the rates of children born outside marriage were high in the Western world. For example, in 1980, the rate was almost 40% in Sweden, over 30% in Denmark, almost 20% in the United States, and well over 10% in Canada, the United Kingdom, and France. However, Japan has continually had a small number of children born out of wedlock: less than 1% in 1980, and just over 2% in 2010. Given this low number, it is to be expected that

there would be few groups in Japan making claims about the inheritance rights of children born out of wedlock. Their main sources of publicity were to publish a few books and have home pages on the Internet, and their main strategy was to sue their cases at civil law court. Even though the number of claim-making groups was still quite small, by 2013, they succeeded in winning their case. This is no doubt due to the influence and power of the international authority's warrant of human rights.

From this case, we can see how powerful and influential the international authority's warrant of human rights can be and how it can sway and change a country's domestic law. Although most people in Japan were not interested in the situation of illegitimate children and their inheritance, the government was motivated to alter its attitude and legal decision under the influence of the international community.

The Example of Smoking

Claims framed using the concept of rights can have a strong impact on a society. Even stronger are claims associated with rights assured by the Constitution of a country. In Japan, the claims concerned with public health, specifically, the protection of the health of citizens, were guaranteed by the Constitution. They were also affiliated with international organizations and this combination proved hugely successful in changing not only laws but the society itself. In a country of heavy smokers, Japan has created smoking laws to protect non-smokers and also influenced the society to the extent that fewer people are smoking today.

In the early history of the Japanese smoking problem, anti-smoking groups appealed to the right of *ken-en-ken*. If we translate *ken-en-ken* word by word, it signifies the rights to dislike smoking, and means the right to not breathe in the air polluted by the tobacco smoked in public spaces such as inside trains. In 1980, anti-smoking groups sued the Japanese Government, the Japanese National Railways, and the Japan Monopoly, which later became Japan Tobacco, and they called the lawsuit *Ken-en-ken*. The lawsuit demanded that people not be forced to breathe environmental tobacco smoke in the coaches of the super rapid express trains of the Japan National Railways (which later became privatized and renamed Japan Railways). At that time, smoking was permitted in all super express train coaches. The claimants were clever to use the slogan, *ken-en-ken*, as it implies a strong feeling of dislike or hate of smoking, as well as clearly proclaiming rights to not breath smoke (Ayukawa 2001). Although they failed to win the lawsuit, the public became aware of the situation, and circumstances changed so that there are now only non-smoking coaches in the super express and very small, isolated smoking areas.

The Example of Girl's Rights to Education and International Support

The support of international human rights organizations seems to be effective, and in some cases, the only way to sustain claims-making activities concerning human rights that are being suppressed. When claims-making is suppressed by a strong power, international human rights organizations may alert the world to the claims concerning hu-

man rights, and in some cases, they are able to alter the state of the oppressed. For example, when a claimant is vulnerable or oppressed, and jeopardized for their very claims-making, then it is only international NPOs and NGOs, and also established international agencies and organizations of authenticity, which can and should give support. International criticism of the governments which are interfering with human rights through oppression can be effective in protecting the helpless.

For example, showing the importance of international intervention for human rights, I shall refer to situations concerning the rights of women (the Convention on the Elimination of All Forms of Discrimination Against Women) and the child's right to education (the Convention of the Rights of the Child, Article 28).

In October 2012, a 15-year-old girl in Pakistan was shot on her way home by members of the Taliban. When the Taliban took control of the region where Malala Yousafzai lived, they prohibited education for girls. At only 11 years of age, Malala started making claims that girls should be given the right to education by writing a blog in Urdu, for the BBC, under a pseudonym. She criticized the Islamic fundamentalism of the Taliban, and they retaliated by attempting to kill her. Soon after the attack, there was worldwide criticism against the Taliban for trying to murder the 15-year-old girl. Yousafzai was treated at a military hospital and then moved to a hospital in the UK. After recovering, she was received by President Obama at the White House and by the Secretary General of United Nations in New York. She was awarded the Sakharov Prize

by the parliament of the European Union in Strasbourg, and the Nobel Peace Prize, which she shared with the Indian child activist, Kailash Satyarthi.

According to several conventions, one basic human right is that a person can receive an education regardless of sex. Women should have the same opportunity for education as men, just as all children should be given the right to be educated. Yet fundamentalist Islamists believe that women should not receive a secondary or higher education. In April 2014, approximately 200 school girls were kidnapped at Chibok in Nigeria by Boko Haram, a group of Islamic extremists opposed to Western education, especially the education of girls. The group attacked and destroyed a secondary school and abducted the girls. The group demanded the government of Nigeria release detained soldiers of their group in exchange for the release of the school girls. Malala Yousafzai went to Nigeria to support and meet the victims' families and speak with the president of Nigeria.

When social problems claims are concerned with the fundamental principles of human rights, those problems can no longer remain simple national domestic matters but become larger considerations for humanity. Where there is gender inequality and authoritarian laws that limit women's rights and refute their status as "human," then international opposition can be an effective way to change the domestic situation. When the nations that have humanitarian problems are brought to the attention of international communities, in many cases, these communities are able to improve the situation and the system and bring about international norms.

It is important to remember that in order to achieve the goal of improving people's rights, both the international groups and claims-makers that hope to bring about change need to be sensitive to the language and customs of the society.

The Example of the Right for Life (and the Death Penalty)

Some people in America accept and even approve of the death penalty as part of the legal system. They feel that certain crimes require the death penalty and that the convicted criminal no longer has the right to live. However, there are also strong claims-making groups such as the American Civil Liberties Union, Amnesty International, Human Rights Watch, and others that make claims for the abolition of the death penalty. Their fundamental idea is that among the claims for human rights, the right to live is the most important. They feel that all humans have rights, including convicted criminals.

Amnesty International, for example, clearly declares that the death penalty:

is the premeditated and cold-blooded killing of a human being by the state. This cruel, inhuman, and degrading punishment is done in the name of justice. It violates the right to life as proclaimed in the Universal Declaration of Human Rights. Amnesty International opposes the death penalty in all cases without exception regardless of the nature of the crime, the characteristics of the offender, or the method used by the state to kill the prisoner. (see: <http://www.amnesty.org/en/death-penalty>)

Amnesty International, Japan also proclaims as following:

[w]e, Amnesty International, think that the death penalty is a problem of human rights. And, we think that the death penalty is the punishment that denies the most basic human right, that is, to live. (see: http://www.amnesty.or.jp/human-rights/topic/death_penalty/)

I will discuss the principles and opinions of the United Nation's Council of Human Rights on the death penalty later. Now, I would like to mention that in one article of the United Nations conventions concerning human rights, defendants should be given the right to be examined at least twice before being sentenced to death. From the viewpoint of this worldwide standard and the human rights for life, the Japanese criminal justice system is in a condemnatory situation, and seems to be going backward. On the other hand, the Japanese Federation of Bar Associations is promoting the claim for the abolition of death penalty more seriously and aggressively than before.

In 1946, after World War II, the United Nations adopted the Universal Declaration of Human Rights. In 1966, two covenants were adopted. One is the International Covenant on Civil and Political Rights, and the other is the International Covenant on Economic, Social, and Cultural Rights. They were ratified by more than 160 countries in the world. Japan ratified them in 1979.

All nations that ratified these conventions are required to give a report every four years on how the

convention is being carried out in their country. This report is examined by the UN council of human rights situated in Geneva, Switzerland. Below are segments taken from the evaluation made by the United Nations' Human Rights Committee issued in response to the Japanese government's 2008 report:

[w]hile noting that in practice the death penalty is only imposed for offenses involving murder, the Committee reiterates its concern that the number of crimes punishable by the death penalty has still not been reduced and that the number of executions has steadily increased in recent years ... It is also concerned that death row inmates are kept in solitary confinement, often for protracted periods, and are executed without prior notice before the day of execution and, in some cases, at an advanced age or despite the fact that they have mental disabilities ... Regardless of opinion polls, the State party should favorably consider abolishing the death penalty and inform the public, as necessary, about the desirability of abolition ... The Committee notes with concern that an increasing number of defendants are convicted and sentenced to death without exercising their right of appeal ... The State party should introduce a mandatory system of review in capital cases and ensure the suspensive effect of requests for retrial or pardon in such cases. (United Nations, Human Rights Committee 2008)

These are strong recommendations made to the Japanese government to promote the abolition of the death penalty. There also are two Optional Protocols concerning the International Covenant on Civil and Political Rights that Japan has not signed. The first protocol is an individual procedure that allows people to complain to the United Nations

organization when a decision of the government or court may violate the covenants (Kinki bengoshi rengokai jinken yogo iinkai kokusai jinken bukai and Osaka bengoshi kai sentakugiteisho hijun suishin kyogikai 2012). The second protocol is the abolition of the death penalty.

In December, 2012, there was a vote at the General Assembly of the United Nations on the motion called "The Moratorium on the Death Penalty." In all, 111 nations voted for it and 34 nations abstained. While the majority of the 41 nations voting against the moratorium were Islamic countries, no votes included the United States, China, North Korea, and Japan.

The European Convention of Human Rights also includes the abolition of the death penalty. The Council of Europe is aggrieved that Japan and the United States are not willing to end the death penalty and it has suggested that it might expel both countries from the status of observers of Council of Europe.

The Japan Federation of Bar Associations (JFBA) is concerned with human rights matters and proposed the moratorium of the death penalty in 1970s. Also, claims for the abolition of the death penalty have been made by human rights organizations such as Amnesty International, Japan, Human Rights Now, Centre for Prisoners' Rights, and other groups.

The JFBA has been discussing the death penalty for a long time, and recently explicitly declared that they are in favor of abolishing it and will promote research into the best way to do this. Although there are several positions and proposals about how to abolish the death penalty, so far, there has

not been a consensus on what kind of strategy would be best.

Amnesty International is prominent in the movement for abolishing the death penalty. The Centre for Prisoners' Rights has also been an active claims-making group in this matter. Recently, not only these organizations but also a number of new NPOs support abolishing the death penalty. It is notable that most human rights organizations, including NGOs and NPOs, have strong ties with international organizations. All of these groups have been influential and helpful to the JFBA in their attempt to change the Japanese legal system in regards to the death penalty.

We can find a dialectical relationship between domestic claims-making groups and international organizations concerning social issues. This connection is relevant to rights in an international context. When we examine large humanitarian issues such as the right for life, which is expressed as the abolition of the death penalty, the international organizations are essential for guidance and help. This is also true concerning domestic issues, for example, rights for public health, which is exemplified with the smoking problem, human rights concerning equality between men and women, and women's rights against oppression, be they conventional or religious matters which control all facets of everyday life.

U.S.A. and Human Rights

In the era of globalization, social domestic problems often concern international human rights or-

ganizations. At times, claimants or claims-making groups make efforts to promote and ratify treaties in order to solve social problems in various countries. However, there are some occasions when some claimants, claims-making groups, organizations, and members of governments consider international treaties concerning human rights to be intrusions on their nations' domestic policies. These need to be very powerful groups or have strong beliefs in order to ignore or refuse treaties accepted internationally by the majority of nations. Perhaps countries like the United States and Japan are reluctant to ratify certain treaties because they would give an authority beyond the sovereignty of the state. In other words, they are cautious and do not want to be controlled by what some people criticize as a "world government."

When we look at human rights in the United States, there are some unusual issues. Although the United States is greatly advanced in some ways, some basic social problems remain problematic and unsolved. For example, among all technologically advanced countries, the United States has ratified the fewest conventions concerning human rights, especially concerning children's rights, economic, social and cultural rights, and the rights of people with disabilities.

Some of the conventions the U.S.A. has ratified include the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, and the protocol relating to the status of refugees.

However, the United States did not fully ratify each of these. For example, there are five reservations, five understandings, and three declarations. Among the five reservations there is one reservation concerning capital punishment of persons of all of ages. The United States Senate announced the reservation:

the United States reserves the right, subject to its Constitutional constraints, to impose capital punishment on any person (other than a pregnant woman) duly convicted under existing or future laws permitting the imposition of capital punishment, including such punishment for crimes committed by persons below eighteen years of age. (see: <http://www.internationaljusticeproject.org/juvICCPR.cfm>)

In addition, the United States has signed, but not ratified, the Convention on the Rights of the Child, a convention that has been ratified by all the nations in the world with the exception of the Federal Republic of Somalia and the United States. In the case of Somalia, one of the poorest countries in the world, considerations of human rights of the child may be superficial since the government is overwhelmed and powerless due to the conflicts within the country.

The International Covenant on Economic, Social, and Cultural Rights was adopted in 1966 and became effective in 1978. It is one of the two main covenants that realize the universal declaration of Human Rights of the United Nations. It was ratified by more than 160 nations around the world. Of the countries which have not yet ratified it are the United States and the Republic of South Africa.

The United States also has not yet ratified the convention on the Rights of Persons With Disabilities, although more than 140 nations ratified this convention, including China, India, and the Islamic nations of Iran, Iraq, and Saudi Arabia. The United States is against the Declaration of the Rights of Indigenous People, a covenant that became effective in 2007 when it was ratified by 143 nations, including the United Kingdom, France, Spain, Portugal, Germany, Russia, China, and Japan. Only 4 nations voted against it at the General Assembly.

There are many claims-making groups, such as the American Bar Association (ABA), Human Rights Watch, Amnesty International, the U.S. Campaign for Ratification of Convention of Child's Rights, and the former President Carter that have called for ratifying the Convention on the Rights of the Child, in which are included articles for the abolition of the death penalty and the abolition of life imprisonment of juveniles.

In 2005, the U.S.A. became the last country to abolish the death penalty for juveniles (a person under the age of 18 when committing the crime). In 2012, the United States Supreme Court decided the sentence of mandatory life imprisonment without the possibility of parole for juvenile offenders was cruel and unusual punishment and against the Constitution.

Although the U.S.A. ambassador to the United Nations signed the Conventions for the Rights of the Child, American presidents have not yet submitted this convention to the Senate. Influential senators on the Senate Foreign Affairs Committee refused to examine the convention, saying it would interfere

with parental authority. Interestingly, even Islamic countries, where a father has the right to strictly discipline and severely punish his child, ratified this convention.

The two crucial issues that stopped the U.S.A. from ratifying the Convention of the Rights of the Child were the death penalty for juveniles, and the sentence of life imprisonment without parole to a person under the age of 18. Although these two main problems seem to have been solved, it is not clear when the U.S.A. will ratify the convention, which was adopted at the General Assembly of the United Nations in 1989.

When a nation refuses to ratify an international treaty that is recognized as crucially important for human rights and already has been ratified by almost 99% of the countries in the world, the people of that nation may lack the vocabulary of warrants and grounds. This means the people are not aware of their potential rights in the international communities.

Concluding Remarks

Social constructionism's aim should not be only the accumulation of research. It should also con-

sider complex issues, assess them, and offer their results in order that those in power may review domestic problems. In this paper, I pointed out the complexities in the language of some basic humanistic concepts. There is a need for sensitivity considering these difficulties when looking at different countries' social problems. Also, I suggested the dialectical relationship between domestic social problems and international organizations concerning human rights.

I pointed out the influence that international human rights institutions and groups can have on changing the domestic situation in a country. On the other hand, there are countries which are still powerful enough, like Japan and the United States, which can refuse the recommendations.

Social constructionist approaches to social problems have great potential for examining and understanding social problems relevant to human rights. Since social constructionists see problems in a worldwide perspective, they are able to offer new conclusions and insights in social problems. In the future, as the world gets smaller, their contribution will be more and more valuable.

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