

From the Subjectivity of Human Rights to the Universality of Human Rights

— *A Preliminary Interpretation of the Theory on the Subjectivity of
Human Rights*

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Abstract: *Universality is one of the essential characteristics of human rights, but there is a substantive difference between idealism and realism in understanding the concept of universality of human rights. The concepts of radical universality and strong universality based on the concept of natural human rights are too idealistic and thus have a high risk of being alienated into a tool of international repression in practice. On the contrary, the theory on the subjectivity of human rights can effectively defuse this risk brought about by radical universality and strong universality. Advocating a transition from the universality of human rights to the subjectivity of human rights not only keeps in line with the actual construction process of international human rights, but can also effectively interpret the practical difficulties in the realization process of international human rights. Therefore, it can be used as another alternative theory on human rights beyond the theory of natural human rights.*

Keywords: human rights ♦ universality ♦ subjectivity ♦ concept of natural human rights

The concept of human rights has been inherently linked with the notion of universality from the beginning. One could say that without universality, there are no human rights. However, the realization of the universality of human rights has always faced significant resistance in practice, leading to intense international human rights struggles. The relationship between the universality and particularity of human rights has thus become one of the core issues in modern human rights theory. How to resolve the tension between the universality and particularity of human rights, how to view the Western practice of using the universality of human rights to justify international human rights interventions in developing countries, and how to vigorously defend the positions of developing countries while pursuing human rights values have become major theoretical and practical challenges we must address. This paper will first categorize the concept of universality of human rights and analyze how different types of universality concepts may impact human rights theory and practice. Next, it will focus

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on analyzing the risk that radical universality and strong universality of human rights could be easily distorted into tools of “oppression” through alienation in practice. The third section will introduce three theories that, to varying degrees, attempt to mitigate the risks posed by radical and strong universality from the perspective of human rights subjectivity. Finally, this paper will systematically explain the basic stance of the theory on the subjectivity of human rights and address potential theoretical criticisms it may confront.

I. Idealism and Realism in the Concept of Universality of Human Rights

In the literal sense, human rights refer to the rights that should be enjoyed by all individuals simply by virtue of being human. Historically, classical human rights declarations have asserted, in an indisputable manner and in the name of all humanity, that certain inalienable rights belong to everyone. These rights claims, made in the name of all humanity, have endowed the struggle against state power repression with unprecedented moral force, making it appear theoretically indisputable in terms of moral legitimacy.

Universality is an essential attribute of human rights. However, in human rights theory and practice, there are significant differences in how people understand “universality.” These differences directly lead to major divergences regarding the nature, content, and implementation of human rights. One could say that debates about the universality of human rights largely stem from varying interpretations of the concept of universality itself. Therefore, to discuss the issue of universality in the realm of human rights, we first need to clarify which concept of universality of human rights we are addressing: the absolute, idealistic universality or the more realistic, relative universality.

A. Conceptual universality or substantive universality¹

Conceptual universality is the most common understanding of the universality of human rights. It refers to the universality of human rights understood literally, meaning that rights should be enjoyed by everyone without exception. Jack Donnelly’s notion of “substantive universality” primarily refers to the substantive content of human rights, that is, the universality inherent in specific types of human rights. The concept of human rights and substantive human rights themselves are essentially a relationship between “name” and “substance.” Theoretically, specific human rights as “species” (such as freedom of speech and the right to education) should conform to the concept of human rights as “genus.” However, discrepancies between the name and substance are common in the practical international human rights system.

1. Considering Jack Donnelly’s influential views on the meaning and classification of human rights universality, this paper will discuss some aspects of universality classification based on his work. However, Donnelly did not directly propose the concepts of “synchronic universality” and “moral universality,” nor did he analyze and compare “diachronic universality” with “synchronic universality,” “ontological universality” with “overlapping consensus universality,” and “moral universality” with “international legal universality” in a contrasting manner. Regarding Jack Donnelly’s classification of human rights universality, see Jack Donnelly, “The Relative Universality of Human Rights,” translated by Guo Xiaoming, *The Journal of Human Rights* 4 (2018).

The conceptual universality of human rights actually establishes the absolute scope of applicability of human rights in terms of subjects. It constitutes the core of traditional human rights concepts because it grants human rights their unique idealistic character and moral authority. However, this notion of conceptual universality has also become a quagmire of controversy in human rights theory. In human rights theory, some viewpoints use “conceptual universality” to deny certain “unqualified” substantive attributes of human rights. For example, Maurice Cranston denies the human rights attributes of economic, social, and cultural rights using this notion of conceptual universality, while Donnelly denies the human rights attributes of rights such as the right to development, which have collective rights characteristics.² Donnelly himself acknowledges that, if his strict definition is adhered to, the number of conceptually universal human rights might be very small, or they might be defined in such abstract terms that their practical significance is minimal.³ In the current international human rights system, there may be a considerable number of types of human rights (including certain civil and political rights) that may not necessarily align with the universality of the human rights concept. Therefore, this kind of universality may not fully correspond to the reality of the existing human rights system.

B. Diachronic universality or synchronic universality

In terms of whether human rights possess a universality transcending time, we can categorize the universality of human rights into two types: diachronic universality and synchronic universality. According to the viewpoint of diachronic universality, human rights are rights that individuals should have enjoyed throughout human history. They transcend not only cultural and societal limitations but also historical limitations. Donnelly refers to this universality as “historical/anthropological universality.” On the other hand, synchronic universality refers to the concept of universality of human rights proposed by Joseph Raz, which essentially means that human rights are rights that should be jointly enjoyed by contemporary living individuals.⁴ This concept of universality denies that human rights possess a transcendent historical nature and argues that human rights are merely a concept widely recognized in modern times.

In theory, if human rights possess not only spatial transcendence but also temporal eternity, undoubtedly, it can further enhance the moral authority of human rights, thus aiding in advocating for human rights worldwide. Inspired by the fact that many existing international human rights norms lack complete spatial and temporal transcendence, A. J. M. Milne has attempted to propose a new list of human rights with

2. Regarding the discussion on the relationship between traditional human rights concepts and list of human rights entities, see Huang Jinrong: Reconstruction of the Concept of Human Rights under the Trend of Human Rights Inflation: A Perspective from International Human Rights Law,” *Zhejiang Social Sciences* 10 (2018): 27-28.

3. Jack Donnelly, “The Relative Universality of Human Rights,” 121-122.

4. Joseph Raz, *Human Rights in the Emerging World Order*, accessed June 10, 2022, <http://www.fxexw.org/index.php/Home/Miaowen/artIndex/id/3983/tid/1.html>.

fewer but more historically and realistically universal contents.⁵ Many non-Western scholars have also attempted to argue for the transhistorical and transcultural nature of the concept of human rights, suggesting that human rights are not only a product of Western history but also have corresponding historical roots in non-Western cultures such as Confucian traditions, Hindu traditions, and Islamic cultures. For example, during the philosophical survey conducted by the United Nations in 1947 to formulate the *Universal Declaration of Human Rights*, Chinese philosopher Luo Zhongshu stated, “The concept of human rights had developed very early in China. The right of the people to overthrow cruel rulers had existed for a long time.” Similarly, Indian political scientist S. V. Puntambekar asserted that great Indian thinkers had long proposed “ten fundamental freedoms, restrictions, or virtues necessary for a good life,” which included “freedom from violence, freedom from poverty, freedom from exploitation, freedom from disrespect and violation, and freedom from premature death and disease.”⁶

However, this view of diachronic universality, while providing some historical grounding for current international human rights, remains relatively weak in terms of evidence. As Donnelly puts it, with respect to equal and inalienable individual rights, no society, civilization, or culture before the 17th century had widespread practices or even conceptions of human rights.⁷ Therefore, human rights are largely a modern concept. Given the comprehensive systematization of modern international human rights norms, proving the diachronic universality of all human rights is an almost impossible task.

C. Ontological universality or overlapping consensus universality

In philosophy, ontology refers to the study of the ultimate nature or essence of the world. However, Donnelly’s notion of ontological universality primarily refers to the universality of human rights recognized with moral principles or theories based on a “singular, transhistorical foundation.”⁸ The characteristic of the ontological universality argument is that it only acknowledges a particular singular moral principle or theoretical doctrine (such as natural rights theory), affirming that this moral principle or theoretical doctrine possesses objectivity and correctness transcending historical and temporal limitations. Ontological universality essentially represents an essentialist and dogmatic conception of universal human rights. This view of universal human rights is highly questionable in a pluralistic world and difficult to implement in practice. During the drafting of the *Universal Declaration of Human Rights*, although Western natural rights theory served as the foundation for the development of human rights concepts and traces of this theory can still be found in the *Declaration*, most of the representatives involved in the drafting process did not endorse Western society’s

5. Regarding Milne’s efforts in rebuilding a transhistorical and transcultural human rights list, see A. J. M. Milne, *Human Rights and Human Diversity: An Essay in the Philosophy of Human Rights*, translated by Xia Yong and Zhang Zhiming (Beijing: Encyclopedia of China Publishing House, 1995).

6. Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights*, translated by Liu Yisheng (Beijing: China University of Political Science and Law Press, 2016), 72-73.

7. Jack Donnelly, “The Relative Universality of Human Rights,” 123.

8. *Ibid.*, 130.

conception of nature or God as the source of authority for human rights. Instead, they chose to base human rights on human nature and dignity.⁹ Ultimately, the *Universal Declaration of Human Rights* is regarded as a framework document that accommodates and develops different philosophies, religious beliefs, and socio-political theories.¹⁰

Overlapping consensus universality refers to the universal effectiveness of human rights achieved through the political consensus among groups or societies with different religious, philosophical, or moral doctrines. John Rawls first proposed the concept of overlapping consensus in his book *A Theory of Justice* and further elaborated in *Political Liberalism* and *The Law of Peoples*. Rawls described “overlapping consensus” as the consensus reached among comprehensive doctrines regarding political conceptions of justice, such as metaphysical, rational religious, philosophical, and moral doctrines. He introduced this concept primarily to “address the question of how to achieve consensus, coordinate action, and maintain stability in contemporary societies based on diversity.” Its core meaning can be understood at several levels: First, people with different viewpoints treat each other with reasonable attitudes; second, people with different values support common norms from their respective perspectives or by adopting each other’s perspectives; third, individuals currently holding different views and positions strive for mutual understanding in the future, even aiming for a “fusion of horizons.”¹¹ Although Rawls himself did not explicitly use overlapping consensus as a tool to argue for human rights, this concept has found widespread application in human rights theory and has become a theoretical basis for achieving consensus on human rights in a diverse world with different moral, religious beliefs, and political doctrines. From the perspective of international human rights practice, the adoption of the *Universal Declaration of Human Rights* and numerous subsequent international human rights conventions have demonstrated that the international community can indeed reach a consensus on human rights to a considerable extent.

In human rights theory, there are two fundamental approaches to arguing for universality: One based on a certain ontology of human rights and the other based on consensus.¹² The former approach typically adopts the so-called “naturalistic” viewpoint, which holds that human rights are rights inherent to all individuals solely by virtue of their nature. Once this point is acknowledged, human rights are deemed to be universal. In human rights theory, this perspective is often referred to as natural human rights theory. The latter approach establishes universality based on consensus reached among different societies with diverse moral and political values. Without consensus, there are no human rights. In human rights theory, this is generally termed as the consent theory of human rights. Clearly, natural human rights theory relies on

9. Johannes Morsink, “The Philosophy of the Universal Declaration,” 309 *Hum. Rts. Q.* 6 (1984): 309-334.

10. Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights*, 72-73.

11. Tong Shijun, “The ‘Overlapping Consensus’ about the ‘Overlapping Consensus,’” *Social Sciences in China* 6 (2008): 55.

12. Charles Beitz, *The Idea of Human Rights*, translated by Gao Jingzhu (Nanjing: Jiangsu People’s Publishing House, 2018), 52.

the assumption of human nature as the source of universality, making it more idealistic, whereas the consensus theory of human rights bases universality on agreements reached through specific procedures among different societies, hence carrying a more realist tint.

D. Moral universality or international legal universality

Human rights are initially conceived as moral rights that exist independently of positive law, and they exhibit their unique value through their moral critique of unjust legal orders. Despite the complexity of international human rights politics, the widespread recognition of the moral value of human rights worldwide remains undeniable, repeatedly affirmed through various human rights declarations or decisions at the United Nations level. For this reason, Louis Henkin confidently asserted that human rights are the idea of our time, the only political and moral concept that has gained universal acceptance.¹³ This widespread acknowledgment of the moral value of human rights is often seen as proof of the high moral universality of human rights and frequently serves as the basis for human rights criticism in the international community.

However, the broad universality of the moral value of “human rights” does not necessarily imply that all specific types of human rights have equal universality, nor does it imply that specific human rights norms and standards also possess such universality. In “issues involving universal value rules,” even if agreement is reached on a first- or second-level concept of universal value, disagreements may still arise at the third or fourth level. “The more ‘universally’ recognized a value is, the more abstract and idealized its expression becomes; the more it enters the realm of behavioral rules and norms, the more concrete and distinct the subjectivity of values is manifested, and the stronger the sense of autonomy and reality in people’s value orientation becomes.”¹⁴ For example, nations have broad consensus on whether individuals have the right to life, so almost all societies agree that human life cannot be arbitrarily deprived. However, there is disagreement among countries regarding what constitutes “arbitrary” and what constitutes the “most serious crimes” eligible for the death penalty; there are also significant differences within the international community regarding whether the right to life implies a requirement to abolish the death penalty. Therefore, only by distinguishing between levels of human rights values or norms can we better understand the meaning of the moral universality of human rights.

Modern human rights are not only moral rights but also, to a large extent, legal rights under international law. “Human rights are Janus-faced, looking simultaneously toward morality and the law.”¹⁵ Therefore, the universality of human rights can also be viewed from the perspective of international law. International legal universality refers to measuring the universality of human rights by assessing the extent to which international human rights documents are accepted. It is easy to argue that the rights

13. Louis Henkin, *The Age of Rights*, translated by Xin Chunying, Wu Yuzhang and Li Lin (Beijing: Knowledge Publishing House, 1997), I.

14. Li Deshun, “How to Understand Universal Values,” *Philosophical Research* 1 (2011): 7-8.

15. Jürgen Habermas, “The Concept of Human Dignity and the Realistic Utopia of Human Rights,” *Philosophical Analysis* 3 (2010): 5.

enshrined in the *Universal Declaration of Human Rights* have gained universal acceptance, as emphasized in the *Vienna Declaration and Programme of Action* adopted by 168 participating countries in 1993, which emphasizes that “the *Universal Declaration of Human Rights* constitutes a common standard of achievement for all peoples and all nations.” Furthermore, the fact that most countries have ratified the core human rights conventions of the United Nations also demonstrates the universality of human rights. An undeniable fact is that over time, the number of countries signing and ratifying these documents generally increases rather than decreases. Therefore, using the acceptance of international human rights conventions as evidence of the universality of human rights is a compelling argument.

However, using international legal universality to argue for the universality of human rights has considerable limitations. This is because the development of international human rights instruments may not always reflect the consensus of the entire international community, and almost all international human rights conventions have instances where some countries have not joined. Furthermore, even those countries that have ratified human rights conventions do not necessarily represent comprehensive acceptance of all the provisions of the conventions, as most countries make reservations about certain clauses when joining. For example, although the United States has ratified the *International Covenant on Civil and Political Rights*, it has made numerous reservations about specific rights provisions and has explicitly stated that any limitations on rights under this covenant must not violate the provisions of the U.S. *Constitution*. The implementation of this covenant is also conditioned upon not violating the federal system of the United States.¹⁶ Therefore, for the United States, regardless of the eloquent rhetoric it may express regarding human rights, its true stance on the rights outlined in the covenant is that it does not consider the reserved rights applicable universally to the United States, nor does it consider the unreserved rights to have universality beyond what is provided for in the U.S. *Constitution*.

II. The Risk of Human Rights Alienation Under Radical Universality and Strong Universality

In international human rights politics, the two most common opposing positions are often taken under the guise of universality to criticize the human rights situation in certain countries or to resist criticism of human rights in others. However, it is quite ironic that even countries advocating for the particularity of human rights rarely openly oppose the notion of human rights universality. Despite the abundance of countries defending the particularity of human rights on the eve of the 1993 World Conference on Human Rights, the unanimously adopted *Vienna Declaration and Programme of Action* still asserted that “the universal nature of these rights and freedoms is beyond question” as confirmed by international instruments and international law. Even the *Bangkok Declaration*, considered reflective of Asian values, did not deny the universality of human rights. However, looking at the debates on Asian values and Islamic perspectives on human rights during the World Conference on Human Rights, this

16. Huang Jinrong, “American Cultural Relativism on Human Rights,” *Chinese Journal of Human Rights* 4 (2021): 54.

consensus on the “universality” of human rights appears, at most, superficial, as it cannot conceal the substantive differences among countries regarding the concept of universality itself.

A. Radical universality, strong universality, or weak universality

Many countries worldwide, each with their distinct views of human rights, often claim that human rights are universal. This suggests that people understand the “universality” of human rights differently. To differentiate between the various interpretations of cultural relativism, Donnelly categorized it by degrees of strength into “radical cultural relativism,” “strong cultural relativism,” and “weak cultural relativism.” “Radical cultural relativism” posits that culture is the sole source of the legitimacy of moral rights or norms. “Strong cultural relativism” maintains that culture is the primary source of the legitimacy of moral rights or norms. Meanwhile, “weak cultural relativism” suggests that culture may be an important source of the legitimacy of moral rights or norms.¹⁷ Corresponding to this classification, we can also categorize universality into three types based on its degree: Radical universality, strong universality, and weak universality.

Radical universality refers to the type of universality that asserts human rights have an efficacy that transcends both time and space. The previously mentioned concepts of “conceptual universality,” “ontological universality,” and “diachronic universality” can all be considered under the scope of radical universality. Strong universality implies that human rights have comprehensive validity for all modern societies and individuals, emphasizing their applicability across contemporary times and immediate relevance. The previously mentioned “synchronic universality” and “moral universality” can potentially be interpreted as forms of strong universality. Weak universality merely suggests that human rights have the potential to be applicable to all modern societies and individuals without requiring immediate applicability to all societies and individuals. The previously discussed “consensus universality” and “international legal universality” can be seen as specific forms of weak universality. Additionally, “synchronic universality” and “moral universality” can also be interpreted as forms of weak universality to a considerable extent.

The most typical form of weak universality is “international legal universality.” This is also a form of “consensus universality,” as international human rights conventions represent the consensus reached among different countries regarding the types and content of specific human rights. However, this textual consensus on international human rights is merely a “surface consensus.” All countries must legally ratify the relevant human rights documents to become a true consensus. This consensus-based universality implies that such legal universality is often limited. During the drafting stage of human rights conventions, the universality of human rights is limited to the countries that participated in the negotiations and voted in favor of the text. At the ratification stage, the universality is confined to those countries that have ratified the hu-

17. Jack Donnelly, *Universal Human Rights in Theory and Practice*, translated by Wang Puqu, et al. (Beijing: China Social Sciences Press, 2001), 127-128.

man rights conventions. For countries that do not agree with the text and ultimately do not ratify the convention, the human rights confirmed by the convention do not have a universal binding effect. Even for countries that have legally ratified the human rights conventions, the human rights provisions explicitly reserved at the time of ratification do not have universal binding force on them. Overall, the consensus reached among countries on human rights conventions is limited by their voluntary agreement. Therefore, the scope of the binding effect of human rights universality is also limited by this genuine willingness.

If we understand the universality of human rights based on weak universality, especially international legal universality, the contradiction between the universality and particularity of human rights can be better resolved. On the one hand, we can assert that human rights possess universality because they are based on a certain level of international consensus and have the potential to be applicable to all countries. On the other hand, most specific human rights have a degree of particularity, as countries may have different interpretations of them. Therefore, countries can freely decide whether to ratify and implement human rights conventions and whether to recognize certain specific human rights provisions. Understanding human rights universality through the lens of international legal universality implies that countries that have joined human rights conventions do not have legitimate grounds to criticize those countries that have not joined the conventions or have made reservations on certain human rights provisions, based solely on the universality of human rights. If the international community were to fully embrace the concept of international legal universality in addressing human rights issues, it might lead to fewer international human rights disputes.

However, it is evident from the real-world practice of international human rights politics that some countries do not understand the universality of human rights solely through the international legal universality model. Instead, they either embrace radical universality, such as “conceptual universality” or “ontological universality,” or forcefully interpret “synchronic universality” or “moral universality” as strong universality. These countries then demand that all other countries comply with these standards, regardless of whether they are signatories to international human rights conventions or their populations accept this interpretation of universality. This approach starkly contrasts the concept of weak universality of human rights, which fully considers the perspectives and will of the people in the concerned countries. From the standpoint of weak universality, human rights cultural relativism and human rights universality are not contradictory. However, from the perspective of radical universality and strong universality, human rights cultural relativism fundamentally negates human rights universality, inevitably leading to intense conflict between the two. Radical and strong universality proponents often view weak universality as not truly universal at all, but rather as a form of human rights particularism that permits countries to act according to their preferences.

B. International human rights intervention in the name of radical universality and strong universality

The distinction between the concepts of radical universality and strong universal-

ity on the one hand and weak universality on the other is not merely a matter of differing understandings of universality but also reflects differing attitudes toward international intervention. Radical universality and strong universality are almost invariably linked with advocacy for international intervention in human rights issues. Specifically, those who strongly advocate for international intervention in human rights often base their arguments on radical or strong universalist grounds. From the perspective of those who support radical or strong universality, human rights are inherent to all individuals and do not depend on legal recognition by states. Thus, these rights have moral authority that transcends national sovereignty. All states are obligated to protect these rights immediately. If a state fails to effectively fulfill its obligation to protect the human rights of individuals within its jurisdiction, the international community has the right to intervene directly in the affairs of that state. In other words, in the realm of radical or strong universality, international human rights constitute a form of international justice that any state can demand to be enforced, regardless of whether it has ratified relevant international human rights conventions. If a state fails to fulfill this obligation, the international community has the right, and even the duty, to “act on behalf of the highest-level order,” thereby upholding international justice.

In human rights theory, a concept known as political human rights theory asserts in its core argument that the defining characteristic of modern human rights is their capacity to justify international intervention. A prominent figure in this theory, Joseph Raz, even defines human rights as rights that have moral force in the international arena against states,¹⁸ or, in other words, rights that morally justify measures to limit sovereignty.¹⁹ Another advocate of political human rights theory, Charles Beitz, also views human rights as matters of “international concern,” with the potential for international intervention being a fundamental characteristic of human rights. He argues that the key idea of international human rights is that states have responsibilities to their people that must meet certain conditions, and if they fail to meet these conditions, or are likely to fail in the future, this may justify corrective or preventive actions by the international community or other actors.²⁰

Compared to proponents of radical and strong universality, which almost invariably associate human rights with international intervention, proponents of weak universality take a more cautious stance toward international human rights intervention, influenced by historical memories of Western colonialism and the lessons learned from wanton contemporary Western human rights interventions. However, this does not mean that proponents of weak universality necessarily oppose all forms of international human rights intervention. For them, the crucial issues are not whether intervention should occur, but rather who intervenes, how they intervene, and what they intervene in. Interventions themselves can take various forms. They can include strong interventions such as economic sanctions, diplomatic sanctions, and acts of war, as advocated by Rawls. They can also encompass relatively milder forms of in-

18. Joseph Raz, “Human Rights without Foundations,” *Peking University Law Journal* 3 (2010): 376.

19. *Ibid.*, 373.

20. Charles Beitz, *The Idea of Human Rights*, 14.

tervention, such as conditioning aid on human rights compliance, requiring countries to report on their human rights records, formally condemning human rights violations, and imposing trade boycotts.²¹ The object of intervention can elicit different responses depending on the type and severity of human rights issues involved. The legitimacy, intensity, and methods of intervention can vary significantly. For most proponents of weak universality, international intervention based on international law is not entirely unacceptable. Countries that support the international legal universality model and participate in drafting or ratifying international human rights conventions implicitly acknowledge that human rights are a matter of international concern. By joining such conventions, these countries accept a degree of intervention from relevant convention bodies regarding their domestic human rights affairs. This might include allowing these bodies and institutions to review national human rights reports and issue “concluding observations” (including critical comments) as per the requirements of the human rights conventions.

C. Human rights themselves can also be transformed into a tool of “oppression”

From their inception, human rights have been viewed as a “right to resist,” a means to defend against and resist the oppression of state power, promoting individual freedom and liberation. However, the irony lies in the fact that in the ideologically and politically fragmented international community, human rights can be transformed into an effective tool for some countries or blocs to suppress other nations and peoples. International human rights interventions exhibit a typical “paternalistic” nature, characterized by a stark duality. On the one hand, such interventions can help protect certain groups’ rights in specific situations. On the other hand, they can easily result in the interveners imposing their perceived correct beliefs and understanding of facts, forcing the subjects of intervention to attain “freedom.” Without internationally recognized impartial institutions and legitimate procedural mechanisms, many interventions, even with good intentions, can lead to counterproductive outcomes. More importantly, numerous instances of international intervention have demonstrated that certain countries and blocs often use human rights as a tool to attack ideological and geopolitical adversaries.

In international human rights politics, an undeniable fact is that those who fervently assume the role of international human rights “guardians” are primarily Western countries and blocs, led by the United States. The targets of such interventions are mainly developing countries in Asia, Africa, and Latin America, which, despite being economically and socially underdeveloped, have long histories of suffering under Western imperialism and colonialism. The Western enthusiasm for human rights interventions is deeply rooted in historical and contemporary reasons. Beyond Western colonialism’s legacies and Christian thought’s influence, the West’s long-standing political, economic, and ideological dominance is the most significant factor. Due to the profound impact of Western influence, it is undeniable that the United Nations international human rights system aligns more closely with Western democratic liberal ide-

21. Yan Hailiang, *Human Rights in the Age of Globalization — Exploring from the Perspective of Joseph Raz* (Beijing: Law Press · China), 111.

ology and is more suited to Western liberal democratic political systems.²² Compared to Western societies, developing countries are generally not only economically less advanced but also politically and ideologically more diverse. Even among developing countries that have adopted Western-style liberal democratic systems, there are often significant differences in their understanding of human rights compared to Western countries. These facts contribute to a persistent illusion in the West that it occupies the moral high ground on a global scale regarding human rights. This perception provides an extraordinary impetus for Western countries to engage in international human rights interventions. "Apart from the United Nations, whose Center for Human Rights is responsible for human rights matters, Western governments, and particularly the United States, have been the principal advocates for the use of human rights as a tool of policy against other states. In this respect, human rights standards have been viewed as norms with which non-Western, non-democratic states must comply."²³ Thus, an implicit metaphor emerges in the international human rights narrative "with the United Nations, Western governments, International NGOs, and Western charities as the actual rescuers, redeemers of a benighted world." In this metaphor, the people of many developing countries are portrayed as victims in dire need of "freedom from the tyrannies of the state, tradition, and culture," awaiting rescue and redemption.²⁴

Western governments and societies are enthusiastic about promoting human rights globally, but their efforts are inevitably highly selective. For example, although economic, social, and cultural rights — once considered to reflect more "socialist" ideologies — have long been included in the *Universal Declaration of Human Rights* and related international human rights covenants, and despite the right to development being declared by the United Nations as an indivisible human right alongside others, Western governments and societies have always focused their implementation of international human rights primarily on "those rights and programs that seek to strengthen, legitimize, and export political or liberal democracy."²⁵ Western human rights diplomacy and numerous international non-governmental organizations almost exclusively channel their resources into activities that promote "civil and political rights" worldwide. "In fact, the currency of civil and political rights has been so strong that they have become synonymous with the human rights movement, even as the so-called second and third generation rights have attempted to make inroads into the mainstream of the discourse."²⁶ The targets of Western governments implementing human rights diplomacy and human rights intervention are also highly selective. Their focus is almost always on countries that compete or have significant contradictions with them in terms of ideology, political system, national interests, etc., while the human rights issues of their own allies and followers of Western policies are either broad-minded or downplayed. Henkin believes the politicization of human rights has

22. Makau Wa Mutua, "The Ideology of Human Rights," 589 *Va. J. Int'l L.* 36 (1996): 607.

23. *Ibid.*, 647.

24. Makau Mutua, "Savages, Victims, and Saviors: The Metaphor of Human Rights," 201 *Haro. Intl L. J.* 42 (2001): 42.

25. Makau Wa Mutua, "The Ideology of Human Rights," 604.

26. *Ibid.*, 604-605.

led to a greater concern for human rights violations in certain countries than in others. Human rights have become a topic or excuse for attacking specific countries.²⁷ However, in the international community, it is mainly Western countries and governments in a dominant position that highly politicizes human rights issues and views them as weapons to attack certain specific countries.

Western countries politicize human rights through the discourse of human rights universality, using international human rights as tools to promote their own ideologies and foreign policies. Their practices often lead to severe alienation of international interventions justified on human rights grounds, turning human rights into a tool for Western oppression of non-Western societies. For most developing countries, the miserable historical memories of Western colonialism have not faded, and a new wave of human rights imperialism is emerging. The only difference is that “Colonialism was driven by ignoble motives while the human rights movement was inspired by the noblest of human ideals.”²⁸ In situations where the perspectives on human rights and the people’s will in developing countries are not respected, even well-intentioned Western human rights interventions can be perceived as unwelcome oppression. As An-Na’im pointed out regarding this matter, “the similarities of colonial and post-colonial experiences of African and Islamic countries appear to have somehow generated and sustained a shared suspicion of the universality project in general as a neo-colonial tool of cultural imperialism designed to defeat their right to self-determination and to perpetuate their economic and political dependency on the West.”²⁹ Due to this vigilance against Western human rights imperialism, developing countries have put forward a series of human rights principles aimed at preventing human rights from becoming a tool for Western oppression of non-Western societies, as seen in documents such as the *Bangkok Declaration*.

III. Preventing the Risk of Human Rights Alienation Under Radical and Strong Universality Through Subjectivity

The viewpoints advocating radical universality and strong universality of human rights actually reflect a powerful inclination towards the concept of natural human rights. This perspective on human rights represents an objectivist view, where human rights are perceived as inherent rights entirely independent of the will of the right-holder. In other words, human rights are forcibly endowed upon individuals who cannot choose, waive, refuse, or transfer them. According to this view of human rights, although human rights are rights possessed by individuals, the subjects themselves are, to a considerable extent, objectified. They can only passively accept these rights bestowed upon them by other forces (such as nature, deities, or the international community), regardless of whether they agree with them. This theory of human rights, which completely objectifies the rights subjects, on the one hand, elevates the theoretical universality of human rights to unprecedented heights and becomes the theoretical

27. Louis Henkin, *The Age of Rights*, 34.

28. Makau Mutua, “Savages, Victims, and Saviors: The Metaphor of Human Rights,” 236.

29. Abdullahi A. An-Na’im, “The Contingent Universality of Human Rights: The Case of Freedom of Expression in African and Islamic Contexts,” 29 *Emory Int’l L. Rev.* 11 (1997): 34.

basis for certain international powers to intervene in international human rights disregarding the subjective will of people in other countries. On the other hand, it is also the theoretical source of intense struggles in international human rights politics and poses significant challenges to implementing international human rights.

Many human rights theories attempt to address the tendency of natural rights theory to objectify the subjects of human rights and the serious challenges it may pose to the implementation of human rights norms by emphasizing the role of the will of the subjects in the formulation and implementation of human rights norms. These theories share a common emphasis on the right to expression of human rights subjects in formulating and implementing international human rights norms, seeking to correct the problem of human rights alienation that may result from radical and strong universality perspectives. Theories such as human rights cultural relativism, the theory of human rights victims' consent, and the human rights recipient approach all emphasize to varying degrees the decisive role that human rights subjects should play in accepting human rights concepts and norms. Therefore, they can all be considered as part of a broad category of theory on the subjectivity of human rights.

A. Human rights cultural relativism theory

Among the various theories that emphasize the will of human rights subjects, human rights cultural relativism theory undoubtedly stands out as the most representative one. Cultural relativism theory can be seen as a product of the globalization of human rights. Since the establishment of the United Nations, the declaration of "universal human rights" in the name of all humanity has prompted human rights cultural relativism to emerge as a questioning voice against the concept of universal human rights. Although there is internal inconsistency within cultural relativism theory regarding the extent of the universality of human rights and views on international human rights, they all adopt a very cautious attitude toward the potential "imperialism of universality" that human rights theory and practice may lead toward. They advocate for the cultural legitimacy of human rights and emphasize the necessity of respecting the cultural differences of peoples in different societies and their corresponding differences in rights concepts.

As early as 1947, when the United Nations proposed drafting the *Universal Declaration of Human Rights*, the American Anthropological Association (AAA) issued a "Statement on Human Rights" that strongly challenged the concept of "universal human rights" from a cultural relativist perspective. The statement argued that cultural evaluation lacks objective standards, so the differences in cultures and ways of life among various societies must be respected. "What is held to be a human right in one society may be regarded as anti-social by another people or by the same people in a different period of their history"; it further argues that "Standards and values are relative to the culture from which they derive so that any attempt to formulate postulates that grow out of the beliefs or moral codes of one culture must to that extent detract

from the applicability of any Declaration of Human Rights to mankind as a whole.”³⁰ It asserted that promoting a human rights declaration based on Western values under the guise of universality could likely lead to Western oppression of non-Western countries and peoples. As the statement points out, for the non-Western nationalities, “The values of the ways of life of these peoples have been consistently misunderstood and decried”; “Rationalized in terms of ascribing cultural inferiority to these peoples, or in conceptions of their backwardness in development of their ‘primitive mentality,’ that justified their being held in the tutelage of their superiors, the history of the expansion of the western world has been marked by demoralization of human personality and the disintegration of human rights among the peoples over whom hegemony has been established.”³¹

Due to advocating that human rights concepts vary with cultural differences, the human rights relativist thought, represented by the AAA, is often labeled as “radical cultural relativism” or “cultural absolutism.”³² However, most cultural relativism, including the AAA’s statement, does not entirely deny the possibility of universal human rights. For cultural relativists, human rights can be universal as long as they are recognized across different cultures. For instance, scholars like Adamantia Pollis, who are perceived as practicing “cultural absolutism,” assert that, in principle, it is clear that there are universally accepted sacred aspects of human life. She argues that even without a truly universal theory, no society would endorse concepts that support genocide, arbitrary arrest, murder, torture, or enforced disappearance.³³

Another prominent figure in cultural relativism theory, Alison Dundes Renteln, acknowledges that the assumption that human rights are independent of culture, ideology, and value systems, which underlies the universality of human rights, is mistaken. She also expresses skepticism about the universal effectiveness of many human rights outlined in international human rights documents. However, she maintains that cultural relativism does not necessarily deny the possibility of shared values among different cultures, and holds that there may be a considerable degree of commonality among different moral systems. She also firmly believes that human rights standards are more likely to be accepted or taken seriously. Western countries or the United Nations have more legitimacy in criticizing the actions of other countries when there is cross-cultural support for human rights. This is because they are not condemning these countries for violating international human rights standards that these countries have not ratified or that they have ratified but disregard. Instead, they are criticized for disregarding their standards.³⁴

30. The Executive Board, “American Anthropological Association, Statement on Human Rights, American Anthropologist,” *New Series*, vol. 49, no. 4, part 1 (Oct.-Dec., 1947), page 542.

31. *Ibid.*, 540-541.

32. Rhoda E. Howard, “Cultural Absolutism and the Nostalgia for Community,” 315 *Hum. Rts. Q.* 15 (1993): 317.

33. Adamantia Pollis, “Towards a New Universalism: Reconstruction and Dialogue,” 16 *Neth. Q. Hum. Rts.* 5 (1998): 21.

34. Alison Dundes Renteln, *International Human Rights: Universalism versus Relativism*, Quid Pro Books, 2013, page 115-116.

Another renowned proponent of cultural relativism, Abdullahi A. An-Na'im, goes even further to assert that only extreme cultural relativism would conclude that humans do not share universal values. He believes that despite the uniqueness and diversity among different cultures, societies still share certain fundamental interests, concerns, characteristics, and values. While An-Na'im firmly denies the unquestionable authority of existing international human rights standards from the perspective of cultural relativism, he does not believe that advocating for the cultural legitimacy of human rights necessitates a complete rejection of existing international human rights standards. Instead, he views existing international human rights standards as reference points that can be debated or modified while striving to refine concepts and better articulate standards for genuinely universal human rights.³⁵

This demonstrates that although cultural relativism advocates for the cultural relativity of human rights, it does not necessarily entail a complete denial of the existence of universal human rights, nor does it entail a wholesale rejection of existing international human rights standards. In An-Na'im's view, the logic of cultural relativism emphasizes that shared moral values must be genuine, rather than externally imposed.³⁶ As long as the relevant international standards can genuinely gain acceptance from different societies and cultures, advocates of human rights cultural relativism are also willing to acknowledge the universality of human rights. According to Renteln, the most useful feature of cultural relativism in the past and still today is its ability to challenge the presumed universality of what is specific to one culture.³⁷ Therefore, the true mission of human rights cultural relativism is not to attempt a wholesale denial of the universality of human rights, but rather to continuously raise warnings about the potential for "imperialism of universality."

B. The theory of victim consent regarding human rights

The theory of victim consent regarding human rights was primarily proposed by the renowned Canadian scholar and social activist Michael Ignatieff. He keenly perceived that the language of human rights post-World War II has such an incredibly imperialistic nature in asserting universality,³⁸ and he also recognized the deep irony in the United States "leading the world in denouncing the human rights violations of others but refuses to ratify key international rights conventions itself."³⁹ Consequently, he criticized the tendency of radical and strong universality to venerate human rights as if they were a religion. Simultaneously, he proposed that international human rights

35. Huang Jinrong and Yang Liu, "The Pathway to Legitimacy and Universality of Human Rights from a Cross-cultural Perspective — A Brief Review of An-Na'im's Theory of Human Rights Legitimacy and Dialogue," *The Journal of Human Rights* 1 (2021): 153-154 and 157.

36. Abdullahi A. An-Na'im, "Toward a Cross-Cultural Approach to Defining International Standards of Human Rights: The Meaning of Cruel, Inhuman, or Degrading Treatment or Punishment," in *Human Rights in Cross-Cultural Perspectives: Quest for Consensus*, Abdullahi A. An-Na'im ed. (Philadelphia: University of Pennsylvania Press, 1992), 25.

37. Alison Dundes Renteln, *International Human Rights: Universalism versus Relativism*, 50.

38. Michael Ignatieff, *Human Rights as Politics and Idolatry*, introduced by Amy Gutmann (Princeton: Princeton University Press, 2001), 58.

39. *Ibid.*, 93.

interventions should center on the human rights victims' will.

Ignatieff opposes the concept of natural human rights, which bases the universality of human rights on human nature or human dignity. He argues that although this concept may enhance the sanctity of human rights, the contentious nature of human dignity or human nature's content makes the forced implementation of such rights prone to skepticism from non-Western countries. For many, believing in the sanctity of human rights is challenging because they may believe that only a deity who created humanity is sacred. As a result, the more the West venerates human rights as a quasi-religious idol, the more likely it will face resistance when promoting these rights in non-Western countries. Therefore, Ignatieff advocates for viewing human rights as a secular moral language open to negotiation, persuasion, and even compromise, rather than as the ultimate moral authority that can resolve all moral debates.⁴⁰

Ignatieff advocates for a minimal consensus on human rights, recognizing that reaching an agreement on what constitutes a good or virtuous life is challenging in a world of extreme moral, cultural, and religious diversity. However, there can be consensus on "what is insufferably, unarguably wrong."⁴¹ Therefore, he suggests that human rights should be limited to those "negative freedoms" that serve to resist oppression. Nevertheless, Ignatieff is acutely aware that even minimal human rights standards may struggle to gain universal acceptance in politically divided societies. Consequently, he argues that "The bias of human rights advocacy must be toward the victim, and the test of legitimacy — and hence of universality — is what might be termed the victim's consent. If victims do freely seek human rights protection, rights language applies."⁴²

Since Ignatieff believes that "The test of human rights legitimacy is taken up from the bottom, from the powerless,"⁴³ the question arises: what should be done if the oppressed lack awareness of human rights or if their understanding of human rights conflicts with that of external advocates? Should external human rights interveners adopt a paternalistic approach to liberate these "victims" from their plight forcibly, or should they respect their choices, allowing them to continue in their condition of "voluntary servitude"? Ignatieff's stance is that a persuasive approach should be taken, ultimately respecting the voluntary choices of the human rights victims. He asserts that "consent ought to be the defining constraint of human rights interventions in all areas where human life itself or gross and irreparable physical harm is not at stake."⁴⁴

Ignatieff does not deem himself a proponent of human rights relativism; on the contrary, he holds that "Relativism is the invariable alibi of tyranny," and "Western human rights activists have surrendered too much to the cultural relativist challenge."⁴⁵ However, Ignatieff's theory of human rights consent recognizes the dangers

40. *Ibid.*, 84.

41. *Ibid.*, 56.

42. *Ibid.*

43. *Ibid.*, 71.

44. *Ibid.*, 75.

45. *Ibid.*, 74.

of the prevalent paternalism in Western human rights discourse. He advocates for justifying human rights interventions from the perspective of the victims, highlighting the legitimacy and limits of such interventions, a stance that closely aligns with the relativist view that the content and enforcement of human rights should consider the awareness and will of the rights holders themselves. However, from the perspective of cultural relativism, Ignatieff's theory reveals contradictions and inconsistencies. On the one hand, Ignatieff opposes the sacralization of human rights and supports a consensus-based approach, similar to cultural relativists, showing openness to revising the existing international human rights framework. On the other hand, he insists that only "negative freedoms" should be included in the human rights agenda, ignoring the "right to subsistence" which is essential for the minimum standard of living⁴⁶ and is widely supported by many countries to be listed in the human rights agenda. This stance indicates that his theory is not entirely committed to a thorough human rights subjectivity approach and partially reverts to the concept of natural human rights, which he criticizes. Furthermore, Ignatieff's theory posits the will of the oppressed and the victims regarding human rights as the legitimate foundation and limits of external human rights interventions. Yet, he simplistically assumes that only a society's rulers would oppose external human rights interventions, overlooking the possibility that most ordinary citizens might share the same views as their leaders.⁴⁷ Consequently, from a cultural relativist standpoint, Ignatieff's theory of human rights consent can be seen as an incomplete and limited approach to human rights subjectivity.

C. The theory of receptor approach to human rights

The receptor approach to human rights was primarily proposed by Professor Tom Zwart of Utrecht University School of Law in the Netherlands. The background to his theory is the antagonistic debate between the universality of human rights and cultural relativism, where international human rights and local cultures are often seen as two opposing extremes. Proponents of universality believe that implementing international human rights may require abandoning many traditional values. In contrast, supporters of cultural relativism claim that local values can effectively counteract the implementation of all or part of international human rights. However, Zwart attempts to demonstrate that there is an intersection between international human rights and local cultures, and that international human rights can be fully realized with the help of existing local social mechanisms.⁴⁸

The so-called Receptor Approach proposed by Zwart is a special implementation method for international human rights. It assumes that non-Western developing countries' local cultures and social mechanisms can also contribute to fulfilling international human rights obligations. Thus, it suggests an alternative human rights implemen-

46. Amy Gutmann, "Introduction," in *Human Rights as Politics and Idolatry*, edited by Michael Ignatieff and introduced by Amy Gutmann (Princeton: Princeton University Press, 2001), xii.

47. Diane E. Orentlicher, "Relativism and Religion," in *Human Rights as Politics and Idolatry*, edited by Michael Ignatieff and introduced by Amy Gutmann (Princeton: Princeton University Press, 2001), 150.

48. Tom Zwart, "Using Local Culture to Further the Implementation of international Human Rights: The Receptor Approach," 546 *Hum. Rts. Q.* 34 (2012): 547.

tation approach to the traditional Western legal methods. Zwart believes that Western countries have two taken-for-granted assumptions regarding the implementation of international human rights. The first assumption is that human rights conventions are primarily enforced through laws and individual rights. The second assumption is that international human rights law requires Eastern and Global South countries to abandon their traditions and systems in favor of Western values and implementation mechanisms, which are assumed to be human rights' foundations.⁴⁹ However, he argues that international public law and human rights conventions allow each country to determine how to fulfill its obligations autonomously. Countries should not sacrifice their culture or values when ratifying human rights conventions. The implementation of international human rights law should not and need not come at the expense of traditions and systems in the implementing country.⁵⁰ To this end, Zwart proposes specific methods for implementing international human rights by identifying and relying on local social and cultural arrangements.

Zwart's Receptor Approach to human rights clearly attempts to understand the legitimacy of international human rights from the perspective of the rights receptors. Consequently, it advocates for allowing countries to make localized arrangements for implementing international human rights based on their own cultures and systems during the implementation process. Superficially, Zwart's theory seems to focus only on local institutional arrangements outside formal laws in implementing international human rights conventions. Therefore, it may appear as "old wine in a new bottle,"⁵¹ as critics suggest, given those international human rights conventions allow state parties to implement them through "legislative or other measures." However, Zwart asserts that his theory differs from typical human rights conventions' implementation methods, which are merely sensitive to cultural contexts, as well as the practices that often view traditional culture as an obstacle to implementing international human rights conventions. Instead, he regards the regional cultures of developing countries as a positive factor conducive to implementing international human rights and seeks to explore methods to leverage this positive factor.⁵² Based on Zwart's positive evaluation of the regional cultures of various countries, he completely disagrees with the criticism leveled by Western governments and human rights organizations against the 2012 *ASEAN Human Rights Declaration* for its "regional contextualization." He believes that the contextualized approach advocated by the *ASEAN Human Rights Declaration* is not a flaw but an advantage, as it enables human rights to gain broader acceptance in the ASEAN region. He even suggests that the "Asian values" proposed by Asian countries in the 1990s merely sought to implement international human rights in a way that respects local cultures. However, Western attacks on this legitimate request resulted in the debate over Asian values becoming a challenge to universal

49. Ibid., 548.

50. Ibid., 547.

51. Yvonne Donders, Vincent Vleugel, "The Receptor Approach: A New Human Rights Kid on the Block Or Old Wine in New Bags—a Commentary on Professor Zwart's Article in HRQ," 653 *Hum. Rts. Q.* 36 (2014): 653.

52. Tom Zwart, "Safeguarding the Universal Acceptance of Human Rights through the Receptor Approach," 898 *Hum. Rts. Q.* 36 (2014): 901-902.

human rights.⁵³ Therefore, from Zwart's perspective, his Receptor Approach to human rights is overall closer to cultural relativism.

From the above, it is evident that while cultural relativism, the theory of human rights victim consent, and the Receptor Approach to human rights have certain differences in their attitudes toward the universality of human rights, they all question the concept of natural human rights' implicit radical universality and strong universality theories. They warn against the legitimacy crisis and imperialistic application that such notions may lead to, advocating instead for a reconstruction of the legitimacy of human rights from the perspective of the rights holders. According to Ignatieff, human rights need to "go global by going local, imbedding itself in the soil of cultures and worldviews independent of the West."⁵⁴ An-Na'im also shares a similar perspective, suggesting that for international human rights standards to truly gain universality, they need to undergo a process of "retrospective legitimation" achieved through cross-cultural dialogue.⁵⁵ In the view of these theories that uphold the subjectivity of human rights, only by respecting the agency of rights holders can the universality of human rights have a solid practical foundation. Furthermore, it is argued that only through consensus on human rights achieved via the subjectivity of rights holders can there be an effective resistance against American-style "unilateral universalism" or "excessive or 'erroneous' universalism."⁵⁶

IV. The Fundamental Stance and Defense of the Theory on the Subjectivity of Human Rights

The traditional theory of human rights universality based on the concept of natural human rights endows views of human rights with an exceptional idealistic quality and lays the theoretical groundwork for the dissemination of human rights concepts and the establishment of the United Nations international human rights framework. However, this theory cannot fully explain the actual construction process of international human rights, nor can it account for the significant conceptual differences in the international community regarding human rights or the substantial obstacles encountered in implementing international human rights. More importantly, it often, to a large extent, leads to distortion and even alienation of human rights concepts. It is within this context that understanding international human rights concepts and institutions from the perspective of rights holders, as proposed by the theory on the subjectivity of human rights, becomes a viable option for explaining the contradictions between human rights ideals and realities in a diverse world.

The theory on the subjectivity of human rights differs significantly from traditional natural rights theory in that it does not predominantly view human rights as objective rights that are independent of individual will. Instead, it emphasizes the subjectivity and agency of rights holders in constructing and realizing human rights. While

53. Ibid., 903-904.

54. Michael Ignatieff, *Human Rights as Politics and Idolatry*, 7.

55. Abdullahi A. An-Na'im, "Introduction," in *Human Rights in Cross-Cultural Perspectives: Quest for Consensus*, Abdullahi A. An-Na'im ed. (Philadelphia: University of Pennsylvania Press, 1992), 6.

56. Jack Donnelly, "The Relative Universality of Human Rights," 138.

traditional natural rights theory aims to sanctify or even religiousize human rights, the theory on the subjectivity of human rights seeks to demystify and de-metaphysicalize human rights, placing them within the realm of the real world for reevaluation. It also seeks to explain human rights' nature by examining the formation and acceptance processes of human rights systems and concepts.

The theory on the subjectivity of human rights asserts that the legitimacy of human rights is not self-evident or taken for granted; fundamentally, it can only stem from the recognition of people in different countries. "The concept of human rights must break free from heavy metaphysical positions,"⁵⁷ and to achieve this, it is necessary to listen to all voices.⁵⁸ Starting from the theory on the subjectivity of human rights, regardless of the extent to which human rights are considered universal, they should first and foremost be seen as a form of "right to autonomy" for the people of each country. The realization of human rights should fully respect the "autonomy" of the people of each country as rights holders. In any society, the subjects enjoying human rights should have the greatest say in what constitutes human rights and how they should be protected. The content and development of human rights should primarily be determined by the people within that society. In international human rights dialogue, the human rights system determined through legitimate processes within a country should also be respected by the international community, even if there are differences between it and international human rights conventions.

From the perspective of human rights subjectivity, the strong universality of human rights can only be established on the basis of powerful consensus voluntarily reached by different societies, rather than through external coercion. In other words, the universality of human rights should be based on the subjectivity of rights holders. If human rights are to be considered universal, then at the very least, this kind of universality should be achieved through the subjectivity of human rights, rather than vice versa. It should not ignore the subjective will of the people in various countries and forcibly impose an assumed universality of the international human rights system worldwide. Establishing the universality of human rights based on human rights subjectivity ensures that the concept of human rights is inclusive and respects diverse perspectives. It also ensures that the international human rights system has a strong moral and cultural legitimacy.

The theory on the subjectivity of human rights provides a great explanation for the practical methods of drafting and implementing international human rights declarations and treaties, as well as the actual process through which international human rights gradually move toward genuine universality. Current international human rights norms are not merely descriptions of some transcendent "natural rights," but rather limited agreements reached by United Nations member states through discussion and compromise on a range of rights content. The limitation of such human rights consensuses is that not all countries have had the opportunity to participate in formu-

57. Jürgen Habermas, *The Postnational Constellation*, translated by Cao Weidong (Shanghai: Shanghai People's Publishing House, 2002), 145.

58. *Ibid.*, 140.

lating international human rights declarations and treaties due to historical or present reasons. Even if they have participated, not all countries necessarily fully endorse the content of these declarations and treaties. Furthermore, even if international human rights treaties are adopted, not all countries choose to join, and those that do join may not necessarily agree with all the provisions of the human rights treaties. Nevertheless, this kind of consensus is overall a process that expands over time, with the universality of human rights gradually expanding as more and more countries declare their adherence to the *Universal Declaration of Human Rights* or join relevant international human rights treaties. For example, although many countries have yet to join the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights* adopted in 1966, the number of states parties to these two core United Nations human rights treaties has shown a clear upward trend. Such a growth trend fully reflects the gradual expansion of the universality of human rights through the recognition of people in various countries.

In the perspective of human rights subjectivity, while largely representing the international consensus reached by the global community, international human rights do not inherently possess the “inviolable sanctity” claimed by the concept of natural human rights. Nor does their adoption as “international human rights standards” necessarily imply unquestionable universality, as the legitimacy of these rights in various regions is only truly established through the recognition of people in different countries. As An-Na’im puts it, existing international human rights standards are not a done deal; their universality needs to be constantly reaffirmed and demonstrated.⁵⁹ Ultimately, international human rights are “precious,” but they are not a “secular religion.” As a result, “We need to stop thinking of human rights as trumps and begin thinking of them as a language that creates the basis for deliberation.”⁶⁰

Emphasizing the subjectivity of human rights also implies that human rights education, rather than external coercion, should be the primary means of promoting and implementing international human rights. As An-Na’im points out, a universal standard can only be obtained by forming a global consensus, not through presumption or imposition, because all human societies adhere to their cultural value systems.⁶¹ Since the true legitimacy of human rights depends on the genuine endorsement of the people of each country, the dissemination of international human rights should primarily be achieved through education, gradually acquainting people around the world with the benefits of embracing international human rights standards, which not only safeguard individual dignity but also contribute to the formation of a just society and its long-term stability. This approach, which respects the subjectivity of rights holders, is totally in line with the guiding principles of the *Universal Declaration of Human Rights* adopted in 1948. The *Declaration* itself does not demand that all countries immediately and unconditionally comply with its proclaimed rights provisions; rather, it

59. Abdullahi A. An-Na’im, “Introduction,” in *Human Rights in Cross-Cultural Perspectives: Quest for Consensus*, 6.

60. Michael Ignatieff, *Human Rights as Politics and Idolatry*, 95.

61. Abdullahi Ahmed An-Na’im, *Islam and the Secular State: Negotiating the Future of Sharia*, translated by Lv Yaojun, Han Yongjing and Zhang Hongjuan (Beijing: China Social Sciences Press, 2014), 100.

acknowledges them as “a common standard of achievement for all peoples and all nations” and urges countries to “strive by teaching and education to promote respect for these rights and freedoms.” Given that the legitimacy of human rights fundamentally stems from the endorsement of the people of each country, convincing and educating them is the most crucial task for the international community to truly universalize human rights, rather than resorting to external coercion.

The subjectivity of human rights also provides a strong rationale for adopting a highly cautious attitude toward foreign human rights intervention. The reason lies in the fact that while such interventions may be carried out in the name of promoting human rights, they can easily be exploited by powerful countries or blocs on the international stage to further their interests and interfere in the internal affairs of other countries, disregarding the perspectives and will of the rights holders themselves. The outcome of the “gentle universalism of human rights established by the *Universal Declaration of Human Rights* after the end of the Cold War being hijacked by the radical universalist discourse of Western societies”⁶² has led to the comprehensive politicization of human rights, with human rights often becoming a weapon used by Western powers, led by the United States, to combat countries they perceive as international political adversaries.

The theory on the subjectivity of human rights advocates a highly cautious approach to international human rights intervention but does not oppose certain legitimate forms of intervention. From the perspective of human rights subjectivity, interventions based on international law are not entirely unacceptable. The willingness of many countries to participate in the drafting and even approval of relevant international human rights conventions demonstrates their recognition of human rights as a matter of international concern. Joining relevant international human rights conventions implies allowing treaty bodies to intervene to some extent in their domestic human rights affairs in accordance with the provisions of the human rights conventions. Participating as a member of the United Nations in the regular review of human rights by the UN Human Rights Council also implies allowing this body to offer criticisms and recommendations on the human rights situation in the country. Therefore, the theory on the subjectivity of human rights adopts a highly cautious stance toward international human rights intervention not because it completely denies the legitimacy of such intervention, but rather because interventions in human rights issues detached from international authoritative bodies can easily be abused by certain Western countries or blocs for political reasons. This is also why documents such as the *Bangkok Declaration* advocate for human rights practices to adhere to principles of non-selectivity, non-discrimination, non-confrontation, and avoiding double standards and politicization of human rights.

From the perspective of the concept of natural human rights, the theory on the subjectivity of human rights may face theoretical scrutiny on two fronts. First, the theory approaches human rights from the perspective of the will of the rights holders.

62. Huang Jinrong, “The Religious Dilemma on Universal Human Rights Theory,” *Northern Legal Science* 3 (2020): 136.

However, since the discourse on human rights within a country is often dominated by the opinions of the majority, it may inevitably lead to adverse effects on the protection of the rights of minorities. Second, in the process of engaging in international human rights dialogue and seeking consensus on human rights, it is often the government, rather than the people, who represent a country in speaking. This leads to a situation where, in cases of divergence between government will and the will of the people, it is easy for government power to be used to suppress the rights of the people.

When discussing cross-cultural international human rights dialogues, the theory on the subjectivity of human rights often simplifies matters by treating a country as a unified cultural entity sharing similar human rights concepts. However, the reality is far more complex. It must be acknowledged that almost every country is, to some extent, a "divided community." Within a country, there are differences in human rights concepts among various social groups and instances where the governmental stance on human rights may diverge from public perceptions. Therefore, the challenge lies not only in how to achieve consensus on human rights through dialogue between countries but also in how to reach consensus within any given country and ultimately establish a set of domestic standards for human rights protection through dialogue. Under modern democratic decision-making mechanisms, the theory on the subjectivity of human rights implicitly suggests that the opinions of the majority should primarily represent a country's participation in international human rights dialogues. Moreover, when resisting improper foreign intervention in human rights, the opinions of the majority within a country should be the primary consideration. While this stance may have adverse effects on the protection of minority rights to some extent, it can also be seen as an inevitable cost of modern societies adopting democratic principles as their fundamental decision-making mechanism. According to democratic principles, it is entirely reasonable for a country to reject the ratification of international human rights conventions aimed at abolishing the death penalty if the majority of its population opposes such abolition. This rejection may also extend to opposing foreign intervention on this issue despite the existence of minority voices within the country in favor of abolishing the death penalty. However, this "suppression" of minority voices is only temporary because, through both international and domestic human rights dialogues, the voices of the minority still retain the potential to become mainstream viewpoints in the future.

From the standpoint of the subjectivity of human rights, the subject of human rights is the people, not the government. Therefore, it is difficult to avoid situations where the government's stance on human rights diverges from most people's opinions as the subjects of these rights. When the government's position deviates from mainstream social opinion, external human rights intervention may not necessarily be justified. However, when there is a severe conflict between the government's stance and the majority's human rights views, and the majority calls for external intervention, such interference may be endowed with greater legitimacy. Nonetheless, whether addressing the differences between the minority and the majority or reconciling conflicts between the government's position and the majority opinion, the most effective

approach in most cases is to engage in internal human rights criticism and struggle within the community, rather than resorting to external intervention. As Michael Walzer said, “Real criticism, is internal to thick, grounded-in-cultural-meanings moralities.”⁶³ The reason is simple: criticism within a social community that shares culture and more common values is more likely to remain rational, while external criticism often leads to emotional confrontation due to the critics’ lack of community identity and shared values. Of course, for a government truly aiming to resist external human rights intervention, the most effective approach is ensuring that the national human rights system and governmental human rights practices fully reflect society’s mainstream human rights views. After all, we must prevent human rights from becoming a tool for certain foreign governments and government groups to interfere arbitrarily in domestic affairs, while also preventing the monopolization of human rights discourse by the government, which would undermine the proper function of human rights as the constraint on power.

(Translated by *LI Donglin*)

63. Stephen C. Angle, *Human Rights and Chinese Thought: A Cross-Cultural Inquiry*, translated by Huang Jinrong and Huang Bin (Beijing: China Renmin University Press, 2012), 14.