

Rethinking Social Democratic Constitutionalism in Taiwan*

Sun, Nai-Yi**

Abstract

With particular reference to the social injustice resulting from the policy of utmost economic growth and lack of social security in past decades, coupled with the new challenge of globalization faced by the Taiwan democracy and its worsening effect on social justice, this article firstly analyzes the normative values presented in the sections of “National Economy” and “Social Security” in the Constitution in Taiwan and its Additional Articles. The article then examines whether those constitutional provisions can respond to such challenges and the demand of constitutional reform since the social movement of Anti-Cross-Strait-Agreement-of-Service-Trade between Taiwan and China in 2014.

At the present constitutional juncture, the article aims to discover the constitutional values of social democracy based on the universal human rights provided in

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** Associate Professor, College of Law, National Chengchi University, Taiwan.

several international human rights conventions, all of which ensure fair and substantial equal conditions for every citizen and their free development.

I . Background

The Taiwanese government's policy goal, since the authoritarian era through to democratic transformation to the present, has been to strive for "utmost economic growth". It has always been common to perceive social welfare as "jeopardizing economic growth" or "should best be limited to the provision for the poor". There has been limited reflection on questions such as the equality of all members of society in the joint sharing of our economic prosperity. Two cases relating to factory workers, the "workers of closed factory" case(關廠工人案) and the "RCA workers' injuries" case(RCA工殤案) — subtly represent the predicament of workers. The disputes began in the 1990s under a regime where economic development is of utmost importance and social security policy is undermined. The case of the "workers of closed factory" demonstrates a lack of adequate social security to protect workers from unemployment. Despite the fact that the Labor Law allows workers to take actions against their employers for unpaid salary, severance pay and pension, workers were nonetheless left without any remedy when the employer fled the country. The "RCA workers" case relates to the dumping of toxic dissolvent by a US company's factory in Taiwan, causing death or cancer to workers who were exposed to the substance. As a result of non-action on the part of the Taiwan government and the fact that social security was available on a residual basis, the fruits of Taiwan's economic growth in the 1990s were not enjoyed by all and it was the working class who suffered the most.