Human Rights in Asia

A Reassessment of the Asian Values Debate

EDITED BY

LEENA AVONIUS AND
DAMIEN KINGSBURY

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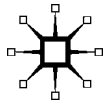

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Softcover reprint of the hardcover 1st edition 2012 978-0-230-60639-5

First published in 2008 by
PALGRAVE MACMILLAN®
in the US—a division of St. Martin's Press LLC,
175 Fifth Avenue, New York, NY 10010.

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ISBN 978-1-349-37366-6 ISBN 978-0-230-61549-6 (eBook)
DOI 10.1057/9780230615496

Library of Congress Cataloging-in-Publication Data

Human rights in Asia : a reassessment of the Asian values debate / edited by Damien Kingsbury and Leena Avonius.
p. cm.
Includes bibliographical references and index.

1. Human rights—Asia—Congresses. 2. Social values—Asia—Congresses. I. Kingsbury, Damien. II. Avonius, Leena, 1966–

JC599.A78H8335 2008
323.095—dc22 2008012341

A catalogue record of the book is available from the British Library.

Design by Newgen Imaging Systems (P) Ltd., Chennai, India.

First edition: October 2008

10 9 8 7 6 5 4 3 2 1

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Preface

This book is based on papers presented at a seminar "Asian Values versus Human Rights Revisited" that was organized at the Renvall Institute, University of Helsinki in May 2007. The idea to organize a seminar on "Asian values"—a decidedly unfashionable theme—emerged through discussions with several colleagues who shared a hunch: even though Asian financial crisis of the late 1990s marked the death of "Asian values," the core issues persisted, however subtly, in public debates in and on Asia. Human rights were still considered "Western"; noninterference in domestic matters was still a frequently heard phrase when Asian governments were reluctant to take a stance on human rights violations taking place in a neighboring country; and cultural differences were still used to explain why social or political problems were not addressed. The rhetoric used in the U.S.-led global "War on Terror" caused a warning bell to ring in many minds—haven't we heard this before? There was no need to return to the old "Asian values" debate, but rather to take a look at how human rights had developed in Asian countries since then and how globalization had shaped the human rights situation and Asian views on human rights. For this reason we invited Asian and non-Asian scholars to Helsinki to reassess the "Asian values" debate ten years after its assumed expiry date.

We wish to thank all those who participated in the seminar. Some who presented a paper at the seminar were unable to participate in the book project. On the other hand, Ann Kent, who was not in Helsinki for the seminar, kindly agreed to submit a chapter for this book. We would also like to express our gratitude to the Renvall Institute for hosting the seminar and the Academy of Finland for financing it. We are also thankful to Paula Nuorteva for assisting in seminar arrangements and Leila Virtanen for assisting in the preparation of the manuscript.

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Introduction

Leena Avonius and Damien Kingsbury

The 1990s saw the rise of what came to be known as "Asian values" in the global human rights debate. In short, proponents of the "Asian values" case held that human rights, in particular civil and political rights, were culturally specific and could not be applied universally. Instead, they argued for culturally and developmentally specific interpretations of rights, in this case based on "Asian values." The so-called "Asian values" debate lasted until around the time of the East Asia economic crisis of 1997–1998, after which time the subject slipped off the public agenda.

While the "Asian values" claim might have more or less disappeared since the advent of the Asian economic crisis, the issues that the debate ranged over have not similarly disappeared. Human rights issues continue to be at the forefront of political activity in East Asia, if in changing ways. Rhetorical acceptance of universal human rights values and instruments has increased, at least among some states, while decreasing in others. Notably, in the post-9/11 era, which has been dominated by the global "War on Terror" led by the United States, the human rights debate has lost much of its intensity. U.S. encouragement of strategic alliances has meant that the state that used to be seen as the global proponent of human rights has turned its attention away from such politically embarrassing issues. Indeed, the United States has itself been compromised through its "War on Terror." Many have looked to the European Union (EU) in the hopes that it would take over the role of the global human rights watchdog. During the past decade, however, the EU has been struggling with its expansion and internal political disputes, and has so far been unable to develop a credible and consistent human rights policy.

The "Asian values" debate can be characterized as having three stages: the cold war period, the period from the end of the cold war until the Asian financial crisis in the late 1990s, and the post–Asian crisis period. The first period can be said to encompass the period

from independence after World War II until the 1980s or early 1990s. In this period, the human rights debate was relatively muted, other than where it had been harnessed as a tool in the anticolonial struggle and in particular around notions of self-determination. However, human rights generally and civil and political rights in particular were frequently sacrificed upon the altar of the cold war by procommunist states and movements, on one hand, and anticommunist movements, often backed by the West, on the other. Examples of human rights violations in support of one or the other ideological positions in East Asia are many, but the Indonesian massacres of 1965–1966, the abrogation of civil and political rights in both North and South Vietnam in the 1960s and 1970s, the suppression of leftist organizations in the Philippines and the widespread use of the Internal Security Act in Malaysia and Singapore are just a few examples. In all these cases, relatively new and often still unstable governments closed down political pluralism in the face of unsteady economic and political environments and, subsequently, actual or potential challenges to their rule. Communist states rationalized precluding civil and political rights on the grounds that, in a perfect communist world, such rights would be redundant and that until such communism was achieved they could be used to damage the socialist state. Non- or anticommunist states similarly rationalized that political openness provided fertile ground for socialist agitation against what were often difficult material circumstances and thus also closed down open debate. In both cases, the autocracies that quickly became established in such environments sought to preserve the advantages that power offered them, often including corruption, and often retained by abusing the authority power offers them. Supporters of one side of the ideological debate, such as the left of regional right-wing regimes, or conservatives of socialist regimes, were often critical of the human rights performance of those on the other side of the political divide, but were rarely critical of their own or, at least, were more understanding of its circumstances.

The end of the cold war, however, cast the human rights debate into sharper relief, with the logic of both sides having fallen by the wayside, on one hand, the communist dream not producing the workers' utopia while, on the other, the liberal underpinning of the capitalist world no longer able to sustain an authoritarian rationale. The nature of conflict changed, becoming more locally or internally based, but the tacit acceptance of human rights abrogation that different regimes had enjoyed in the past was increasingly brought under the international spotlight, with pressure on many regimes

(e.g., Philippines, Indonesia) to reform. However, while there was the beginning of a shift of emphasis in the West, in which the human rights paradigm was more prominent if not entirely ascendant, this paralleled increasing recognition in particular of the economic success of a number of states that had been previously open to criticism on human rights grounds.

States that remained firmly within the communist embrace continued to essentially ignore the human rights debate, if at different times moving toward and away from different notions of openness. China and Vietnam notably flirted with various degrees and types of openness, settling on an increasing degree of economic deregulation within a one-party political structure. Laos, similarly, moved to deregulate its economy and allow some level of local democratic decision making, although within otherwise tightly bound rules of comment and policy options. Cambodia shifted from being a communist state in 1993 to holding more or less democratic elections, under UN supervision, and thereafter charting a constrained if nominally open and plural political course.

However, the previously pro-Western states of East Asia have had a mixed response to the human rights agenda. Especially among the so-called "Asian Tiger" economies of South Korea, Taiwan, Hong Kong, and Singapore, there was a strong sense that an authoritarian political model was not only not inimical to economic growth but also that the political stability it offered enhanced such growth. Moreover, some political leaders came to argue that the capacity for economic growth, sometimes at quite spectacular levels, was inherent in aspects of their cultures, including an appreciation for hard work and scholarship, respect for authority, a rejection of liberal democracy, putting the community before the individual, social harmony over individual freedom, and family loyalty. This position was later taken up by leaders of the "Tiger Cub" economies of Thailand and Malaysia, and by other states such as Indonesia, which subscribed to a generic interpretation of "Asianness."

In this period, the idea was put forward as it was articulated at the 1993 Asian Regional Preparatory Meeting for the World Conference on Human Rights that civil and political rights had to be understood within the contexts of the states in which it was practiced (Bangkok Declaration 1993). This was not the first time that such views had been enunciated, but it was the first time that they had been enunciated so clearly and with such regional consensus. Notable aspects of the Bangkok Declaration phrase the main points of "Asian values": right to self-determination that is linked with the policy of noninterference,

claims to cultural specificity, and prioritizing economic development. In Section 6 the Declaration referred to all countries having the "right to determine their political systems, control and freely utilize their resources, and freely pursue their economic, social and cultural development." Section 8, which qualified human rights by their context, introduced the cultural relativist claim, saying "that while human rights are universal in nature, they must be considered in the context of a dynamic and evolving process of international norm-setting, bearing in mind the significance of national and regional particularities and various historical, cultural and religious backgrounds."[1] The Bangkok Declaration also noted, among many other points, that promoting human rights should not be linked to development assistance (Section 4), that there should be no interference in the internal affairs of states on such matters (Section 5), and that states retain the responsibility for overseeing human rights implementation (Section 9).

While the "Asian values" debate began with a more diffused focus, it soon centered on the public comments of two regional political leaders, Singapore's Prime Minister Lee Kuan Yew and Malaysia's Prime Minister Mahathir Mohammad. Speaking in Washington in 1996, Mahathir went so far as to openly discuss the "Asian values" debate, criticizing claims to universal values as specifically Western and asserting that it was time for the West to respect Asian cultures as equal to their own (Mahathir 1996). Similarly, Lee Kuan Yew was widely seen as a—or perhaps the—main proponent of "Asian values" (Barr 2000). As Milner (1999) claimed, in concordance with this position, East Asia's economic success could not be separated from its cultural context. Ranged against these "Asian values" assertions were critics in the Western media and in particular among human rights NGOs and among prodemocracy academics, as represented in journals such as *Foreign Affairs*, *Foreign Policy*, and the *Journal of Democracy*. The general claim of critics included that "Asian values" were not exclusively Asian, that they were overly generalized, that they were not accurately representative of the heterogeneous cultures of Asia, that they represented particular authoritarian political structures, and that they were, in noncommunist states, a blind for laissez-faire capitalism.

While the "Asian values" debate, or the assertion of "Asian values," ran hot throughout the mid-1990s, the Asian financial crisis from mid-1997 brought a halt to such assertions. They were replaced with what were widely perceived to be the triumphalist claims that the economic basis of "Asian values" had collapsed and, so too, had "Asian values" themselves (e.g., Zuckerman 1998; Fukuyama 1998).

While the East Asian economic collapse shook local economies, and some states such as Indonesia and the Philippines are still recovering at the time of writing, other Asian countries have overcome the crisis much more easily. Singapore was little affected, Malaysia bounced back quickly with monetary controls, Thailand followed soon after reorganizing its financial governance structures, and other East Asian states similarly recovered both quickly and strongly. However, while Mahathir (1998) continued his assertions of the superiority of "Asian values" and there was widespread criticism of the sometimes harsh policy responses of the International Monetary Fund (IMF) (notably from Indonesia), Lee was more circumspect, saying that British-derived rule of law was most important to Singapore's economic survival and that "family values" sometimes led to cronyism (Hirsh 2001). After this, the debate largely faded (Thompson 2001), even if some of the issues raised in the debate did not.

Indeed, while human rights issues continued to be important in Asia, particularly in light of continuing state abuses, the discourse on human rights became more standardized, reflecting an increasingly globalized norm. The language of global human rights organizations such as Amnesty International and Human Rights Watch have since become the standard, at least among Asian human rights NGOs, often being used in near-direct English. Similarly, establishment of institutional structures for monitoring human rights field by Asian states illustrates the increasing willingness to acknowledge international human rights principles. After the recommendation by the UN World Conference on Human Rights in Vienna in 1993 to establish national human rights commissions, at least South Korea (in 2001), Mongolia (in 2000), the Philippines (in 1987), Thailand (in 1999), Malaysia (in 2000), and Indonesia (in 1993) have done so in East Asia.

These national human rights commissions have become more active even if, in some cases, still limited in terms of judicial capacity. In Malaysia the national commission (Suruhanjaya Hak Asasi, Komisi Nasional Hak Asasi Manusia—SUHAKAM) has not remarkably influenced the country's human rights policy. In Thailand the national human rights commission has been criticized for its poor performance (see Thabchumpon in this volume). The Philippines established its national commission under the 1987 Constitution, and it has actively used its mandate to investigate alleged violations and offer human rights education. In Indonesia the national commission Komisi Nasional Hak Asasi Manusia (Komnas HAM) has often been criticized for not taking a more active role in addressing past human rights violations, but the commission's work has clearly had an impact on

the state's accountability in the field of human rights (see Avonius in this volume). The initiative to establish a regional Association of South East Asian Nations (ASEAN) human rights mechanism has also come from these four Southeast Asian countries that already have their own national commissions.

But adopting new rhetoric and building up institutional structures carry little meaning if human rights practices do not change. As many authors in this volume illustrate, incongruence between human rights rhetoric and practice remains commonplace in Asian countries. Further, the global antiterrorism measures that have been intensified since 2001 have actually reversed positive developments in many countries. In East Asia, this has often meant a return to an old "national security" paradigm, in which human rights count for little. In 2007, ten years after the Asian financial crisis that was assumed to set aside the "Asian values" argument, Asian states still continue to suppress political protests in the name of national stability. In December 2007, when Malaysian-Indians organized demonstrations demanding equal rights for ethnic minorities in the country, the Malaysian state detained the leaders of the protests under the controversial Internal Security Act (ISA). Malaysia's Prime Minister Abdullah Badawi justified the use of ISA by stating that the country's peace and security superseded the freedom of speech, and that street demonstrations could not be accepted as part of Malaysian culture. Just months before, in neighboring Burma the government had silenced the peaceful prodemocracy demonstrations by force, with dozens, perhaps hundreds of deaths and mass arrests. When the international community demanded that the Chinese government use its influence on the Myanmar junta, China appealed to its policy of noninterference in the internal affairs of other countries and commented on the situation in Burma only in the mildest terms. Both these cases illustrate how easily some East Asian governments slip back into the old rhetoric when confronted with political pressure to change.

Scholarly Debates on "Asian Values"

The debate on "Asian values" was at its liveliest in the 1990s. Characteristic to the debate was that it was a debate between some Asian political leaders forcefully rejecting liberal democracy in the name of "Asian values" and Asian and Western scholars pointing out the weaknesses of their arguments. Certainly some scholars adopting the cultural relativist view argued that due to historical and cultural backgrounds that are different from the West, Asian countries indeed

have a set of values that are not compatible with the liberal values of the West. Samuel Huntington's (1993) famous thesis on the clash of civilizations that marked Confucianism and Islam as particularly contradictory to Western liberal democracy was the grounding work here. A more philosophically oriented debate on Confucianism has been held on whether the teachings of Confucius can accommodate universal human rights principles (Chan 1999). While scholars have not necessarily agreed with the cultural determinism of the "Asian values" thesis, some have tried to understand its fervent anti-Western flavor as a form of postcolonial critique of the West (Tatsuo 1999: 28–29) or have seen "Asian values" as a reverse Orientalism (Thompson 2001: 159).

The great majority of scholars researching this issue have argued against the core principles of "Asian values" as they were put forward by Asian political leaders. Amartya Sen (1997) has pointed out that the cultural diversity and heterogeneity of the population throughout Asia makes the existence of some quintessential values separating Asians as a group of people from the rest of the world impossible. Even the smallest of Asian countries, namely Lee Kuan Yew's Singapore, reflect a range of variations on cultural and historical traditions. Similarly, "Asian values" have often been equated with Confucian values, thus leaving the Buddhist traditions of Asia out of the argument altogether.

At the center of the culturalist arguments against human rights in the debate have been authoritarianism and communitarianism. Both of these are seen to be in contradiction with the Western liberalist ideology that stresses the freedom and rights of individuals as the most important value. Lee Kuan Yew claimed in 1991 that Asians have "little doubt that a society with communitarian values where the interests of society take precedence over that of the individual suits them better than the individualism of America" (Bauer and Bell 1999: 6). Scholars like De Bary (1998) and Chan (1999) have looked into Confucian traditions to establish whether there would be any base for communitarian and authoritarian arguments. Their results have been to a large extent negative. Like many other religious traditions, Confucianism is incoherent and includes teachings that, on the one hand, stress loyalty and filial duty, but on the other hand, advise on the importance of equality and mutual respect (De Bary 1998: 17–18). Similarly, an idea that in Confucianism the individual's worth would only be found in the group and an individual would be nothing more than the sum of the social roles he is expected to perform ignores the teachings of Confucius that stress the importance of self-development

with an aim to produce a person who is able to stand on his own (23). The point was not to prove that Confucianism would be just as supportive of individualism as Western traditions, but rather to point out that all religious and cultural traditions have both communitarian and individualistic and hierarchical and equalitarian tendencies (Tatsuo 1999).

Reading sources selectively have led into interpretations that lend support the political ambitions of authoritarian regimes that have used the anti-Western and human rights statements to maintain their own power positions and to oppress the critical voices within the countries. Though human rights have been rejected by some Asian leaders and cultural relativist scholars due to their Western origins, they have nevertheless willingly cultivated the Western concept of state sovereignty (Tatsuo 1999: 30). As noted above, the demand for noninterference in the internal affairs of states was justified in the Bangkok Declaration by the need and right for economic development. "Asian values" and limitations to civil and political rights were argued to be a prerequisite for promoting such economic development. However, comparisons in the developmental processes worldwide do not show any causal processes between the level of civil and political rights and economic success: some states with authoritarian regimes have indeed done well economically but so have states that allow wide civil and political liberties to their citizens (Sen 1999: 91–92), while many nondemocratic states have also failed to economically develop.

Some critics of "Asian values" have commented on the Asian financial crisis with a degree of gleeful pleasure or triumphalist hubris. The collapse of a number of Asian economies had tossed aside the strongest argument used by Asian authoritarian leaders against democratic reforms: authoritarian rule had not guaranteed economic success after all. Thompson (2001: 155) has, however, argued that though internationally "Asian values" have been thoroughly discredited, at the domestic level in Asian countries the debates have continued. The Asian crisis hit hardest in Indonesia where the financial crisis led to a fundamental political change. There democratization and human rights became the hegemonic discourse of post-Suharto governments. In countries like Malaysia and Singapore, which were already economically advanced when the crisis hit and due to that were more successful in managing the damages it caused, changes in political discourse and practices have been less apparent. Malaysia and Singapore remain the exceptions that show, contrary to the claim that economic development must precede political liberalization, that economic prosperity does not necessarily lead to political liberalization.[2]

China's recent economic rise will probably also follow their course. The renewed interest in and promotion of Confucian values by China and the stress on sociocultural exceptionalism by the Singaporean government show that while "Asian values" as a term may have disappeared, the issues are very much part of the political debates in Asia.

Anti-Western and often moralist arguments continue to be used in suppressing political opposition and imposing strict control of the personal behavior of citizens. Since the U.S.-led global "War on Terror" was launched in 2001, some radical Muslim groups in Asia have adopted an anti-Western discourse that shares features with the authoritarian discourse of some governments. These self-proclaimed defenders of Islam have been involved not only in so-called sweepings of tourist and entertainment areas that they deem immoral and decadent but also in attacks on minority groups within Islam or liberal Muslims. In Malaysia, the case of Lina Joy, a woman whose conversion from Islam to Christianity has been rejected by the court, and who has been forced to live in hiding due to death threats by Muslim radicals, is just the most recent example of the violation of the right to freedom of religion in that country.

About the Book

This book offers a reassessment of the "Asian values" debate that dominated the discourse on human rights, in particular claims to civil and political rights, throughout much of Asia during the late 1980s and 1990s. Coming from a range of disciplinary backgrounds, the contributors assess what has happened to that debate, and whether the issues that were raised by it remain and, if so, in what ways they continue as features of the regional political landscape.

The book engages with the claims for and against universal civil and political rights and the countervailing relativist "Asian values" arguments, assessing the competing claims and the status of human rights in the East Asia region. It also looks toward ways in which civil and political rights can be articulated across what are perceived by some to be cultural divides, as well as how the "War on Terror" has been used to rationalize qualifications to civil and political rights.

The opening chapter of the book, by Damien Kingsbury, assesses the historical claim to human rights, in particular civil and political rights, and how they have been based upon assumptions about universal political values. Since the 1980s, such claims were countered by the "Asian values" paradigm specifically and, in academic circles, post-structural analysis more generally. These overlapping positions

rejected the universalist claims of human rights, instead positing that political values are relative to the cultures (worldviews) in which they arose. This in turn rested on a linguistic distinction; in particular that culture is embedded in language that is essentially untranslatable. As such, claims to universal civil and political rights are a reflection of a particular, nontranslatable worldview, in this case one dominated by Western thinking, and do not apply in non-Western, in this case "Asian," contexts.

Kingsbury considers the claims made for both the universalist conceptions of human rights and counterclaims based on cultural specificity, noting the distinctions between and the commonalities across such claims, notably the understanding of supposed monolithic "Western" and "Asian" perspectives, and the commonalities found among bodies of thought across both the "West" and "Asia." Within this, the chapter addresses both the practical recognition or otherwise of human rights, the logic of the competing claims, and the political agendas they can be claimed to represent.

In chapter 2, Jau-Hwa Chen asks why human rights have not raised controversies in Europe in the same way as they have in Asia through the "Asian values" debate. Her contribution serves as a valuable—though regrettably often forgotten—reminder of why it was so important to create human rights mechanisms in postwar Europe. Dismissing the conceptual rejection of human rights as "Western," she instead contends that every culture has its own ways and strategies to identify and fight against oppression. The way in which Asian claims to what amount to civil and political rights are manifested might be different from those of Europe, but their purpose is the same. She suggests that Asians could benefit from exploring European developments in order to build up their own human rights mechanisms.

To illustrate this, Chen considers the establishment of the Council of Europe in 1949, the signing of the European Convention of Human Rights in 1950, and the creation of the European Court of Human Rights in 1959. The grounding principles, Chen notes, are supposed to be the common values of European communities, such as democracy, rule of law, and human rights, binding on all members of the organization. These principles and mechanisms were based on European values, while at the same time they were implementing the Universal Declaration of Human Rights in the European context. The drafting of the Universal Declaration of Human Rights was not exclusively Western or European but, as Chen notes, many delegations from Asia contributed their ideas of human rights values so that a universal standard of human rights could be established. For her the

relevant question to be asked in Asian countries is not whether universal human rights should be acceptable for Asians but how they should be implemented in the Asian context. Instead of focusing on origins and principles, researchers should be carefully examining human rights practices in Asia and elsewhere.

The "Asian values" debate has often also overshadowed other interpretations of Asian human rights history. In chapter 3, Lauri Paltemaa analyzes the human rights debate around the Beijing Democracy Wall Movement between 1978 and 1981, and the ways the activists of the movement tried to reconcile human rights notions with Marxism. The more general significance of this chapter is in the way it provides a historical background for the "Asian values" debate by showing how in the early 1980s the main discourse used both by the government and democratic activists in China was not that of Confucianism versus "Western human rights" but of Marxism versus "bourgeois human rights." Paltemaa points out how analysts of the human rights debates should be aware of how intellectual fashions influence both governments and human rights activists, as well as academic commentators. While the basis of such fashions is complex and embedded in particular histories and may be difficult or even impossible to overcome, awareness of the possible limitations of contemporary debates should give better starting points for future analysis on human rights in Asian settings.

Ann Kent's contribution to this volume offers a careful analysis of China's post-Tiananmen Square human rights theory and practices. China's decision to accelerate economic reforms and open up the country to marketization and globalization has not been balanced by allowing more political freedom for workers to protect their rights. While the Chinese government has improved the economic conditions of its workforce, it has been unwilling to diminish the state control over political matters. Here Kent introduces an important theme that will be discussed in several later chapters: human rights practices—and malpractices—are global by nature. Global competition in the world market, international development programs, and the global "War on Terror" affect the rights of people all over the world. When the flows of goods and people across state boundaries increase, the claim on territorial integrity becomes less sustainable. It is important to pay attention to how states have made use of diplomacy in promoting their own interests. According to Kent, China has been very successful in its human rights diplomacy by making use of the "Chinese values" argument when necessary to protect its integrity. The Western states have also been willing to accept these values

whenever human rights issues may have turned out to be too costly for their economic interests. The recent improvements in the Chinese human rights policy, Kent concludes, have resulted more from the pressure within the country than from abroad.

In chapter 5, the focus shifts to Southeast Asia, and Leena Avonius examines the development of human rights in Indonesia during much of the same period as Kent's examination of China. Avonius begins by examining the 1993 murder of labor rights activist Marsinah. She then moves forward to a little over a decade later, in 2004, to examine the murder of human rights activist Munir, who was poisoned on a Garuda flight from Jakarta to Amsterdam. These two murders have become key cases in Indonesian human rights history. As Avonius argues, both can be seen as brutal efforts to silence citizens raising their voices in criticism of state actors. However, in between the two cases, Indonesia went through fundamental political changes. Marsinah was murdered when the "Asian values" advocate President Suharto still firmly held Indonesia in his military grip. In 1998, his rule ended and democratic reforms were pushed through. Since then, Indonesia has adopted international human rights standards and made important legislative changes. When Munir was killed in 2004, many of these reforms had already taken place, and human rights had become one of the most common themes in public debates. While Indonesian human rights rhetoric has become supportive of universal human rights principles and the state has built up mechanisms to monitor the human rights situation in the country, practice often continues to lag behind the principles. This can be seen, as Avonius points out, in that neither of the two cases examined in the chapter has so far been satisfactorily resolved.

In the "Asian values" discourse against universal human rights, Laurence Wai-Teng Leong notes in chapter 6 that Singapore's political leaders were probably its loudest and, he says, most arrogant advocates. Their formulations were aggressively articulated in so many international settings that these ideas came to be known as the "Singapore school" of thought on human rights. While "Asian values" was a buzzword in the context of the growing Asian economies, the term soon lost its appeal after the financial crisis of 1997. Since then, Leong notes, the term "Asian values" has been used more in reference to heritage, such as ethnic festivals, than to human rights. However, he notes, human rights continue to be sidelined by the state: abuse of migrant workers remains rife while the state refuses to act on behalf of this contingent of people; freedom of expression remains restricted in what is said to be the communications age; and

political participation is still narrowly circumscribed. In the face of criticism, Singapore's leaders invoke the "exceptionalism" argument to justify their policies. Leong says that Singapore Exceptionalism, parallel to "American Exceptionalism," serves as a license for disregarding human rights and for staving off the "mobilization of shame" that NGOs and human rights activists lodge against the state.

Naruemon Thabchumpon argues in chapter 7 that the idea of "Asian values" never really caught on in Thailand. This chapter argues that such "Thai style human rights notions" were used as rhetoric by local authorities and politicians to support their political profiles. In the Thai context, Thabchumpon says that notions of human rights became a national issue when politicians and local authorities were forced to react to human rights situations and conflicts at the grassroots, especially in the far south of Thailand. An apparent contradiction between state security and human rights protection arose especially when the rhetoric of "sovereignty" and "national interest" were invoked to protect government cronies rather than the people. Thabchumpon illustrates this by noting that while the now defunct 1997 Constitution was considered a national mechanism intended to give an extension of civil and political rights and popular participation incorporated into the country's political system, in reality the National Human Rights Commission, which was set up under this constitution, was incompetent in protecting the rights and liberties of the people. Since the 19 September 2006 coup, moreover, the terms "freedom of expression" and "freedom of information" have become merely rhetorical devices, since most news organizations imposed self-censorship and refrained from printing any news that might offend incumbent authorities.

Päivi Koskinen assesses another form of universalism in chapter 8 when she discusses how human rights have been and could be taken into account in international development programs. Both human rights and development have been criticized for being Western concepts. As Koskinen notes, development programs are carried out in varying circumstances, where local cultures with their traditions and beliefs may not be congruent with other interpretations of human rights. Some of the most common problems encountered in development programs emerge from the differing views on ideals, expectations, aims, and practices by development practitioners and the local population. It is essential therefore, Koskinen argues, to determine the possibilities for finding a balance between the supposed universal human rights subscribed to by international organizations and NGOs and their respective culturally specific development concerns. Koskinen

discusses gender-specific rights as an example of the dilemma development programs need to address: if the ultimate aim of development programs is to bring about change, how can they improve the lives of women when practices that discriminate against women are left intact?

Mikako Iwatake discusses in chapter 9 two post–cold war debates in Japan that concern the nation-state, the foundational concept of contemporary international relations. The first debate concerns Japanese feminist attempts to build an antimilitarist theory, and the second debate questions the growing use of nationalist symbols in Japanese society. The Japanese case, according to Iwatake, illustrates the weakness of human rights discussions that see the "West" as the heroic vanguard of human rights and the "rest" as the problematic violator. In Japan, it is the increasing U.S.-led international pressure urging Japan to "do its share" in international military and peacekeeping operations in the post-9/11 atmosphere that has pushed the Japanese government to fundamentally amend its defense forces structure that has been based on the so-called pacifist constitution of the 1940s. Japanese critics see this militarization as potentially threatening to human rights. At the core of militarization, they claim, lays the question of nationalism and the nation-state with fixed territorial boundaries that need to be defended by force. As Iwatake concludes, it is the violence embedded in the nation-state that needs to be addressed by future researchers.

In the final chapter of this book, Reetta Toivanen considers the major role that the notion of "terrorism" has come to play in the world, noting that despite this there remains no universally agreed definition of terrorism in the international human rights system. Terrorism, Toivanen says, is best defined by the methods used by the perpetrators and less so by their goals. The concept of terror is often translated for political purposes as something generally "bad." The ambiguity of this "badness" explains, at least to some extent, the enormous political sway held by the concept of "War on Terror." Yet, at the same time it seems to have given legitimacy to states to carry out actions in their own territory and beyond to strip away the humanity of people who are deemed a danger to state order. Intellectuals, representatives of political oppositions, and NGO activists have come to experience this in Asia and other parts of the world since the launching of the "War on Terror" in 2001. The rhetoric of the "War on Terror," Toivanen proposes, seems to serve those in power. While the danger posed by terror is a fact, the danger posed by states that use the "War on Terror" against any people suspect to them is also a

reality. Toivanen urges that while it is important to delve further into the reasons for the use of terroristic methods and ways in which to diminish its dangers, it is equally important to focus research on the victims of an illegitimate "War on Terror," meaning people who have suffered repression, torture, and loss because of their political and cultural activities that allegedly pose a threat to states. She maps the difficulties that sociolegal scholars face in engaging in research and academic discussion on the topic when even getting accurate information on the victims of the "War on Terror" proves to be difficult. This chapter engages in the ongoing debate on the legitimacy of antiterrorism strategies and contributes an essential grassroots perspective to this discussion. At the same time, it asks questions about the limits of an anthropological approach to this field.

Together, the chapters in this book make a useful contribution to contextualizing and understanding the "Asian values" debate of the 1990s and in what ways the issues raised then continue to trouble Asian societies. Moreover, these chapters assess the various claims in relation to human rights, in particular civil and political rights, in ways that have continuing relevance. This relevance has been highlighted by the ways in which some states previously in favor of civil and political rights have stepped back from such commitment, in light of what their governments argue are the greater concerns of global terrorism. As the "War on Terror" continues, as human rights are being limited, we increasingly hear the claim that the so-called terrorists are succeeding in destroying Western societies by encouraging its governments to remove their own foundations.

More prosaically, there remain some states that have never allowed human rights an opportunity to become established and embedded in the thinking of their own citizens, except perhaps as a reaction to such repression. And many states, not least in Asia, continue to see their rhetorical commitment to human rights honored in the breech. A commitment to human rights, and in particular civil and political rights, can be a pretty political decoration, but it is still all too often discarded as fashions or supposed necessity change.

Any critical discussion of human rights, then, is more than just an evaluation of their status or a contribution to yet another dry academic debate; but, as a manifestation of free speech, such discussion is an act of engagement with the practice. In other words, this means that any public comment on or support for the human rights debate, in any form, represents an act of engagement that can only highlight its critical issues. It is through such discussion that recognition of the common quality of human rights can be raised; that they apply to all

people on the basis of their shared humanity. In this most important respect, human rights does not just apply in some abstract sense, or to others, but in a very real way, in how we speak and what we speak about, and how we make and act on decisions about our lives. To that end, we offer this collection of essays and trust that their contribution to this important debate will take it one step further.

Notes

1. The view that human rights should be applied according to local conditions has been echoed also by some academic scholars, for example, by Randall Peerenboom (2003), who has proposed that "universalism" and "relativism" should be replaced by considering local conditions. By doing so he, in effect, repeated the relativist argument.
2. Together with Brunei and Myanmar, Malaysia and Singapore continue to be the Asian countries that have not ratified the United Nations Human Rights Bill.

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Chapter 1

Universalism and Exceptionalism in "Asia"

Damien Kingsbury

The purpose of human rights is, or should be, about increasing human freedom as an intrinsic good (see Sen 1999b). This is not freedom in the sense of personal irresponsibility, or the model where one is free to trample on the lives of others, but freedom from oppression and exploitation and, more positively, to explore one's personal capacities and human potential. Such freedom does not exist in only abstract terms; however, on the political spectrum it is at the opposite end of power. Given that power in itself does not seek approval for its actions, a functional freedom requires certain guarantees in relation to power to be able to exist. These guarantees are usually referred to as civil and political rights.

This chapter will consider the claims made for both universalist conceptions of human rights, in this case civil and political rights, that are taken to represent "Western values," and counterclaims based on cultural exception, most commonly identified with "Asian values." It will note the distinctions and commonalities within such claims, notably the understanding of supposed monolithic Western and "Asian" perspectives, and the commonalities found between peoples across both the "West" and "Asia." Within this, the chapter will address the logic of the competing claims.

Universal Rights?

In the sciences generally and mathematics particularly, there is a considerable body of universals, and where there remains debate about some theoretical applications this tends to be at the more arcane or "fuzzy" fringes. The capacity to count, for example, is universal. Like

mathematics, logic may not be universally employed, but it has a functional universal method. Similarly, where there are minor variations between people, human physiology is common as are its responses to external inputs. Intellectual capacities may vary from individual to individual, but it is the key marker of the human condition that people share intellectual capacity and a conscious awareness of self.

The question, then, is whether it is possible to extrapolate from such universals to establish a set of "rights" that continue to constitute such universality or, if as claimed by some, whether cultural distinction—in this case being of "Asia' "—supersedes such claims. In this, there are two sets of issues, the first concerning the quality of being human, and the second concerning the logic of power. If human beings share a common physiology (accepting that beyond childbearing the principal difference between men and women is cultural), then all people have similar fundamental physical needs. This includes the basics of adequate nutrition and shelter, and the equal value of health care. But basic nutrition and shelter are, of themselves, adequate only to sustain life, potentially in constrained circumstances. As Filipino jurist Jose Diokno noted, food and shelter alone are not enough; "many prisons do as much" (1981: 54).

Beyond basic physiological needs, people have consistent physiological responses to negative stimuli (allowing for individual tolerance). Physical torture afflicts people equally and other forms of depravation have consistent negative effects. So all people respond similarly to imprisonment, isolation, death, and loss, consistency of responses speaking more to social psychology than individual psychology. There may be minor variation between individuals, but alienation, fear, and trauma apply consistently in like circumstances. The intended effect of such conditions derives from a similarly common set of motives: compulsion, fear, hatred, ignorance, greed, and psychosis. These are the handmaidens of unrestrained power.

Again, if language varies but a capacity for speech is inherent, and speech is the principal mechanism by which people communicate needs, desires, and emotions, then limitations upon speech constitute a restriction on a basic expression of the quality of being human. The next question then arises as to acculturated acceptance of imposition. If acculturation is a consequence of resolving social dissonance, for example, by accepting a situation because of a lack of capacity to change it, this does not legitimize the situation but rather just explains why it is unchallenged. If that lack of capacity is a consequence of unequal power relations, then the situation is not one of culture as

such but one of politics. This is not to deny the capacity for the acculturation of political methods and values, but that its explanatory method is primarily political and not cultural. Nor is it to deny the subtlety and impact of interplay between culture and politics and the deeply rooted forms of acculturation that might exist despite the objective interests of the respective parties. But acknowledging that a hegemonic framework exists does not then exculpate the actors within it. Rather, it acts as an analytic tool for understanding that framework.

The claim to human rights, in particular civil and political rights, is based upon assumptions about universal political values. These values were initially expressed in universalist terms during the period of the European Enlightenment, although their antecedents derive from antiquity, and across a range of cultures. Contrary to some claims, conceptions of human rights (of which civil and political rights are seen as the first generation; second-generation rights include economic, social, and cultural rights; and third-generation rights include peace and a sustainable environment) are neither culturally specific nor especially recent. Moreover, while the codification of human rights ensures that there is a specific set of criteria by which they can be measured and applied, human rights do not necessarily rely on codification in order to retain validity. The conception of "natural rights" applies here, parallel to natural law (e.g., see Hobbes 1962; Locke 1960; Rousseau 1973), as those rights that pertain in a range of circumstances in which each is an interpretation of the same or a similar original first principle. Such rights are claimed to exist as a consequence of freedom in a state of nature. This implies a natural moral order (sometimes said to be under God) in which humans are equal in a state of nature, as the application to others of self-regard (moral coherence and consistency) or, most forcefully and without reference to God, as a practical consequence of having a capacity for ethical reason (e.g., see Kant 1997; Locke 1960).

In this respect, the earliest claims to human rights were not codified, and where codification did exist, it often did so in an indirect or incompletely articulated sense. Religion was a principal area in which conceptions of rights were indirectly codified, but which categorically required adherence to particular moral codes. Such moral codes required certain forms of behavior of oneself but also, implying rights, toward others. Examples of such rights for others can be found in The Decalogue (20: 1–21) of the Bible and the Torah, Exodus (22–26, 22: 20–27, 23: 6–7), Leviticus (19: 13–19, 33–37), the edicts of sixth-century BCE Persia under Cyrus the Great, Buddhism especially

under third-century BCE King Ashoka, throughout the Qur'an, within the works of the Greek Stoic philosophers Epictectus and Hierapolis, Socrates, Plato (1955: V, IX: 6), Aristotle (1953: IV), Sophocles (1947), Cicero (1998), and within the Analects of Confucius (see Leys 1997; Ping-Chia 1965: 19–23; Schurman and Schell 1977: 10–11, 48). Following the gross humanitarian abuses of World War II, these values were formally endorsed in the Universal Declaration of Human Rights (UDHR 1948), a document supported by 48 member states, with no votes against and eight abstentions (the Soviet Bloc states, South Africa, and Saudi Arabia). Since then, the declaration has been endorsed by almost all member states, with critical Islamic states adopting the conceptually similar Cairo Declaration on Human Rights in Islam (CDHRI 1990), which sought to establish Islamic law as the basis for such rights (which constrained rights within Islamic law). All this stands in support of the claim that there is now a universal rhetorical agreement that human rights exist, or should do so, and that they are or should be universal in application.

Despite some observations that it contains conceptual flaws (such as those addressed in the CDHRI), UN Declaration remains the key human rights document. There is broad agreement that any effort to address perceived flaws in the document would diminish the declaration in other respects, recognizing that its strength is the protection it offers for the plurality of views that might criticize it. It is, then, nothing if not implicitly reflexive. It has thus been left intact. There has, however, been similar recognition of a broader range of human rights, including the right to development (UN 1986). The addition of rights does not contradict or diminish the quality or scope of the original declaration, but rather enhances it. Importantly, despite some other rights being championed by particular political interests, there is no hierarchy of rights, in which one set of rights may take precedence over others; all are considered to have an equally valid and universal claim.

The Exceptionalist Claim

Since the 1980s, claims to universal human rights have been countered by what has been termed the "Asian values" paradigm specifically and, somewhat separately, a post-structural analysis that has favored relativism over universal assumptions. This latter group includes academics who wish to defend the cultural particularities of their site of interest from a more generalized absorption into Western or global culture (the *authentic* local as opposed to the presumed neo-imperial

global). The former main group, who are sometimes uncomfortable bedfellows with the first, comprises political figures who use culturally relativist arguments about rights to sustain unequal power relationships or to rationalize otherwise inexcusable abuses. Such individuals or groups may draw on preexisting conceptions of power relations that may be "reified" (see Pemberton 1994) or "naturalized" so as to preclude the conception that another possibility could exist (e.g., see Lukes 1974). Within this, the proposition of "Asian values" reflects particular power relationships. But, portrayed as cultural rather than political, such "Asian values" have in some cases attracted the implied support of academic relativists.

These overlapping positions reject the universal claims of human rights; instead they posit that political values are relative to the cultures (worldviews) in which they arise. This in turn rests on a claimed category of linguistic distinction around the embeddedness of culture in language, and that as languages are different and not immediately or sometimes at all mutually intelligible. According to this position, at base there is a point of untranslatability; hence cultures and forms of social organization that arise from such cultures are also mutually and fundamentally unintelligible and untranslatable (Whorf 1956; Sapir 1955). This "linguistic turn," deriving from the structural anthropology of the 1950s and 1960s (e.g., de Saussure 1959; Levi-Strauss 1963) and the semiotics of the 1960s, came to influence literary studies where it was revised and relativized, returning to anthropology as the "reading" of cultures or a "retreat into the code" and related promotion of "form over meaning" (Giddens 1987: 84, 86). This culturalist "incommensurability" perspective was given substantial support by the development of post-structural (or postmodernist) theorizing generally and the deconstructionist project of the 1980s and early 1990s in particular. In linguistics, the "outsider" and "insider" perspectives were sometimes referred to as "etic" and "emic," relating to capacities to identify incommensurable difference, or exceptionalism, following the Prague Linguistic Circle (see Hymes 1982), which refers to the distinction between phonetics (classification according to acoustic properties, or "explanatory") and phonemics (function of sound in language, or "interpretive"—see Wacquant 1992: 20, nb 19). This has been loosely applied in anthropology to differentiate local and authentic knowledge from external and presumably inauthentic knowledge (e.g., see Geertz 1993: 56–57), or the legitimate culturally specific as opposed to the illegitimate universally general.

As such, this varied body of linguistic thought, and in particular its post-structuralist elements, broadly agreed on the epistemological

position that knowledge is always contingent on the perspective of the observer and as such is always subjective. Hence one could only know one's own thoughts and never truly those of another. In some way, this took the form of one's own thoughts even being the product of a range of other influences and capacities and, as such, one might not even truly know oneself. Indeed, for many who accepted this premise, the whole notion of "truth" became at best problematic and at worst ceased to exist altogether. Further, rather than arriving at concrete truths, post-structural investigation into meaning deferred to constituent questions about such meaning, and constituent questions about the meanings of the answers to those second-order questions. In such a "deconstructionist" mode, the logic of the process was not to answer a question finally, but to continue to unpack both the question and its premise, and the premise for that, and so on, thus deferring meaning in perpetuity. If meaning was thus permanently deferred, one could never truly know. This was especially the case in relation to "other" in general and "other" in particular. Values become not just different, but unknown, and unknowable. According to this logic, any and all expression is culturally embedded, especially including that which refers to social values as the expression of cultural organization. As such, claims to universal civil and political rights are rather a reflection of a particular worldview, in this case one dominated by a specific form of Western thinking, and did not apply in non-Western, in this case "Asian," contexts. Ipso facto, assertions of particular values, in this case "Asian values," could not be countered on the grounds of unsustainable claims to an impossible universality. An assertion of "Asian values" by an "Asian," then, was self-legitimizing (on relativism and human rights, see, e.g., Tilley 2000; Milner 1999; Heard 1997; Ayton-Shenker 1995; Renteln 1985).

From a less power-centric and more intellectually engaged perspective, a relative conception of rights thus assumes that what is understood by one might not (or cannot) be understood by another, and that neither understanding is privileged over the other. No particular meaning can assert its authority if meaning is constantly deferred via a chain reaction of questioning away from the source. However, there is an internal contradiction of deconstructing relativism's own proposition (that all propositions are relative, including this one) and its implicit lack of engagement with demonstrable realities. Beyond this, where such relativism (or relativisms) acknowledges and respects difference, it could be understood as "positive relativism," of the type favored by Foucault (1982), Derrida (1980, 1997), and

Lyotard (1984). "Positive" relativism in this approach implies an affirming quality, in that such difference seeks liberation from imposition. Assuming that positive relativism involves acceptance of plurality (or pluralities), it positions individuals or groups in ways that cannot be regarded as the same. This then differentiates within groups, with further assumption being that all individuals are both somewhat different but, if they are not to comprise a fundamentally differentiated and hence totally fragmented or atomized and internally alienated society, must be regarded as forming part of an overarching cohesive whole. This use of such differentiation, then, assumes that there is some fundamental distinction between human beings beyond the ways in which we go about organizing our lives relative to our circumstances. People are different but, as Evans-Pritchard described, not in ways that are terribly important (in Geertz 1989: 70) or, as noted by Riceour, not radically so (1981: 49–50). The important point here, then, is not difference as such, but the protection of difference as a quality of freedom.

More disconcertingly, though, the deferrals of meaning implied in relativism can also be adopted to support "negative relativism." Negative relativism positions people according to a subjective cultural or physiological scale, at the far end of which blurs the categories of value of existence. This can manifest as, for example, institutional racism, and can be applied in gross numbers as part of a specific program, the Holocaust and Apartheid being cases in point. But beyond a rationalization for amoral power it still suffers from arbitrary categories of victims that can, logically, turn upon itself or elements of itself (e.g., Stalin's USSR, China's purges in the 1950s and again during the Cultural Revolution, Nazi Germany, and Cambodia's Khmer Rouge). That is to say, if relativism is consistent it must respect difference through the establishment of an egalitarian plurality as a guarantee of freedom, or else devour itself.

Postcolonial Responses

At approximately the same time as the shift toward post-structuralism in which relativism featured so strongly, Western hegemony was being challenged by the rise of a number of postcolonial states, notably in East Asia. In the immediate postcolonial period, many decolonized states had opted for a plural democratic or other "liberating" system as methods of government in which civil and political rights were implied. However, the postcolonial experience was commonly beset by a series of similar problems. The first problem was that the removal

of the colonial yoke did not automatically produce all—or in most cases many—of the benefits that liberation was supposed to guarantee. In this, expectations grossly exceeded capacity, which was often reduced rather than enhanced by independence.

The common postcolonial experience was of political failure, especially in cases where plural democratic structures that had taken decades or even centuries to formulate and refine in Western countries were expected to take immediate hold in postcolonial countries. The emphasis within human rights on claims to free expression and assembly are seen in some political environments to not just challenge the status quo but to create an unstable political and economic environment and inciting already restive populations to illegal activity. In circumstances where the state struggled to construct basic institutions, to provide services and to head down one consistent development path, such political distractions were often unwelcome. Set against the background of often arbitrary and increasingly fractured polities fighting increasingly desperate internal battles, it became both a convenience and arguably a necessity for political elites controlling the levers of power to abandon or violently repress plural democratic or other emancipatory processes in exchange for the "stability" of one-party or one-person authoritarian rule. The functional claims of plural democracy or other forms of actual liberation, and the civil and political rights that are inherent in them, were thus discarded as impeding the changing expedient political practice.

Combined with and rationalizing the imposition of authoritarianism, many critics of human rights, especially in developing countries, opposed universal conceptions of human rights as being specific rather than universal and as reflecting a type of cultural imperialism (e.g., see World Conference on Human Rights 1993: 3; Suh 1997). These critics claimed that rather than being universal, claims to human rights were a reflection of specific cultural values and, as such, amounted to the imposition of an alien culture. This argument was usually advanced in association with claims to other forms of imperialism or neo-imperialism, such as economic or strategic relations that favored former colonial or Western powers over postcolonial states. Notably, the issue of perceived or claimed imposition of an alien culture led to rejection. However, arguments about the imposition of human rights, as with the imposition of democracy, contradict their liberating principles so that such imposition, if it existed, would contradict the principles it was trying to support. It would further call forth rejection based on the fact of the imposition, rather than for the inherent quality of the rights in question. Such rejection would itself

be couched in terms of "rights," in this case the "right to resist imposition."

There is also the further problem of an inherent egalitarian assertion underpinning attempts to delegitimize conceptions of universally valid human rights. That is, detractors of universal civil and political rights argue that their view is of equal validity to views expressed in support of such rights. Yet implicitly, a relativized understanding should logically not accept such equality of the value of assertions. To accept such equality is to accept the equal legitimacy of the right to express it as a freely held value and the universality of such equality. This in turn implicitly supports the underlying principle in favor of universal civil and political rights.

The only circumstances under which claims to relativization that propose an inequality of values can be sustained is where there is the aforementioned hierarchy of value claims, for example, that the individual is less important than the community, or that some individuals have less value than others. While hierarchical ordering has the potential to separate and privilege particular value claims, and thus avoid the egalitarian principles that underpin universal claims, there is nothing in this that presupposes that claims against universal civil and political rights would be privileged or sustained. That is, cultural relativism opens the door not just to difference, but to persecution rationalized by such difference. The argument of a particular ordering of human value based on cultural exceptionalism is thus logically inconsistent.

Claims to the relativism of rights continue—if decreasingly—at an official level. Like claims to democracy, the widespread acceptance of the terminology around civil and political rights has, on the one hand, tended to be devalued and, on the other hand, has been all too often observed in the breach. But despite such rhetorical if not actual acceptance of civil and political rights, there continue to be moments where, especially in specific cases, arguments are put to "explain" the special circumstances of particular cases. Atrocities against civilians in conflict zones are a principal example of "explaining" such "special circumstances," often accompanied by dissembling rhetoric such as the "necessity" of torture in the "War on Terror."

Assuming the claim for the relativization of civil and political rights overcomes these hurdles, this claim then implicitly raises the question of different sets of rights for different people in different circumstances. That is, it assumes cultural or state-specific rights, rather than rights predicated upon the universal quality of existing as a human being. Yet the universalist claim of civil and political rights

pertains not to the specificity of one's circumstances but to the quality of being human, which is commonality (*consensus gentium*) (see Geertz 1993: 43, 50, 60, 350–351; Geertz 1989: 15, 70; Todorov 1986: 374).

"Tiger" Values?

In some cases, and for a variety of often similar reasons, some postcolonial states that adopted authoritarian or dictatorial political models succeeded in economic terms, in East Asia known as the "Asian Tigers." South Korea built a strong economy under military rule as did Taiwan, while Singapore flourished under quasi-authoritarian one-party rule while the colonial anomaly of Hong Kong similarly flourished with access to plural democratic processes. It was but a short step from such economic success to a conclusion that it was not just linked to but a direct product of a particular "Asian" way of doing things.

The main contributing factors to economic success among what came to be termed the "Asian Tigers" included, as well as guaranteed political stability, substantial economic inputs from the United States through its involvements in the Korean and Vietnam Wars and the West's massive consumer purchasing thereafter, a legacy of Japanese economic infrastructure in both South Korea and Taiwan, Singapore and Hong Kong's histories as key free ports in a global trading network. But most importantly, it also included Japan's economic leadership, in which regional economies picked up discarded Japanese industries, often with Japanese finance, as Japan moved higher up the technology scale. More culturally focused, each of these societies reflected Confucian concerns with education, reflected in high education spending, and a work ethic allied with private business. In this last instance, private business was also assisted by government support, partnerships, soft-loans, and other forms of economic inducements.

Regardless of the varied reasons for these specific economic successes, it was relatively easy for governments presiding over economic prosperity to accord it to political style, in turn claimed to be based on a specific "cultural" heritage. The logic of such claims was that such political style reflected cultural values that did not accord with Western ideals of plural democracy and civil and political rights. In this, states could assert a "national" pride based on economic success that countered cultural ignominy that was a product of colonial imposition. Thus an exceptionalist claim that initially reflected unity,

in this case around Confucian economic success, came to be adopted by governments of states that could claim neither a cultural affinity nor, in many cases, economic success. What they could claim, however, was an assertion of legitimacy of an authoritarian political model. Indeed, for many postcolonial one-party states, rejecting plural democracy and civil and political rights became a further method of asserting a noncolonial state identity. For such states, the common claim of economic efficiency took precedence over civil and political rights. If the "luxury" of civil and political rights was to be granted, or returned, it would only be after the establishment of prerequisite economic success.

The assumption that democratization was contingent upon economic development ("full bellies thesis") was undermined by many postcolonial states having neither "rice" nor "rights." The assumption of structural determinism between economic development and democratization has since been contradicted by economically successful Singapore failing to democratize while Indonesia and the Philippines both returned to democratization despite being in the depths of economic crisis. As Sen has noted, there is no necessary link between political forms and economic development (see also Przeworski et al. 2000; Barro 1996; Przeworski 1995). Moreover, political freedoms, as implied in a representative, transparent, and accountable political system that not only allows but encourages a high degree of public participation, have helped ensure that no democratic state has ever suffered a famine that, he claims, is due to the accountability of governments (Sen 1999b; see also D'Souza 1990; Dr'eze and Sen 1987; HRW 1992; RC 1994), nor has a democratic state gone to war with another (there are marginal exceptions in an extensive field of conformity). Corruption, too, appears to be significantly more prevalent in states in which there is no or little accountability. Economic development may actually go backward as a consequence of a lack of political openness as implied in plural democracy and civil and political rights (see Sen 1999a).

Tensions within Rights

It has been a basic assumption of democratic government, in which the interest of the majority prevails (if not at the absolute expense of the minority) that it should pursue policies that produce the most favorable outcome for the greatest number of people. This utilitarian position of pursuit of broadly favorable outcomes, or "public good," assumes the existence of an overarching political unity, usually understood as

"nation," which is intended to secure and preserve its interests (i.e., the "national interest") within the context of a territorially bounded and institutionally capable territory (the "state").

Such good can be construed in purely material terms, such as economic benefit, security of economic conditions, strategic (sovereign) security, and access to the benefits of the state, such as a consistent and equitably applied law, infrastructure, and social services. This good may also be construed in terms of security of political benefit, including political participation and representation, and the associated rights to freedom of speech and communication, and assembly, and from arbitrary arrest, detention, torture, and so on. However, in a generally open society, the public good of rights that secure political goods may be in tension with the public good of rights that secure utilitarian goods, especially where those utilitarian rights are more narrowly conceived (e.g., by limited private interest). That is, political debate in favor of some economic redistribution might potentially limit absolute economic accumulation or growth. The two may coexist and, indeed, in most rights-based societies do so with relative equilibrium between them. However, this is only in an unending contest for supremacy based on orderings of individual and group interest.

The fundamental assumptions underpinning utilitarianism are that there is a political cohort to which its value applies and that the utility applies to most of the people in a given community most of the time. This in turn assumes a unity of purpose, which in a fully realized form may constitute a nation within the institutional context of a state. This is not to suggest that the nation, the state or the "nation-state" are a political ideal or absolute political ends in themselves. Rather it suggests that the fully realized form of a bonded political community may be called a "nation," but may potentially be less or greater than contemporary conceptions, being less than represented by a state (e.g., economic class) or by being spread across states (e.g., multilateral organizations). A nation may be a devolved or relatively evolved political community, either less or greater than the rather static interpretations of nation (and also state) that tends to apply. The general tendency has been for specific political unities to devolve to their constituent parts, while larger unities have tended to form as the result of perceived or actual economic or security benefit. The idea of nation then has tended to reflect a devolution, or largely a return to aspects of primordialism, rather than evolution, and as such reflects vertical (ethnic, cultural) rather than horizontal (class, economic) interests.

Assuming a common bonded political identity, that is, a nation, the focus on the welfare of the community within an agreed sovereign territory supports the utilitarian proposition. However, the degree to which the community is bonded may not apply equally to all elements of the community. To ensure the good of the constituent members, the community must allow all individuals the opportunity to express their preferences (where there is no harm to others) and protect them from the potential imposition of a singular communitarian will. This could be understood in particular in the case of a postcolonial state in which neither language, economy, or security are absolute unifiers in themselves, but which through sufficient proximity (colonial geospatial organization) identify enough in common to maintain the value of the point of overlap. This could be said to imply a tendency toward vertical social integration, with the areas where there is no overlap comprising assertions of local identity or, potentially, vertical disintegration.

Alternatively, assuming that these interests are all economic, for example, around sectors of capital, technology, and labor, but with a common language and security focus, there might be greater common ground to form a single community, creating the horizontal conditions for national identity, but a particular point where unity of purpose is contested by specific economic interests. The points at which these respective interest groups do not overlap suggest a probable desire to preserve or promote specific interests, and the capacity to be able to do so. Given the tendency of the center or middle ground to act as a median point of interest, utilitarianism assumes that the greatest number of people receive at least some benefit, while relatively few are disadvantaged. This implies mutual acceptance of legitimate plurality.

Assuming that each interest group will assert their primary interest, or at least assert a claim to what constitutes a fair balance of interests, the middle ground and definitions of "greatest good" become contested. Even where there is agreement about the greatest good, there may be instances where the greatest common good remains deleterious to constituent members. That is, it may be necessary to sacrifice the interests of a few for the greater good of many. This then suggests an inconsistent application of agreed codes (law) or the expedient abrogation of the interests of some members of the community for the benefit of others. Due to either the inconsistency of this application, or the institutionalization of expediency, abrogation of the rights of some is likely to lead to social discord, potentially at high and destabilizing levels. Ensuring that both judicial inconsistency or

institutionalized expediency are constrained therefore requires the institutionalization of a counterbalance, that is, the rights of the constituent member to freedom from such impositions and the freedom to fully engage as an equal in the process of determination of the common good.

The contrary position to community rights and interests, then, is to assert the "right" of the social constituent—the individual—against a presupposed uniformity of interest or the assumed overarching welfare of the community. This then sets up a competition between community rights, which are said to comply with "Asian values," and individual rights, which are said to comply with "Western values." In putting forward a claim to individual freedom, Bentham (e.g., 1781: Chapter 16) and Hobbes (1962: Chapter 21) argued that every law diminished freedom, even if the purpose of such law was to prevent a greater loss of freedom. Yet recognizing the practical value of majority claims, especially in a functioning democracy, the rights of an individual must on occasion be required to give way to wider social benefit. Rejection of this compromise of absolute individual rights neglects the reality that individuals live within communities, and the rights of all cannot be compromised, without exception, by the rights of one.

The balance between community necessity and individual claims, then, posits liberalism, a preference for freedom, against libertarianism, an absolute freedom—particularly in the economic sphere—and recognizes that the rights of one are bounded by their capacity to negatively impact on others. That is, freedom, which rights are supposed to make available, does not equate to freedom from law (see Larmore 1996: 108), but rather freedom for all under law. In this respect, the rights of a community are best preserved by guaranteeing the rights of its constituent members within the context of the rights of others, or the substance of liberalization (O'Donnell and Schmitter 1986: 7). As noted by Berlin, in arguing for a balance betweens rights, "Every law curtails some liberty, although it may be a means to increasing another" (1958: 123, nb xlix). Similarly, the judicial theorist Rawls did not see freedom (or "liberty") as an absolute, but as "a certain pattern of social forms" (Rawls 1971: 63), or as what might be described as the positive right of rational individual autonomy along with freedom from domination or unnecessary interference as a result of the absolute rights of others. Indeed, not only is the idea of individual rights not contrary to a sense of community, and hence certain communitarian values, but as Larmore suggests, the community is the safest place in which rights can reside. "Take our fate out of the hands

of individuals," he said, "and give our immunity to interference an impersonal or collective basis" (Larmore 1996: 114).

Such "impersonal" civil and political rights are generally divided into "positive" and "negative" rights, or rights "to" (e.g., freedom of expression, gathering, political activity) and rights "from" (such as arbitrary arrest, detention, or torture), and between natural (implied) rights and positive (codified) rights. These correspond to the capacity for and potential restrictions upon agency, although it is easy in a theoretical discussion to overstate the practical implications of the distinction. Freedom from limitations creates the practical opportunity of freedom to engage in activity. Noting this value of protection from (negative rights) to allow the opportunity to (positive rights), Weinstock noted that "citizens need a bundle of rights that ensure that their freedom will not be encroached upon [negative rights] in ways that make the realization of their projects [positive rights] impossible" (Weinstock and Nadeau 2004: 2). The claim of "Asian values," in which communal rights must take precedence over individual rights, caricatured individual rights while removing the "collective basis" of rights and, in fact, restored responsibility for such "rights" to the hands of powerful individuals. In the case of the "Asian values" claim, this responsibility devolved to Singapore's Lee Kuan Yew, Malaysia's Mahathir Mohammad, Indonesia's Suharto, and like authoritarian leaders.

Legitimacy and Rights

The claims of such political leaders that there were or can be specifically "Asian values" in relation to rights, and thus rejecting the universality of rights has, however, been contradicted by the commonly expressed preferences of those people if and when they have an opportunity to do so. In Indonesia in particular, the view that the "little people" did not need open democracy was contradicted by their embrace of it in 1999. That is, if the universal claims of human rights have a measurable basis, it is not so much in what people in common wish for, even though there is a high degree of commonality in basic aspirations. Rather, the most absolute point of consistency in human rights is in what people do not wish for, or, more to the point, wish to avoid at all cost. If there are quibbles about some universal claims, one that stands up irrespective of time, place, culture, or other circumstances is abhorrence of personal torture. That is, no one likes it, no one would willingly put up with it, and everyone would wish that it did not exist should they be subject to it (see Singer 1979).

Similarly, being jailed is for most people a negative experience and few people would willingly surrender themselves to incarceration. This is particularly so if incarceration is outside of the due process of law and if it includes not the relative comforts and security of some of the more enlightened prison systems, but is constructed around the bare minimum to sustain life, and perhaps then not for the long term.

The question of normative forms of and respect for civil and political rights is best addressed by being directly tested against a specific universal set of criteria, and whether political rule meets the test of legitimacy (see Morris 1998: 24, 105–111). Broadly, "legitimacy," in the positive sense, complies with the exercise of power in accordance with a broadly socially accepted set of principles, procedures, or method of conferral of authority. As this is generally codified in order to achieve some standardization of application, it implies the existence of law. Indeed, the word "legitimacy," like that of legal, derives from the Roman *lex* (law), and its original application did not distinguish between the legitimacy and legality of a regime; in order to be one it had to be the other, in contrast to arbitrary rule or tyranny. In later discussion, especially under the influence of Christian theology, the idea of legitimacy was linked to natural law, and through the Enlightenment gradually democratized. Weber's theory of legitimacy of rule canvassed different ideal models obtaining to different preconditions, but throughout asserted that legitimacy either arose through acceptance of a precondition, imitation, rational belief in its value, or its legality (Weber 1946: 130).

Another set of criteria might construe legitimacy as being comprised either of a normative natural order that translates as political order. For example, such criteria can be found in traditional forms of rule and elements of "organic" political corporatism or in a liberal-minimalist model dependent upon a state's capacity to maintain peace under rule of law, characterized by the "small state" approach of neoliberalism. They can also be located in a democratic-proceduralist model of agreement between free and equal citizens, based on individual self-determination (as the only rational basis for morality) as outlined by Kant (1997) and as construed as social contract by Rousseau (1973).

In this, there is a parallel between the somewhat artificial separation of positive and negative rights, the distinction between the individual and the community, and between freedom and equality. A community is no more than a collective of individuals, just as an individual is no more or less than a constituent member of a community. A conceptual differentiation may be required of both for

theoretical purposes, but in practice the community and individuals overlap and live within each other. As the individual goes forward, within a framework of respect for the rights of others, so too does the community; when the community regresses and diminishes its access to rights, so to do the individuals who comprise it. In that the "Asian values" position proposes a dichotomy, it is therefore a false one.

There is, of course, a claimed paradox between conceptions of freedom and law: to the extent that freedom is understood as the absence of domination, just laws form its precondition (Weinstock and Nadeau 2004: 105). Yet this "sense of paradox is due to confusing the absence of domination with the absence of interference" (106), which is most often associated with the utilitarianism of Bentham. Moreover, in ancient Greece, "Demokratia was committed to the rule of law because it recognized that the rule of law protected the interests of the poor as well as the rich" (Ober 2000). This is to say while law imposes some limitations upon freedom, normatively such restrictions are only to the freedom to restrict the freedom of others. In that, law normatively guarantees protection from such arbitrary restrictions, it enhances real freedom. Under the "Asian values" paradigm, law is itself a restriction upon freedom, marking the differentiation between a normative rule of law and, in the "Asian values'" context, rule by law.

Freedom from arbitrary arrest, detention, and torture, which find themselves more commonly applied under "rule by law," are among the first-generation civil and political rights, as legal protection from authoritarian excesses intended to quell challenges to the authority of an oppressive state. These freedoms "from" are necessary rights alone, but are especially important as protective measures in concert with rights "to" freedom of speech and assembly, and so on. Freedom from arbitrary arrest, detention, and torture also imply the existence of the consistent and equal rule of law. Beyond that, structures against the use of inhumane or degrading punishment, including torture, reflect the positive values of a society in relation to its own members, and imply a broadly benign approach and a degree of mutual respect as human beings, even for law breakers. Taken from a negative perspective, strictures on the use of torture or other cruel, degrading, or inhumane forms of punishment also reflects an awareness that it is not possible to separate one aspect of a society's behavior from others, and that what occurs in prisons, and the means by which citizens might get there, says much about how a society more generally treats itself, its capacity for empathy and its sensitivity or otherwise to human suffering. Singapore and Malaysia's Internal Security Act

(ISA), by which people can be jailed without charge, and other legalistic devices of repression, speak directly to the type of political society they remain. So too do Indonesia's draconian defamation, "hatred," and treason laws, along with its continuing restrictions on political parties.

None of this, however, was discussed by the founders of Indonesia, Malaysia, or Singapore, each of whom employed the rhetoric of "liberation," or freedom. Such freedom implies the capacity and intention for the improvement of peoples' lives based on a wide-ranging sense of voluntary inclusion and participation through practical recognition of the validity and implementation of civil and political rights. The key components of civil and political rights, as both rights "to" and rights "from," ensure the capacity for constituent members of a polity to communicate with each other without fear over matters of individual or mutual relevance and importance. Such rights have been demonstrated not to apply just to the West or other cultural constructs, nor have they been established as immune from "Asia." The right to meet, to discuss, to express views, and to disseminate those views amongst one's community is basic not just to political freedom, but to the full and fair manifestation of the human condition.

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Chapter 2

Asia Values? Why Not, But How? *

Jau-hwa Chen

The explanations for the rise of the "Asian values" debates in the 1990s are diverse and multiple. The economic successes of East Asia were introduced as the historic background, especially regarding the "Four Tigers": Hong Kong, Singapore, South Korea, and Taiwan. Marina Svensson (2002: 58) describes the debate as both "a reaction to the increasing importance of human rights after the end of the Cold War" and "an outcome of growing self-confidence on the part of the prospering Asian nations." In addition, Wolfgang Heinz (1999: 59) refers to five key political factors: (1) the changed political situation after 1989; (2) the increasing awareness of political leaders to their economic successes and the efforts to a corresponding political role for their regions and countries; (3) the dominant thought on the Pacific economic growth as the future center of the world economy; (4) the event and the consequences of Tiananmen 1989; and (5) the diminishing presence of the United States' security policy. However, those explanations referred only to the changes in economic and political relations, regionally and internationally, sometimes too external to explain why the issue of "Asian values" was revisited persistently,[1] and the universality of human rights in the pluralistic cultural context has to be defended.

In this chapter, I am going to argue that the "Asian values" debates are more than simply a reaction to the international human rights regime. Rather, they reflect the obstructed human rights discourses in Asia, assuming that human rights are a Western phenomenon, imported through colonialism, alien to Asian culture, so that the implementation of international standards of human rights was seen as imposing elements of Western culture onto Asian lands. In fact, the

debates could present Asians with an opportunity to promote open discourse on human rights and its cultural relevance, confirming that human rights are not alien to their ancestral struggles for freedom and justice; such openness and debates may pave the way for the institutionalization of human rights and the creation of a regional international monitoring mechanism for human rights.

Values in Asia: Recognized through Resistance

Why are human rights discourses in Asia frequently connected with cultural differences? And, if we are discussing differences, just what kind of differences—from what and from whom? If political dissidents in Asia risked their lives to achieve political freedom in their countries, we can easily recognize their acts as defenses of human rights—rights such as the freedom of expression and freedom of political participation.

One well-known case in Taiwan is that of Cheng Nan-jung and his appeal for "100 percent freedom of expression." Cheng Nan-jung founded the February 28 Peace Promotion Association that toured Taiwan with various activities aimed to seek restitution for Taiwan's worst periods in history. He was also involved in coordinating with the May 19 Green Action, which appealed for an end to martial law, launching a series of mass street demonstrations that lasted for half a year. Under Article 100 of the Criminal Code, Cheng was charged with "rebellion" for having printed a "Draft for a New Taiwan Constitution" in his Magazine "Freedom Era." When the Kuomitang (KMT)[2] government prepared for his arrest, he declared "the KMT cannot arrest my person, just my corpse." On 7 April 1989 Cheng Nan-jung brought his life to an end by setting himself on fire in his editorial office, just as the police were on the way to arrest him. In 1987, although martial law had been lifted, the KMT government was still drafting the National Security Law to replace martial law. In response to this, people from different groups went to the street to protest against the drafted legislation and demanded for "100 percent abrogation of martial law." Through the countless demonstrations confronting the barricades and riot control police, from 1980 to 1990, issues of women's rights, workers' rights, the environment, and nuclear power, as well as the rights of indigenous people were raised. The death of Cheng Nan-jung and his strong commitment to the freedom of expression reminded Taiwanese citizens of the relevance of human rights in their lives. And there is no going back to the

authoritarian regime. Although cultural differences may inform Taiwanese interpretations of the case, they cannot diminish the value of human rights as proposed by Cheng Nan-jung.

The young man standing alone in front of a tank in Beijing near Tiananmen in 1989 may have had his own reasons for doing so. Although we do not know whether he had read the Universal Declaration of Human Rights, what he was defending is easy enough for us to see. Such examples inspired us so much that we realized that the words and terms of human rights were to be found not only in books, but it was what thousands of women and men in Asia were already fighting for, when their basic freedoms were deprived or unjustly limited. How those cases were relevant to their cultural backgrounds may be found in the explanations and justifications for their acts, indicating, after all, that culture and human rights are not two totally separate things. However, academics tend to pay less attention to those specific explanations and justifications for such acts, if they are not explicitly labeled with the words of human rights.

In 1369, the first emperor of the Ming dynasty, Taizu, issued a decree prohibiting sacrifices to Confucius outside the capital city, except at Confucius's birthplace. He further maintained that the ritual of sacrifice to Confucius was the most supreme ritual and thus was only to be an exclusive privilege of the emperor, denying the rights of Confucian scholars and officials to perform the rituals locally. Resentment against the ban soon broke out. Ministers and high officials argued for a universal sacrifice to Confucius. Thus it was argued: "Confucius established his teaching in accordance with the Way. The sacrifice that all people under heaven make is not directed at Confucius personally, but rather at his teaching and the Way" (Chu 1998: 170). Today, applied to Article 18 of the Universal Declaration of Human Rights, we may find it easier to say that they were defending the freedom of religion and the freedom of conscience. If some scholars insisted that Chinese traditional culture comprised no concept of individualism, inalienable rights, and freedoms, the notion of defending human rights in the Ming dynasty seems downright incongruous. We are thus at a loss for words. If we fail to recognize that the birthplace of human rights resides in those struggles for dignity and freedoms, where can we realize human rights?

Some notable Asian leaders[3] have raised their hands and made a strong gesture, saying that they rejected "Western ideas" of "individualism," "born free" and "inalienable rights and freedoms," because "Asian values" are "totally different." What is more, they

insisted that the opposite of those ideas is the case, no more and no less. Their voices echoed the main trend of Western human rights studies, when some of them maintained "Human rights . . . raised from the tradition of the occident humanist and humanistic arts of thinking" (Lenk 1998: 25); or "The studies must lead to the conclusion that historically and ideas historically speaking, no evidence about the existence of the concept of human rights in the selected political cultures[4] before they touched and interacted with the West world" (Kühnhardt 1991: 229). Culture sets standards?! Who is not doing so! The Asian leader borrowed the words from the West, and said: "Human rights? No thanks, they belong to the Western cultural tradition ONLY!" He dismissed human rights with no regard for people's struggles for freedom of religion and freedom from need and fear in their history. If some politicians asserted that human rights was an alien concept to their cultural tradition, we have to ask ourselves just how they viewed a struggle for freedom and justice in that particular tradition? From the real use of human rights to its conceptualization of human rights, every culture has its own context and strategy for identifying oppressions. It was naïve to believe that we can judge whether or not non-Western cultures have the concept by only drawing upon the Western conceptualization of human rights.

The first part of this chapter deals with the rise of the Council of Europe as an example of the regional implementation of human rights, explaining that European cultural values are not excluded in the establishment of a regional international institution. The second part discusses the failure of the "Asian values" debates to create a similar institution for human rights. The third and last part demonstrates that the discussions on the cultural "roots" of human rights are problematic for the human rights discourses, particularly so if the focus of their attention is not on the implementation of human rights.

"European Values" and the Council of Europe

On 19 September 1946, Sir Winston Churchill gave a speech at Zurich University:

> I wish to speak to you today about the tragedy of Europe. This noble continent . . . is the home of all the great parent races of the western world. It is the fountain of Christian faith and Christian ethics. It is

> the origin of most of the culture, the arts, philosophy and science both of ancient and modern time. If Europe were once united in the sharing of its common inheritance, there would be no limit to the happiness, to the prosperity and the glory, which its three or four million people would enjoy. Yet it is from Europe that have sprung that series of frightful nationalistic quarrels, originated by the Teutonic nations in their rise to power, which we have seen in this twentieth century and even in our own lifetime, wreck the peace and mar the prospects of all mankind.[5]

This speech, regarded as an important document of the Council of Europe about its grounding history, set down its basic principles and frameworks. Churchill identified the problem of Europe as "the series of frightful nationalistic quarrels," suggesting that the solution resided in a united Europe. In addition to that, he argued that "the common inheritance" transferred through "Christian faith and Christian ethics" should be the natural foundation of a united Europe.

Later, the common inheritance Churchill referred to was explained in the preamble of the Statue of the Council of Europe (1949) as the values of democracy, such as personal freedom, political liberty, and rule of law. The preamble explains the motive and the principle of a united Europe: "Reaffirming their devotion to the spiritual and moral values which are the common heritage of their peoples and the true source of individual freedom, political liberty and the rule of law, principles which form the basis of all genuine democracy; Believing that for the maintenance and further realization of these ideals and in the interests of economic and social progress, there is a need of a closer unity between all likeminded countries of Europe"[6] The preamble is an institutional interpretation of Churchill's speech, indicating the normative statutes and the binding forces of the principles. "The common inheritance," which was religious and moral, comes into being as the regulative principle that should be reflected in the structure of the Council of Europe.

The principles of democracy, identified by Churchill as "the fountain of Christian faith and Christian ethics," have two important functions: First, through recognition of a common heritage, a new identity for European peoples can be created, which is crucial to the united peoples in making the efforts to rebuild and reconstruct a new Europe after World War II. Second, they make possible an intrastate monitoring system of human rights to prevent the rebirth of the totalitarian regimes. The first one is very helpful for improving the economic and social cooperation of the member states; the second, to

monitor the implementation of democracy, rule of law, and human rights in its member states, and to give a signal, if they do not comply and later become undemocratic.

In a speech to the Consultative Assembly (later changed to "Parliamentary Assembly")[7] in August 1945, the former French minister of justice, Pierre-Henri Teitgen, who significantly contributed to drafting the European Convention on Human Rights, expressed his main concern about the newly founded regional international institution:

> Many of our colleagues have pointed out that our countries are democratic and are deeply impregnated with a sense of freedom; they believe in morality and in natural law…Why is it necessary to build such a system? Democracies do not become Nazi countries in one day. Evil progresses cunningly, with a minority operating, as it were, to remove the levers of control. One by one, freedoms are suppressed, in one sphere after another Public opinion and the entire national conscience are asphyxiate…It is necessary to intervene before it is too late. A conscience must exist somewhere which will sound alarm to the minds of a nation menaced by this progressive corruption, to warn them of the peril and to show them that they are progressing down a long road which leads far, sometimes even to Buchenwald and to Dachau. An international Court, within the Council of Europe, and a system of supervision and guarantees could be the conscience of which we all have need, and of which other countries have perhaps a special need. (Merrills and Robertson 2001: 4)

On 4 November 1950, the foreign ministers of the ten founding member states of the Council of Europe met to sign the European Convention of Human Rights. In 1954, the European Commission for Human Rights was established. And since 1959, it has been operating. The mandates of the court demonstrate that the rights of the individual cannot be violated by the juridical system of its member states.

Since 1974, applying for membership to the Council of Europe could only occur under the following condition, namely, the signing and the ratifying of the European Convention on Human Rights, including the monitoring system of the Commission for Human Rights and the Court of Human Rights (Klebes 1997: 545, 1988: 104–105). As of 11 April 2007, the Council of Europe already has forty-seven member states. The rapidly increasing memberships of recent years raised the debates about the role of the organization in the future. The critics of the membership policies are worried that the

function of the Council of Europe is no longer the conscience of Europe, but rather a school of democracy (Klebes 1997: 548–549).

The preamble to the European Convention on Human Rights (ECHR) begins with the following words: "Considering the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on 10 December 1948; Considering that this Declaration aims at securing the universal and effective recognition and observance of the Rights therein declared."[8] After that, the common heritage would be stated as follows: "Being resolved, as the Governments of European countries which are like-minded and have a common heritage of political traditions, ideals, freedom and the rule of law to take the first steps for the collective enforcement of certain of the Rights stated in the Universal Declaration."

In other words, the ECHR identifies itself as the first stage for the implementation of the Universal Declaration of Human Rights (UDHR). In addition, there should be no conflict or competitive relation between those two international documents on human rights. On the contrary, the implementation of the ECHR should be within the framework of the UDHR, under its structure European values are managed and realized regionally. The universality of human rights is not questioned in its regional implementation, even when the ECHR contains only seventeen human rights items from twenty-five to be found in the UDHR.[9]

The Universality of Human Rights in the UDHR

The word "universal" in the UDHR was originally used to express the meaning of a drafted project, an "international bill of human rights," for the setting of a common standard of human rights. The guiding principle of the draft, suggested by the Commission on Human Rights, is that "the bill should be acceptable to all members of the United Nations and that it should be short, simple, easy to understand and expressive" (Möller 1999: 23). Therefore, originally, the word "universal" proposed that the UDHR must be supported and accepted by all members of the UN (Samnøy 1999: 13), and "designed to be universally applicable" (Glendon 2001: 146).

Peng-chun Chang, a Chinese representative of the KMT government,[10] and one of the crucial figures of the drafting committee, regarding an uncompromised debate about the origin of human rights, addressed the fact that "his own country . . . comprised a large proportion of humanity, and its people had ideals and traditions

different from those of the Christian West. Chinese ideals included good manners, decorum, propriety, and consideration for others. Yet he, as the Chinese representative on the Human Rights Commission, had refrained from proposing those ideals for inclusion in the Declaration. He hoped his colleagues would show similar consideration" (Glendon 2001: 146). Because the UDHR should be universally applicable, easily intelligible to all people, the controversial issues should be avoided. Mrs. Roosevelt revealed her impression about Chang: "Dr. Chang was a pluralist and held . . . on the proposition that there is more than one kind of ultimate reality. The Declaration, he said, should reflect more than simply Western ideas . . . " (Glendon 2001: 47). According to the discussion of Article 1 of the UDHR, revised by René Cassin,[11] "All men are brothers. Being endowed with reason, members of one family . . . " Chang suggested that "besides naming 'reason' as an essential human attribute, the article ought to include another concept. What he had in mind, he said, was a Chinese word that in literal translation meant 'two-man mindedness,' but which might be expressed in English as 'sympathy' or 'consciousness of one's fellow men.' The word was ren (仁), a composite of the characters for 'men' (人) and 'two' (二)" (Glendon 2001: 67). Chang's suggestion was not accepted directly; however, the words "and conscience" were added after "reason." And not only the individual, but also the normative relationships of individuals, through the expression of the "brotherhood," were adopted as the grounding principle of the following articles of the UDHR.

In other words, the universality of the UDHR excludes neither the cultural pluralistic nor the local regional approaches. Quite the opposite, it is intended and very much required that the local and domestic cultural traditions should be encouraged to identify their own human rights issues and make the collective efforts regionally to ensure that the monitoring mechanism of human rights is established. Based on past experiences of the atrocities of state violence, showing that the domestic laws and their implementation could be used as a power of destruction under a totalitarian regime, the responsible governments should take actions to review those laws and its implementations, identifying the grounds of human rights violations and discrimination, and taking measures against them. In addition, it is extremely important to make the UDHR locally intelligible and available—to people in all fields and at all levels. Human rights education, interwoven with local interpretations and the cultural justification of human rights, is crucial for a successful building of human rights culture and civil society.

"Asian Values" and the Monitoring Mechanism for Human Rights in Asia

Indeed, in the 1990s, the terms "Asian Way" and "Asian values" demonstrated that Asian societies have their own values; referring to the teaching of Confucianism, it was hoped that the local application and justification of human rights could be established. When Lee Kuan Yew, the former prime minister of Singapore, argued for "Asian values" in an interview, "...that the individual exists in the context of his family....The family is part of the extended family, and then friends and the wider society. The ruler or the government does not try to provide for a person what the family best provides,"[12] he was criticizing so-called American individualism. Yet for the UDHR it was nothing new that the value of family deserved protection. Otherwise, when he emphasized that, instead of the belief in the democratic principle, it was "the belief in thrift, hard work, filial piety and loyalty in the extended family, and, most of all, respect for scholarship and learning" crucial for Asian peoples, we wondered whether his talk was still relevant to human rights.

Lee's criticism of individualism and his advocacy of "Asian values" could be seen as a critical understanding of Western cultures, revisiting its failure and trying to provide a new foundation for a united Asia—if only he and the other Asian leaders would have opened the discussion for the interpretation and the justification of human rights, based on the cultural pluralistic approaches in Asia. Indeed, it could have created an opportunity for Asian societies to raise the following questions: Why shall we not ensure the person, who is bonded with her family, believing in thrift, hard work, et cetera, to enjoy freedoms of expression, freedoms of politic participation and so on, showing that the pluralistic approaches could work successfully also, at least no less than their monotheistic competitors? Why do the peoples of Asia deserve not a "Council of Asia" for maintaining those "Asian values," not to be threatened by the "nice" and "kind" governments, in case that the latter are on the way to militarism and totalitarianism, before it is too late? Why do the governments in Asia not need a monitoring system for human rights to ensure that the basic freedoms of peoples are not violated?

In the context of preparations for the World Conference on Human rights, from 29 March to 2 April 1993, the ministers and representatives of Asian states met in Bangkok and were supposed to make a common statement for human rights. The resulting document, the Bangkok Declaration of 1993, was especially surprising to the Asian

civil societies, because the crucial point of the document had nothing to do with defending people's freedoms from oppression and exploitation. Instead, the Bangkok Declaration highlighted "the principles of respect for national sovereignty and territorial integrity as well as non-interference in the internal affairs of States, and the non-use of human rights as an instrument of political pressure" (Art. 5). The words "sovereignty" and "interference" have been notorious over the past fifty years, used by some Asian states as an excuse for no improvement in human rights. Those two words mentioned once every so often by a Soviet representative in the drafting processes of the UDHR, that René Cassin made the following remarkable response: "...I must state my thoughts very frankly. The right of interference is here; it is here in the [UN] Charter...Why? Because we do not want a repetition of what happened in 1933, where Germany began to massacre its own nationals, and everybody...bowed, saying 'Thou art sovereign and master in thine own house' "(Glendon 2001: 60).

Forty-five years after the UDHR was accepted and recognized internationally, these two words were repeated in the 1993 Bangkok Declaration to reject the concept of human rights in general. The meaning of the UDHR is explained in its universal applicability that the domestic violations of human rights threaten wars and armed conflicts of the world. World War II taught us a severe lesson: the violation of human rights is a key reason for political and social struggles seeking to reestablish justice and social order. When a government extends its dominant political power to include the arbitrary punishment of citizens, links up unaccountable use of power, it would produce the regional and the world instability consequently through its ruling potential use of armed force by the government to maintain its ruling legitimacy. That is why Article 52 of the UN Charter encourages the regional member states to establish a regional international organization, corresponding to the mandates and principles of the UN Charter. For the same reason, the Council of Europe was established and validated to act as the conscience and community of European values.

The debates on "Asian values" engendered a series of debates about the universality of human rights whether economic and social rights are priori to civil and political rights, collective rights priori to individual rights. But the original meaning and function of the UDHR is almost forgotten. And the related questions of the research are limited to the following types: Do Asian cultural traditions entail human rights? Are Asian cultural traditions compatible with human rights? Those questions, actually irrelevant to the real struggles for social and political freedoms, propose that human rights are essentially Western and thus alien to

Asian peoples, and thus potentially distracting international attention away from the violation of human rights in the region.

Unfortunately, they were the leading questions in Asian human rights studies, thus obscuring the problems of the systematic human rights violations for most Asian peoples. If the Asian mainstream cultures become alienated from the meaning of human rights in the UDHR, the situation will exacerbate human rights violations. Basil Fernando, the Executive Director of the Asian Human Rights Commission, understood this problem when he said: "No one loves freedom more than those who were once denied it, and this is also true of human rights. . . . To say that human rights are not part of Asian culture contradicts everything I have seen and heard in all parts of Asia. To say that it has not been the tradition in Asia for rulers to respect human rights may in general be true . . ."[13]

We wonder whether the debates on "Asian values," regardless of whether they occur in the East or the West, are still relevant to human rights—if they centered on those questions. Each time, with regard to the concept and conception of human rights, it was Western cultural traditions of thought under consideration, neglecting the important mandates prescribed by the UDHR that every regional cultural group is obliged to bring human rights home legally and culturally. Furthermore, the issue was complicated by discussions concerning the "roots" of human rights in Western history and the history of ideas exclusively.

In the drafting processes of the UDHR, the most serious challenges of the work is to set up an international standard of human rights, which can be accepted by all of the states' members and made applicable at the local level. Therefore, the formulation of the document should be general and abstract, allowing room for local interpretations, on the one hand, short and simple, easy to understand, and expressive, on the other. Article 1 of the UDHR left the question of the origin and the justification of human rights open and unanswered, implying that distinctive cultural traditions may provide the opportunity to answer the question convincingly, according to their unique and special ways. In other words, the universality of human rights presupposed conceptually that the specific explanation and justification of human rights could be done consistently, because, if the denial of those basic freedoms is also the denial of a person's humanity, there should be no problem for them to find their places in the specific human cultures.

Following that, Lee and his Asian colleagues missed the point that the universality of human rights does not rule out cultural distinctions,

for it needs culturally diverse interpretations to render them truly universal. But since they were not preparing to accept the crucial principle of human rights in general by complying with the international standard of human rights, their "Asian values" are not relevant to human rights at all. But that should not blur the importance of local discourses on human rights, to provide explanations about the origin of their idea for human rights and to justify its validity and legitimacy of having been applied, especially in a struggle against oppression and discrimination, based on their culturally diverse needs of human rights.

Mainstream discourses on human rights throughout the world still tend to deal with the concept of human rights as though it originated in the European tradition exclusively, without reflecting on what the universality of human rights actually means. In Asia, human rights are conceived of as a cultural product, imported from Europe through colonialism and the Opium War. That is why Asian human rights discourses are limited by the discussion as to whether Asian traditions contain human rights. Asian human rights discourses are constructed in a vicious circle: the alienated understanding of human rights impeded the Asian discourse of human rights, and vice versa, so that the underrepresented human rights discourses strengthened the alienation of the understanding of human rights. Only some writers on human rights have expressed doubts about the thesis itself and asked the following question: What do we actually mean when we say that human rights are Western?

The question about the origin of human rights is in itself ambiguous. Sometimes, its history and development was at issue; other times, it was its interpretation and justification. Occasionally, human rights were justified through the argument of its historical development. The word "human rights" sometimes was used to refer to its term, other times, to a conception of human rights, or to the concept itself. What exactly have some scholars meant by their insistence on the Western origins of human rights? Are they referring to the formulation of the term, its conception, or the concept of human rights? And does "originated" mean historically or conceptually? For the purpose of this chapter, we will discuss only the thesis that the concept of human rights originated historically in the West.

The Problem of Historicism and the "Roots" of Human Rights

First of all, we have to clarify that the concept of human rights we have today has a different meaning compared with its earlier version,

especially after 1948, when the international standard of human rights was formulated. Tore Lindholm, who has investigated the drafting process of Article 1 of the UDHR, concluded "that Article 1 of the UDHR is a significant innovation, and a much needed improvement, compared to classical predecessor texts in Western tradition; that its practical significance may be considerable; and that its normative validity, as a moral and political doctrine at the basis of universal human rights, should be beyond reasonable dispute" (1999: 41). This conclusion is based on a comparison of Article 1 with its different variants in Western pioneering documents about the origin of rights, for example, in the Virginia Declaration (1776), the Declaration of Independence of the United States (1776), and the French Declaration of the Rights of Man and of the Citizen (1789). The rejection of the ultimate justifications for human rights, by recourse to God, nature, reason, Ten (天) or others, as "optional grounds for accepting universal human rights but as mandatory principles of human rights to embraced by all" (Lindholm 1999: 68), provides Article 1 of the UDHR with "a politically more realistic mode of rights justification than do its classical predecessor" (s.a.). In this regard, the meaning of universality is different from the past one, as it was usually referred to in the Judeo-Christian tradition.

Therefore, if we cannot find the same meaning of universality in the earlier documents or thinking, it is only because the UDHR was set up by and for people from different continents and territories. Its universal applicability was arrived at through compromises and generalities. If we use today's concept of human rights as the standard for determining that either this or that tradition lacks a concept of human rights, however, it would be a major error in judgment—based ultimately on the misuse of hindsight. For example, it was simply wrong to judge that Confucianism had no concept of universality in the UDHR, as we have.

Second, the thesis that the concept of human rights has its origins in the West has usually been grounded by certain kinds of "tracing back" to European history, not arbitrarily, but very selectively, regardless of the complicities of historical moments and realities. Why the selected fragments correspond with the thinking and the idea of human rights, or to what extent they are related to our understanding of human rights, are rarely reflected upon. Therefore, it is very misleading to say the "roots" of human rights can be found in European history, suggesting that the "seed" of human rights was grounded in European soil, gradually growing into something, a tree, for example. This metaphorical notion of history suggested that we could have a

linear overview of historic development, as if we "know" the essence or the absoluteness of history, which implied all possibilities of its real development.

Many problems can then be identified: (1) No falsification of this essence is possible, because all possible developments are considered a part of this well-united essence, guaranteed at every stage of its development. (2) No external observation of the development would be possible, because that would state the essence in question and make it relative to other systems. If we take Eide and Alfredsson's article as an example,[14] we would see that a construed series of historical developments was seen as "phases" of the historical development from which the concept of human rights evolved. The elaboration of ideas and the events such as "the dignity of the individual," Roman law, Machiavelli's theory of the legitimate systems of governance, the theory of natural rights, and others are organic parts of the whole. And their relationships with each other are constituted by "the essence of human rights." If someone questions the essence itself, why history unfolds in that particular way, the organic parts would be referred to, and vice versa. The above text by Eide and Alfredsson, however, is formulated with a great concern to avoid evoking the impression that other non-Western cultures lack the concept of human rights, and limited their concern within the European context. Nevertheless, it is still problematic and misleading to refer to the "roots" of human rights existing in European history, suggesting that something was already there and simply waiting to be found.

As Bielefeldt rightly explains, the "root" thesis implies that the modern insights of human rights is to put them back into history and interpret them in just the way prescribed by modern insights. Kaviarsj's "teleological metaphor" identifies the problem: "While the idea of subjects as bearers of rights existed in a sketchy fashion in premodern history of Europe, these ideas were developed by a specific historical trajectory to produce the modern conception of a civil society and civic rights. Indeed, one danger of reading this too deep into the European past is that this encourages essentialist thinking. Achievement of a civil society then gets associated with a mysterious and indefinable feature of European culture or, "Western spirit," and proves before the debate has begun that it is beyond the cultural means of other societies to create similar institution" (Bielefeldt 1998: 121). Interpreting history in that way is to risk slipping into historicism, blurring the distinction between fact and ideal, providing no actual explanation of history, because the truth of what is set out to

be proved has already been presupposed. No further discussion is possible.

Bielefeldt argues that human rights are not natural components of European culture. The legitimacy of human rights was first justified in modern times. For a long time, church leaders and European intellectuals expressed their suspicions about human rights—before they began to consider them. In Europe, it took a long time to learn how human rights can be realized in the political system so as to protect individuals from oppression (2000: 94–100). And the realization of human rights in European countries is still an ongoing learning process (Bielefeldt 1998: 124–129).

In European history, before the 1949 establishment of the Council of Europe, the notion of human rights was still rather alien in the actual political climate. Indeed, sexism, racism, nationalism, totalitarianism, colonialism, Nazism, and dictatorship in European societies were more influential than the idea of human rights, even attracting a larger audience. The assertion that the idea of human rights was the central element of the development of the European cultural tradition is not true. Eide and Alfredsson made the following remark: "European settlers and their descendants abroad very often did not extend their concern for the dignity of the individual to the members of the peoples and the peoples themselves whom they met in the territories they colonized. Racial discrimination, marginalization followed in the footsteps of many of European settlers" (1993: 9). Svensson also noticed that "Totalitarianism and the denial of human rights is unfortunately as much a part of the West, both in theory and in practice, as are democracy and the respect for human rights" (2002: 21). Can we thus conclude that European culture is the "root" of sexism, colonialism, totalitarianism, and so on, regardless of the similar practices in other cultural traditions?

Nevertheless, the "roots" explanation is related to the "authorship" of human rights. If it is not used either to exclude the other or to dominate others, suggesting that the "roots" are the only legitimate historical explanation of human rights, then it would be wonderful to know that every culture in the world has a similar empathy for people once oppressed and discriminated, and their resistance against abuses is legitimized by the international standard of human rights. For Asian peoples, it is very important to know that human rights are not the natural "gifts of the West" (Baxi 2002: vi), and to realize that "the originary authors of human rights are people in struggle and communities of resistance" (s.a.).

Institutionalized Human Rights in Asia and Cultural Justifications—Concluding Remarks

Today, when the "root" or the "origin" of human rights is questioned in the classroom of an Asian state, what sort of response does it elicit? Which one is crucial to the answer: political thinking in Western history and the local history of resistance against suppression, or the drafting history of the UDHR? Or should we stop asking the "root" and "origin" question?

Regarding the draft idea of the UDHR, Asian states are obliged to explain to Asian citizens why the human rights stated in the declaration are significant to her or to him. Following that, the explanations must be diverse and multiple, taking into consideration cultural and social diversities. Those diversities were supposed to profoundly enrich the understanding of human rights, to extend "the morally binding force on everyone" (Glendon 2002: 161).[15] In this regard, variant and particular cultural justifications of human rights are encouraged as a local basis of their enforcement. Unfortunately, the cultural and social diversities between East and West were used by some of the Asian states in 1993 as excuses for not complying with the international standard of human rights, regardless of the alleged violations of human rights in all respects.

After 1948, European states were trying to institutionalize the democratic and human rights values, which were claimed to be their "traditional common legacies." Although the Western reconstruction of their human rights history is excessively dominant in global human rights discourses, we have to acknowledge that the member states of the Council of Europe were the ones to establish a feasible monitoring mechanism for human rights. If the question about the "root" and the "origin" of human rights served as a part of their implementation, bringing the international standards of human rights home, the problem of the historicism or the essentialism could be avoided.

The rise of the debate on "Asian values" was, on the one hand, a consequence of the misunderstood authorship discourse of human rights, and on the other, proposed by some governments in Asia, in order to shirk their duty to respect human rights. If the debates would focus more on the struggle for freedom and justice and the responding cultural tradition of resistances among Asian peoples, human rights discourses in this region would be promoted. And we are all equally responsible—peoples of Asia and of the rest of the world—to make more effort to institutionalize human rights.

Finally, do Asian people have their values for human rights? Of course they do! Cheng Nan-jung's struggle for 100 percent freedom of expression in Taiwan as well as the thousands of women and men who have risked their lives for freedom show us how meaningful political, social, and economic freedoms are to them. For identifying situations as political, social, and economic acts of repression, their cultural backgrounds and traditions of thought must have provided them with reasons and justifications for dealing with them. How those reasons and justifications are used and established, reflecting violations and acts of resistance, to defend human rights values and how those values can be transferred to the regional common binding laws, to make the governments in Asia accountable for human rights, are two urgent agendas within Asian human rights discourses.

Notes

* The title of this chapter has been formulated to avoid the impression that "Asian values" are being defended. Many thanks are due to the friends and colleagues who helped the author bring this chapter into its present form. They generously shared their passionate commitment (*Begeisterungen*) to human rights. They are Heiner Klebes, Heiner Bilefeldt, Ron-Guey Chu, Edmund Ryden, Tania Peitzker, Leena Avonius, Damien Kingsbury, Reetta Toivanen, the participants of the conference " 'Asian Values' versus 'Universal Human Rights' Revisited," as well as Wei-cheng Kung. Of course, the author takes full responsibility for the weaknesses or flaws in this chapter.

1. Many literatures use the term "Asian values" to represent the issue of "cultural relativism," "cultural particularity," and "cultural approaches to human rights." S. Wm. Theodore de Bary (1998): *Asian Values and Human Rights*, Cambridge, MA, and London: Harvard University Press; Peter Van Ness, ed. (1999): *Debating Human Rights*, London and New York: Routledge; Michael Jacobsen and Ole Bruun, eds. (2000): *Human Rights and Asian Values*, Richmond: Gurzon Press; Klaus F. Geiger und Manfred Kieserling Hrsg (2001): *Asiatische Werte*, Muenster: Westfaelisches Dampfboot; Martha Meijer, ed. (2001): *Dealing with Human Rights*, Utrecht: HOM (The Netherlands Humanist Committee on Human Rights). Stephen C. Angle (2002): *Human Rights and Chinese Thought*, Cambridge: Cambridge University Press.
2. The KMT was led by Chian Kai-shed, who shifted his military government to Taiwan in 1949, after his army was defeated by Mao Tse-tung's guerrilla force in China. The regime of the KMT government was transferred peacefully to the regime of Democratic Progressive Party (DPP) government after 2000.

3. The advocators of "Asian values" are the ex–prime minister of Singapore, Lee Kuan Yew, the Indonesian president, Suharto, and the former prime minister of Malaysia, Mahathir Mohammad.
4. The candidates Kühnhardt had selected were Islamic, Indian, Japanese, Chinese, and African cultures (Kühnhardt 1991: 133–228).
5. http://assembly.coe.int/Main.asp?link=/AboutUs/APCE_history.html (Accessed 1 May 2007).
6. http://www.hri.org/docs/ECHR50.html#C.Preamble (Accessed 1 May 2007).
7. The Consultative Assembly passed a resolution in 1945 to change its name to "Parliamentary Assembly." Until 1994, the Committee of Ministers refused to accept the resolution. Then, for over twenty years there was the peculiar situation whereby the president of the "Parliamentary Assembly" wrote letters to the Committee of Ministers, but the Committee of Ministers answered to the president of the "Consultative Assembly" (Klebes 1996: 18).
8. http://www.hri.org/docs/ECHR50.html#C.Preamble (Accessed 1 May 2007).
9. Professor von Senger states that the European Convention on Human Rights is not a universal understanding, because 30% of the substantial rights items in the UDHR are not formulated in the European Convention on Human Rights. The preamble to the European Convention on Human Rights explains very clearly that it accepts the universality of all human rights stated in UDHR, but it takes "the first steps for the collective enforcement of certain of the Rights stated in the Universal Declaration" (Von Senger 1998: 95).
10. The Chian Kai-shek government built in Taiwan represented the State of the Republic of China, which was a initiative member in the UN, but retreated from the UN in 1971, after the U.S. government had recognized the People's Republic of China as the sovereign regime of China. After a long democratic struggle by activists against the martial law (1949–1987) in Taiwan, the regime of KMT is changed to the DPP, which won the president election in 2000.
11. Cassin was the only European representative in the drafting committee of the UDHR 1948. As both a jurist and a victim of the Holocaust, he contributed his talent for systematically structuring the working paper of the drafting UDHR, which was prepared by John Humphrey, a Canadian lawyer who served in the secretariat of the ECOSOC. Cassin was president (1965–1968) of the European Court of Human Rights at Strasbourg.
12. http://www.fareedzakaria.com/articles/other/culture.html (Accessed 29 March 2007).
13. Basil Fernando (2001): A Peoples Charter: Precursor to a Regional Charter agreed on by Governments, http://material.ahrchk.net/charter/mainfile.php/chinese_launch/49/

14. "In European history, the roots may be traced back into antiquity, but it was during the Renaissance that the emphasis was first placed on the dignity of the individual. Merging with the rediscovery and elaboration of Roman law that has taken place at the earliest universities during the late medieval period and with intellectual controversies over legitimate systems of governance sparked off by authors like Machiavelli, the newfound emphasis on the dignity of the individual animated the discussion of natural rights in the seventeenth century. It was further conceptualized within the framework of the theory of social contract. Authors like Johannes Althusius, John Locke, Jean-Jacques Rousseau, Thomas Paine, and Thomas Jefferson provided significant contributions to the debate about the relationship between the individual and the authority. It found expressions in documents like the English Bill of Rights in 1689, the American Declaration of Independence in 1776, and the French Declaration on the Rights on Man and the Citizen" (Eide and Alfredsson 1993: 8).
15. Cassin was in charge of the final stylistic form of the document. The title was changed to the "Universal Declaration of Human Rights" from the "International Declaration of Human Rights." Cassin wrote later that the change "meant that the Declaration was morally binding on everyone, not only on the government that voted for its adoption" (Glendon 2002: 161). Glendon explained that the Universal Declaration "was addressed to all humanity and founded on a unified conception of the human being" (s.a.).

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Chapter 3

Human Rights from the Left: The Early Chinese Democracy Movement

Lauri Paltemaa

This chapter examines the potential that lies in the Asian attempts to adapt human rights to indigenous value systems and worldviews in the region. This is done through an analysis of the Chinese debate on human rights that took place through the Democracy Wall Movement from 1978 to 1981, exploring how such an indigenous adaptation process could take place under the strict Marxist, or Maoist, intellectual atmosphere that still prevailed in China during this period. The chapter is also a contribution to the discussions of what "Asian values," after all, are.[1] Must "Asian values" be derived from some of the great cultural and religious traditions of the region? Or, can they possibly arise from something more modern, and yet still influential to peoples in (East) Asian societies—in this case—Marxism? As it is argued here, attributing "Asian values" to these traditions is not enough in modern Asian societies. Values are not fixed and perpetual; new ones are being acquired, remade, and recycled as we speak.

Although the intellectual roots of the "Asian values" debate can be traced back to Singapore and Malaysia in the late 1970s (Barr 2002: Chapter 3), concerning China the debate only began in earnest in the early 1990s with the Chinese White Paper on Human Rights in 1991, as well as the Bangkok Declaration in 1993, which many commentators saw as advocating relativist views on human rights. This "first round" of the debate that came to a close in the late 1990s was led by politicians of the region and boosted by its rapid economic growth. It could be further divided into the debates on the developmental benefits of authoritarianism based on the claim that "Asian values"

supported the political status quo that was behind the "economic miracles" in the region, as well as into a more theoretical debate on the compatibility of Western human rights notions with the local great traditions (Peerenboom 2005).[2]

However, the democratization of the Republic of China (Taiwan), South Korea, and Indonesia along with the Asian financial crisis that hit the region in 1997 seemed to prove the "Asian values" advocates wrong, leading some writers to declare the debate over (Kessler 1999; Thompson 2004); but their pronouncements appear to have been made in haste. Human rights have stayed on the international agenda of many NGOs and governments; Asian economies have recovered, and many authoritarian regimes have still stayed in power in the region. According to Randall Peerenboom (2005), there has now evolved a second round in the debate under a more sophisticated title of "values in Asia," with a greater focus on the possibility of having Asian variations of human rights, rather than their total compatibility or incompatibility with region's regimes and traditions.

Although most writers readily acknowledge the multitude of values in Asia (Dallmayr 2002; Peerenboom 2005), especially when they consider China, many have tended to equate "Asian values" with Confucianism. This is a view espoused by some well-known scholars such as Wm. Theodore de Bary (1998) and Joseph Chan (1999) and followed by other writers taking respective sides of the argument by seeing Confucianism either as "human rights friendly" (e.g., Williams 2006) or unfriendly (e.g., Twiss 1998; Weatherley 1999). As far as this debate is concerned, Marxism has been largely dismissed, either by going back some 2000 years to the Confucian Classics and simply bypassing the past half century of the history of the People's Republic of China, or arguing that Marxism is increasingly irrelevant in today's China, and therefore does not deserve to be studied anymore (Williams 2006: 38).[3] However, as we see it, Marxism continues to be an integral part of the history of Chinese human rights argumentation, and even today social and political thinking from the "left" is not dead in China (see, e.g., Hook 2007).

This chapter therefore points out that, historically speaking, there has been a third line, a Marxist one, in the human rights thinking in Mainland China that has nevertheless not placed itself in opposition to liberal human rights notions. Through studying this prohuman rights Marxist argumentation during the Democracy Wall Movement we may find interesting parallels with the contemporary debate—parallels that may lead us to fruitful ways of moving forward in it.[4] The chapter also serves to remind us that the compatibility of human

rights with Chinese society has not always been framed through the great old traditions, not even by the Chinese themselves, and that we therefore need a more comprehensive, localized, and nuanced view on the human rights debates in Asia in order to grasp the meaning of the phenomenon.[5]

The Democracy Wall Movement

This chapter is about the Chinese Democracy Wall Movement (*Minzhu qiang yundong*)[6], which is regarded as the beginning of the contemporary Chinese Democracy Movement. When it was taking place, the movement attracted considerable attention from the West for several reasons. In Europe the Helsinki Declaration[7] had raised human rights issues to the agenda of international politics in 1975, lending added momentum to many East European dissident movements (Gaddis 2005: 181–191), and in the United States President Carter's administration had just launched its own human rights policy. With this newly acquired interest in human rights in international politics, the Democracy Wall Movement was regarded as an indication that the People's Republic of China was also following the example of many East European countries. In the cold war atmosphere such indications of internal problems in the communist bloc were studied carefully in the West. Consequently, the interest in the themes of democracy and human rights also came to dominate Western research on the movement.

This research has had its blind spots, however, most notably a lack of interest in the relation between Marxism and human rights arguments in the movement. At the time, the Democracy Wall Movement could be simply treated as a movement whereby the Chinese espoused the human rights ideals of the Enlightenment and the democratic activists were therefore regarded as human rights dissidents. Typically, such analysis did not even try to explain how the activists tried to reconcile such concepts as universal human rights and representative democracy with Marxist social analysis. The result was bafflement over the role of Marxism in the movement's argumentation, combined with an inability to see the movement as it was for its participants.[8]

Later research has usually treated the movement's argumentation as a part in longer debates on democracy in China (Nathan 1985; Goldman 2002; Goodman 1981; Chen Ruoxi 1982; Christiansen et al. 1980; Munro 1984b; Black and Munro 1993). While these studies have almost invariably noted the influence of Marxism in the movement's argumentation, they have generally had only a cursory

interest in it, as if democracy and human rights could or should somehow be argued separately from Marxism in the China of the late 1970s (Burns 1983: 35–53; Brodsgaard 1981: 768; Liu Sheng-chi 1981: 54; Harrison 1983: 872–873; Goldman 2002: 170; Munro 1984b: 73–74; Mab Huang and Seymour 1980: 26).[9] In yet later studies, researchers have moved away somewhat from framing the questions on Chinese human rights based on liberal tradition only and moving toward regarding Chinese traditions, and also Marxism, as important in its own right (Svensson 2002). Following this line of research, this chapter takes Marxism as its starting point and analyzes how human rights were adapted to it in the Democracy Wall Movement activists' writings.

Human Rights Arguments in the Democracy Wall Movement

During its course from 1978 to 1981, the Democracy Wall Movement involved a wide variety of activist groups with their political journals advocating different agendas and arguments for socialist democracy. As the mainstream of the movement saw it, socialist democracy would enable China to rid herself of the backward totalitarian political superstructure and progress toward a political system where the whole body politics and economy would be run and managed by workers and peasants, the people. Indeed, the majority of the Democracy Movement activists saw that they were bringing their experience-based intellectual contributions to modern Marxism by their arguments about such socialist democracy. This sentiment was summarized by a leading activist, Liu Qing (1983: 171), who wrote (while in the labor camp) that "[t]he task of the young people of this generation is not to forsake socialism, but to perfect socialism and struggle against those non-socialist [people who] force their will on the society."

These "non-socialist people" were the party's remaining Leftist (Maoist) forces and officials whom the activists derided as "bureaucrats." The argument, most of which had been taken directly from Maoist radicalism during the Cultural Revolution, ran as follows: these bureaucrats had wormed their way into the party and turned it into an instrument of their personal power and privilege during the reign of Mao Zedong. Most of the Democracy Wall activists regarded the establishment of democratic institutions as the necessary precondition for bringing the conflict between this "new bureaucratic class" and the people to an end. However, while agreeing on issues in the greater scheme of things, the activists were divided over the actual

nature of the future democratic institutions. Here, three categories of arguments could be discerned on democratic reforms: classical, eclectic, and non- and anti-Marxist.

The difference between these lines was most evident in the sources activists chose to use. Those delivering classical Marxist arguments turned to Marxist classics, while those using eclectic arguments turned to Western examples. Non- and anti-Marxists discarded Marxism altogether, or regarded it as just one possible social theory. All in all, the mainstream of the movement remained Marxist, both classical and eclectic, in its argumentation and the more radical non- and anti-Marxist arguments remained only a minority wing in the movement—although they did attract a great deal of foreign attention. However, it was mostly the eclectic writers who focused on human rights in the Democracy Wall Movement from the Marxist point of view, and the discussion below is therefore mainly concerned with their arguments.

In the China of the late 1970s, taking any liberal ideas as a source of inspiration was problematic, to say the least. This issue had been even further exacerbated by the Leftist xenophobia and isolationism that predominated during the Cultural Revolution. It became even more dangerous for the activists when they advocated accepting features from bourgeois democracy that were generally regarded as the way of the class enemy. Even if the reformist party faction under Deng Xiaoping was proposing learning management techniques in industry and technology from the West, it remained hostile to borrowing in the realm of politics. Not surprisingly, the Democracy Movement activists were at pains to deny that they were advocating "capitalist class democracy," while at the same time advocating learning from it. An activist named Bi Dan (1979) gave a good example of this kind of rhetoric when he proclaimed that "[w]e do not want the sham democracy of capitalism. We hate bitterly the capitalist civilisation and universal love. But we disdain even more the system of feudal fascism that has caused so much misery to the Chinese people and must be opposed even more than capitalism" (ibid.: 38).[10]

Capitalism was naturally regarded as the number one enemy of the socialist system and the Chinese had been taught to think that capitalist democracy was only a sham and that human rights, as an element of this deception, merely served to protect the capitalist class interests.[11] This notion was also used categorically to denounce human rights in official press at the time of the Democracy Wall Movement (see, e.g., *Renmin ribao* 21.1.1980). One of the worst accusations the Democracy Movement's adversaries could hurl at the

movement was therefore to call them advocates of "capitalist class democracy," "bourgeois liberalization," or "individualists" and "liberalists." It was against this backdrop that the Democracy Movement activists, resorting to eclectic arguments, had to find ways to justify their calls for learning from the West.

Adapting Human Rights to Socialism

The Democracy Movement activists framed their movement's collective identity as the result of political enlightenment brought about by the Cultural Revolution. For many, the ten years had taught them how to use Marxism independently for criticizing the Party Left. Based on this enlightenment the mainstream of the movement demanded the return to the scientific origins of Marxism and reevaluation of the Leftist doctrine of the continuous class struggle and the Stalinist political system. This involved defending "revisionism" as a theoretically welcome sign that Marxism could be reinvigorated (e.g., Zhou Xun 1979). As an eclectic writer named Hua Chuan (1979a) agued in *Kexue minzhu fazhi* (Science, Democracy and Legality), Marxism had been the revisionism of Hegelism at the time it was created; therefore Hua declared: "Revisionism means new life for old theories. [So] Why should Marxists regard 'revisionist' Marxism so heinous and something that needs to be opposed and guarded against?" (ibid.: 3).[12]

Arguing for revisionism was an argument for human rights, because it opened a way to incorporate new ideas into Marxism. What is more, many kinds of instrumental arguments were used to justify borrowing from the West. The proponents of studying the example of the West could, for instance, find statements from the Marxist-Leninist classics supporting their views. As activists Chang Chun's and Ming Zhu argued, Lenin had said that the capitalist approach to factory management should be studied, so why not also study the capitalist form of government—after all, it had scientific and rational features in it (1979: 56–57). Some writers also compared learning from the West to medical science, where a combination of Western and Chinese drugs was the most effective (Jin Cheng 1979: 232).

Satire was yet another way to endorse learning from the West. A writer for the Democracy Wall Movement journal, for example, described how a prize bull imported for breeding better stock for the Chinese had to be castrated because the officials had decided that its reproductive organs were potentially offensive to Chinese watchers. The bull's most valued part was thus deemed an evil foreign influence

and promptly done away with. Of course, the point was that foreign things tended to lose their efficacy in the Chinese setting, because the Chinese refused to accept them as they were and therefore also what made them useful (*Qiushi* 3 / 1979: 153).

Human Rights as a Historical Inheritance from Capitalism

After establishing that Marxism was indeed an adaptive theory, many activists connected this insight with human rights by recourse to a historical argument. Its basic facet was to separate human rights from the bourgeoisie and capitalism by arguing that human rights were historically progressive achievements of the whole of humankind, not belonging to any particular class as such. Therefore, "history" assumed center stage as the source of justification of human rights, and they, just like the Democracy Wall Movement, were thus tied closely to the grand narrative of the unfolding Chinese revolution. Consequently, the argument for the need to study human rights was largely based on the perceived historical relationship between capitalist and socialist societies. According to this line of reasoning, as the latter had developed from the former, it had to incorporate its progressive features and develop them further.

One of the most ardent groups advocating such learning from the West was Zhongguo renquan, whose name, Chinese Human Rights, already indicated such an inclination. The ninth point of the *Zhongguo renquan's* Declaration of Chinese Human Rights (1979: 189) stated:

> Citizens want to realise Marxism, socialism is a theory of societies with advanced freedom for everybody, and socialist countries' forms of government are inheritors of the forms of capitalist traditions. Socialist democracy and freedoms cannot get separated from the capitalist material civilisation, this is the basic idea in classical theory and the important lesson the Chinese have learned from the last 20 years or so. We do not want to borrow only from Western technology, we also want to borrow from Western traditions, democracy and civilisation…

Zhongguo renquan therefore saw Western ideas as complementing Chinese socialism which, as they pointed out, was also originally a Western idea in itself.

Other activists (Guizhou sheguo 1979) offered a similar historical Marxist defense of human rights in October 1979, when they discussed the various ways of refuting human rights by the movement's adversaries. According to them, the usual way of refuting human

rights was to say that they were a "bourgeois class slogan," or an "obsolete" or "declining" thing. The writers agreed that it was true that human rights were originally bourgeois, but so were socialism and class struggle in their origins—as Engels had already pointed out. The proletarian revolution should therefore not renounce all the progress made in history during capitalism. Human rights had not merely been contrived and fomented by an evil-minded minority, rather they were "[a] reflection of present social relations in the minds of the Chinese, a result of imperfect legal system, uncompleted democracy, feudal cruelty, bureaucracy on rampage, and mark a denunciation of the feudal fascist system created by Lin Biao and the Gang of Four" (ibid.: 44–45).

As the writers saw it, the concept of human rights had its class limits, containing things that had to be removed from a proletarian socialist democracy, to be sure, but these were questions of *renshi wenti* (political consciousness), which could be solved through guidance. For that reason, they did not advocate bourgeois human rights, but neither did they want the opposite. It was not a coincidence that the liberation of the proletariat had become the rallying slogan in capitalism, and that now human rights had done the same in socialism. There had to be a reason why all socialist countries were suffering from similar problems and human rights were an important issue in all of them. The reasons for this should be studied, as well as the historical background of human rights (ibid.: 44–45).

According to the writers, another way to refute human rights was to claim that they were not God-given, but products of history, the meaning of which people failed to understand. The writers challenged these critics, asking if they themselves grasped the meaning of human rights. As they argued, atheist Marxists could first of all not accept the concept of "heaven-given" rights, but the European Enlightenment writers had originally only changed "natural" to heaven-given rights in order to increase their value and oppose feudal privileges.[13] However, the point was not in the "heaven-given nature" of human rights, but in their "equal endowment" (ibid.: 45–46).

The writers also asked if human inequality was an innate or later creation. As they saw it, the question had been answered in many confusing ways in the Christian tradition, but Christianity accepted human inequality. According to Marxism, human inequality was the result of social relations, production, and the exchange of goods. This had also been the case with capitalist human rights that had been created to destroy earlier feudal privileges, and Marx's criticism of them had been based on this. The proletariat could be equal only after the

abolition of classes, private property, and capitalist production relations, "but Marxism did not refute the capitalist class notion of equality of all men," argued the writers. Indeed, this was the common point in capitalist and proletarian democracies. The biggest difference had been in Marx's refutation of the capitalist economic system. Therefore, one can say that the proletarian democracy was a higher, more refined, and mature form of democracy. "And we can say Marxism is not against human rights, but against the sham human rights designed to fool the people" (ibid.: 46–47, at 47).

The writers continued that if one did not recognize this, then even the ranks of the proletariat were unequal as inequality started at birth. But what was the difference between "human rights" and "people's democratic rights" then? It was that if the latter did not recognize human equality, they were even lower than rights in capitalist democracy. Should the Chinese recognize the equality of human relations, or inequality based on money and seniority, or the equality of all revolutionary comrades, or that some of them were better than others and could act tyrannically over them? Was there any Marxism left in such a theory of "democracy," asked the writers. Another way to refute human rights was to ask how the people could demand human rights against the Communist Party. Against who else then, asked the writers? What was so hard to understand in a proposition that human rights were needed against the party and the proletariat? The people had to have ways to deal with those leaders who resisted their demands and were afraid of their democratic rights (ibid.: 47–48).

According to the writers, the last way to refute human rights was to claim that China had already established a proletarian class dictatorship and a socialist democratic system. As the writers saw it, already Lin Biao and the Gang of Four had claimed this, but of what use had such slogans been against their abuses? A Chinese proletarian dictatorship was not yet complete, Chinese socialist democracy was incomplete, and one of its shortcomings was the lack of people's democratic rights. This argument against human rights was therefore an expression of extreme Leftists seeking to conceal the real social contradictions. The writers concluded by affirming the argument that human rights were a historical necessity claiming that China was at a historical turning point where those who were insecure about their positions tried to use various measures to impede the progress of human rights, but they could not stop the progress of history that advanced according to its own logic (ibid.: 48–49).

Some writers framed the historical argument for human rights as "making up a missed class." As a worker from Qingdao, named Sun

Feng (1979), argued in a long open letter to Chairman Hua Guofeng and Deng Xiaoping in March 1979, proletarian class democracy should be wider and more complete than capitalist version of democracy. Therefore, the advanced features of capitalist democracy should be included in proletarian democracy, "like middle school courses can include primary school courses." That the former were deeper and higher did not mean that the latter were false. Indeed, "[i]f one has not studied in the primary school, one cannot enter the middle school, and he must [first] study the courses of primary school. A country that has not gone through a complete democratic revolution is not able to realise communism, but it must make up the missed class of democracy, to miss it is not possible!" (ibid.: 106–107).

Combining Natural Rights with Marxism

Arguing for the historical progressive nature of human rights, and therefore the need to study them, was rather easy. However, only a few of the eclectic writers actually delved so deeply into the subject in order to tackle how the problem of the universality of human rights and the particularity of class in Marxism could be overcome. Those few activists who addressed the problem included Hu Ping (penname He Bian), Jiawen, and Hua Shi. All of them affirmed that human rights were based on man's common needs for survival and the pursuit of happiness, that political rights were devised to make this possible in industrial societies, and that these rights should also exist in socialism. Based on this shared understanding, all three writers also discussed the relation between natural rights and man's class nature. The latter was accepted as a real factor influencing human rights, and also affecting the exact nature of political rights, but being of lesser importance when it came to the protection of human rights.

Hua Shi (1979) offered a good example of this kind of argumentation. Hua saw that political and natural rights were not demanded for their own intrinsic value, but based on the human needs they satisfied. Natural rights were the core and basis of political rights. According to Hua, the vanguards of the human rights movement, Locke and Rousseau, early on had named them natural rights referring to the inborn nature of man's needs of existence, reproduction, and aesthetics. They were definitely not bestowed by some great man on the people. Political rights were just a means to achieve "natural rights" through guaranteeing equality, democracy, and freedom. Yet, according to Hua, while natural rights existed over classes and different phases of history, political rights were dependent on them. Based

on the level of productive forces it was possible to choose certain kinds of political rights, which could be quite extensive in industrialized societies (ibid.: 361–362).

As Hua saw it, during the Cultural Revolution Leftist radicalism had distorted the perception of true human nature, and consequently the foundation upon which rights would be based; the notion of true human nature was wrongly replaced with class nature. Although Hua did not want to offer a definite answer to the question of what was human nature, he argued that the Leftist distortion was visible in the arts, where the Cultural Revolution had created the distorted image of a "new man." Hua argued:

> [It was] [a]s if all the desires of a man, all the rich emotions of mankind would belong only to the bourgeois and the proletariat would have parted with its "human" category, and turned into an ideal creature of pure thinking and ideology. . . . Those who respect human nature must respect human rights, those who scorn human nature, must scorn human rights. These three: human nature—natural rights—political rights cannot be separated. All tyrants throughout history have negated human nature and, based on this, denied political rights from the people. All those dictators who want to become "old masters" oppose the notion of "personal freedoms" to the full . . . (Ibid.: 364)

As Hua argued, in China class nature had replaced human nature as the basis of rights. He advocated a return to the normal course of things (ibid.: 365).

Hua Shi's arguments were echoed by another activist named Jiawen (1979); according to him, for many years discussing human rights and human nature had been prohibited, whereas only the theory of man's class nature had been allowed. The "class nature" theory dictated that in a class society there was no human character surpassing man's class nature. What the bourgeoisie loved, the proletariat had to hate and vice versa—as if there could be no common attributes belonging to all men. It followed that demands for human rights had been categorically denied as going beyond the class nature of man. However, people had gradually come to realize that this theory of absolute class nature was wrong. It had been the ideological basis of the despotism of many years. But now the people had fortunately begun to discuss human rights and human nature.

Jiawen saw that the Marxist position regarding the theories on human rights and human nature of the eighteenth century should not be accepted uncritically. Right or wrong, their influence in China was great and one therefore should be able to answer to the Marxist

criticism on human rights theory. Otherwise, all who demanded human rights were unavoidably taken as playing the same old tune of bourgeois human rights (ibid.: 366–367).

Jiawen outlined the problematic points in human rights theory. One question was the relation between human nature and class nature. Jiawen argued that when one went through historical classes, peoples, phases, words, and deeds, one could find out and abstract the general human nature. But it still had many peculiarities and special features in concrete situations. In present societies people also bore the features of their respective class, and class nature could also be abstracted. Although it did not take away anything from general human nature, it was important. But it was still impossible to explain class nature through general human nature. Class nature was included in human nature in general, and class nature was only one concrete form of human nature. One had to acknowledge the dialectical nature of the relationship between the two. This not only influenced human rights and human nature theory, but was also an important precondition in the scientific understanding of them (ibid.: 367–368).

Another problem was relativity and the perpetual nature of human rights. Marx had once said that human nature was the sum of man's social relations. This had informed the rulers' declaration that different classes had a different human nature, thus seeing them as relative, not absolute. This was absurd, as the notion that class nature determined human nature was incorrect. However, human nature had not been the same since Pan Gu had created the Earth. It had developed in different phases, just as a comparison of modern Americans and ancient Eskimos with their different aesthetic tastes demonstrated for Jiawen. Completely denying the development of human nature would be against dialectics that was the objective law in all material things (ibid.: 368–369). Historical materialism consequently also influenced the writer's notion of human rights by making him allow for the development of human nature.

Those eclectic writers who discussed the universality of human rights and the particularity of class therefore shared the same Marxist premises, and faced the same difficulties in their arguments. For them, human rights served the natural needs that every man shared: the pursuit of life and happiness, which justified demands for them. To make the arguments more persuasive, however, they had to be framed within the argumentation about human rights' historical progressive nature and the way human rights had been achieved through popular struggles in history, and how the struggle was still going on under the construction of socialism in China. As these writers argued,

what the capitalist societies had achieved in protection of these natural rights common to all was therefore not to be discarded, but studied and emulated.

However, although these eclectic writers argued strongly against Leftist relativism and the distortion of subsuming all rights under the rubric of class, the writers did not deny that class still had a bearing on political rights. Eclectic writers thus produced a paradox by arguing that political rights were there to protect natural rights, but at the same time implicitly accepting that class could affect an individual's actual political rights. This naturally would make it possible for an individual from the wrong class to lose the protection of their natural rights, too, because under this scheme they might not be entitled to protective political rights in the first place. The eclectic writers were unable to overcome this contradiction, as they could not discard the Marxist notion of rights being the result of class-based politics, which left them in an uncomfortable position. What is more, these writers also neglected to thoroughly consider the question of the content of socialist human (or citizens) rights. This was left to other writers, who, on the other hand, did not reflect on the question of class.

Content of Socialist Human Rights

Apart from making historical arguments on human rights, the other main method of the eclectic writers was to argue for human rights by drawing on their instrumental role in bringing about a socialist future. Political rights were offered as the means to ensure the establishment of a socialist democracy that was the necessary condition for reaching communism. This was related to the peculiar fact that while the Democracy Wall Movement defended its existence as legal and constitutional, it also had to defend these constitutional rights and argue why and how the movement should be allowed to exist and these rights therefore be exercised by the movement's activists.

Freedom of speech was the key right advocated by the journals—after all, it was also in the very heart of the movement's right to exist.[14] Freedom of speech was also connected to other closely related rights, such as the right of information, and the freedom of publication. As an anonymous writer argued in an article entitled Briefly on the People's Democratic Rights (Qiǎn tán rénmínde mínzhǔ quánlì 1979), people's democracy needed two kinds of "the people's rights" (*renminde quanli*): Citizen's rights (*gongminde quanli*) and "the people's democratic rights" (*renminde minzhu quanli*). Citizen's rights contained rights and freedoms of life, reproduction, education,

working, resting, self-creation and self-development, free marriage, occupation, residence, personal safety, and property; whereas the democratic rights contained the rights that ensured that people's opinions had the decisive influence in politics.[15] These were the right of information (or the "right to know the facts" *zhiqing quan*), freedom of speech (or communication), and the right of supervision and management (*du-guan quan*).[16] The last right showed how the scheme was built on the premise of popular supervision over bureaucracy.

In the proposal, democratic rights formed three categories, following the pattern of understanding the situation, reaching correct judgment, and supervising and managing the implementation of decisions. The right of information was defined as "[t]he guarantees that every citizen has the right to know completely and accurately the various important situations in the country; it is the necessary condition on which all citizens can base their reflection and judgment of things" (Qiǎn tán rénmínde mínzhǔ quánlì 1979: 5). Freedom of speech was defined as "The guarantees of personal self education (*ziwo jiaoyu*) and a necessary condition that the great majority will reach correct judgments [of matters]." Third, the right of supervision and management meant "the guarantees that the people can decide on nation's and society's politics" (ibid.: 5).

These rights not only had an aspect of popular empowerment, they also were meant to facilitate the creation of correct awareness and understanding of social situation as a precondition for the proper usage of rights, which fitted well with the self-proclaimed enlightenment role of the Democracy Wall Movement itself. As the writer argued in *Siwu luntan* (April Fifth Forum) with reference to historical justification of democracy, the three categories of rights were needed for "the people to be the creators of history, masters of the country and origin of progress" (ibid.: 6–7). The right of information was crucial for the progressive role of the people in history and keeping them on the right side of the political struggles. Furthermore, the right of open discussion (*yanlun quan*) enabled citizens to reach the correct awareness of things. This was important because only when "[t]he great masses reach a unanimous, correct understanding, the right of supervision and management can be realised, only then can it truly accord with the people's interests" (ibid.: 8).

According to the activist, the past thirty years had shown how entrusting the people's interest in one government and one party had been a mistake. Life had not been like the one in the song "together with the Communist Party, we sprint toward the communist future." Hopes should have been placed on the people instead. "One Party

can change, but the people remain clever about their interests," argued the writer. During peace time, great decisions concerning the country and the people had to be conducted through the masses and their representatives. The legal way to establish and consolidate this was the right to supervise and manage affairs. They included the right to elect and supervise the functionaries on all levels (ibid.: 8).

As such, all the various lists of rights provided by other activists (see e.g., Zhongguo renquan xuanyan—shijiu tiao 1979; Hu Fa 1979) show how the eclectic writers were basing their demands of particular rights to the realities of Chinese society of the late 1970s, which fitted well with their argument that particular human rights (or citizen's rights) would evolve through time although their basis, the common human nature, would remain the same.

Conclusions

The Democracy Wall Movement's human rights debate differed markedly from the "Asian values" debate that would start some ten years later. Many of the differences can be attributed to the cold war and the peculiarities of contemporary Chinese history, which made the actors involved frame such highly ideological matters notably differently. Indeed, the "Asian values" debate became possible only with the collapse of the Soviet Union and the end of the cold war in the early 1990s (Peerenboom 2005: 64–65). Although the collapse of World Communism and the de facto abandonment of socialism also in China have made Marxist human rights a distant vision at best, the Democracy Wall Movement reminds us that there was a human rights debate in China even before the "Asian values" debate, and as shown here, a closer analysis reveals many similarities between the two debates.

In both debates the Western origins and claims of universality of human rights were/are regarded as problematic by indigenous human rights advocates; consequently, they make an effort to find intellectually satisfying ways past this problem through grounding the rights in those beliefs that resonate with their own home audiences, and their own movements. Therefore, we can find in both debates serious attempts to offer "human rights-friendly" readings of the dominant indigenous thoughts in order to justify the introduction and incorporation of human rights in the advocates' societies. A notable difference between the Democracy Wall Movement and today is that during the movement practically no foreign scholars or commentators could participate in the debates. With the opening up of China this has become, for better or for worse, a distinct dimension in the debates.

As for results, although they may not have fully succeeded in their attempts to reconcile Marxism with universal human rights on the level of theory, the Democracy Wall Movement activists could show that even Marxism had a "human rights–friendly" side to it, if one cared (and dared) to interpret it that way. In this, they resembled many contemporary pundits who argue for a human rights–friendly reading of Confucianism or other Asian philosophical/religious traditions. Maybe it is only through this kind of syncretism in situ that human rights can become a part of (East) Asian normal politics in countries where they still are (officially) rejected or restricted. Obviously, this was not the fate of the Democracy Wall Movement's notions of Marxist human rights and socialist democracy, but it need not be the case in other rounds of the debate. When compared to the Democracy Wall Movement debate, the "Asian values" debate can be seen as having taken a step forward in that it has created an arena of international intellectual exchange that may some day benefit both parties—increasing at the same time both Western understanding and acceptance of Asian forms of human rights and Asian peoples' possibilities to enjoy better government.

Notes

1. The simplification of the issues into reified "East" and "West" has been criticized by many authors; see, for example, Peerenboom (2005: 21, 66).
2. Kessler (1999) terms this as a "Great Asian Values Campaign" by Asian autocratic leaders.
3. In Weatherley (1999) the Chinese Communist critique of human rights is analyzed, but not the socialist democratic countercriticism to it. Even Peerenboom (2005: 71), who argues that the "Asian values" debate would have benefited from "broad comparative, empirical, and historical studies of actual cases and events that demonstrate where exactly different countries draw the lines on human rights issues…" (21), largely dismisses Marxism.
4. This chapter is based on the author's PhD thesis (Paltemaa 2005), an analysis of the Democracy Wall Movement drawing on the new social movement approach.
5. For an example of a study where the level of analysis is removed from Confucianism and the international debate to the local level, see Langlois (2001).
6. In this work the author uses the names Democracy Movement and Democracy Wall Movement interchangeably. However, it is useful to note that, historically speaking, the period under study can be said to

have been the Democracy Wall Movement period of 1978–1981 within the contemporary Chinese Democracy Movement.

7. Also known as the Helsinki Final Act, or the Helsinki Accords, the declaration was the final act of the Conference on Security and Co-operation in Europe (CSCE), held in Helsinki, Finland, in July 1975.
8. A good example of this is how Susan Shirk (1979b: 99–100; 1979a: 263–264) saw, mistakenly, that Marxism exerted little influence over the Democracy Wall Movement dissidents and they were quite ignorant of it. For other examples, see Mab Huang and Seymour (1980: 1–26) and Harrison (1983: 869–878).
9. However, only Nathan (1985) devotes one chapter to Marxism and the Democracy Wall Movement's argumentation. Nevertheless, for him it was actually a much earlier Chinese thinker, Liang Qichao, who had influenced most the movement's democratic thinking through influencing Mao Zedong. In Munro (1984a) the problem of democracy is discussed as a problem within Marxism for the Democracy Movement activists, but the analysis is unfortunately comparatively short and concentrates on the argumentation of only one of the activists (Chen Erjin).
10. If not otherwise indicated, the page numbers on the activists' writings refer to the Collection of Underground Publications Circulated on Chinese Mainland (hereafter CUP), vols. 1–20.
11. Such arguments could also occasionally be found at the Democracy Wall; see, for example, *Rénquán yǔ fǎlǜ* (1979).
12. See Hua Chuan on revisionism also in 1979b.
13. Here the writers may have been referring to the fact that in the Enlightenment human rights discourse, "under God" meant "in a state of nature."
14. In this respect there was a notably elaborate debate on the defense of free speech; writers such as Cui Quanhong (1979), Hua Chuan (1979b), and He Bian (1979) were actively involved.
15. Here the division resembled that of the UN conventions, in which political and civil rights, on the one hand, and social and economic rights, on the other, are defined in separate treaties. The conventions had been drafted in 1966 and the PRC had become a member of the UN in 1972. However, nothing in the activists' writings indicate that they were aware of these treaties and their content, or at least they did not refer to them. Under Maoist self-seclusion and propaganda the treaties were probably not discussed in the Chinese press. The PRC joined the conventions only in 1998, which also could explain the fact that the Democracy Wall Movement activists did not refer to them.
16. Very similar reasoning for the right of information can be found also in Zhang Yuan (1979) and *Rénmín qúnzhòngde zīqíng quán* (1979: 27).

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Chapter 4

Chinese Values and Human Rights

Ann Kent

From its emergence as a fully fledged idea in the early 1990s, the concept of "Asian values" appeared as a cultural construct erected by authoritarian political leaders in the Asian region to fulfill various instrumental goals (Kausikan 1993; Kent 1999: 22; Tang 1995). It was devised to achieve legitimization of their authoritarian rule at a time when authoritarian communist regimes in Europe were crumbling. It was also designed to ward off the threat of cultural, political, and social change posed by an increasingly globalized world. At the same time, it was an understandable reaction by non-Western states to the emergence of the international human rights regime as a major focus of international politics in the West. Global politics became clad in the garb of culture, replacing the ideological clothing of the rapidly warming cold war.

An analysis of China's post-Tiananmen position on "Asian values," and the subsequent fate of this concept in its diplomacy, throws light on this retrospective study of overall Asian policy. How China has construed the concept, how it has used it and related its official theory to its actual practice of human rights are important questions that will help test whether or not the concept of "Asian values" was entirely instrumental, or only partially so. To clarify such questions, this study will compare and contrast China's theory and practice of human rights from 1989 to the present. It will also compare the official governmental approach to the concept of the universality of human rights with the perspectives of China's citizens, whether intellectuals, dissidents, workers, peasants, or minorities.

In China's case, from the beginning there was less talk of "Asian values" and more of "Chinese values." Nevertheless, the two concepts were similar and mutually reinforcing. The emphasis on "Chinese" rather than "Asian" values was not so much a reflection of a difference

in approach as an expression of Chinese exceptionalism, apparent in other commonly used concepts such as the "market economy with Chinese characteristics." Since the coming to power of a socialist government in 1949, China had stressed the collective rights of antidiscrimination, anticolonialism, the right to self-determination, the right to development, and the economic and social rights emphasized in socialist thought, itself initially a Western construct.

Other than such rights, and China's criticism of the notion of "bourgeois right" embraced in the Western capitalist system, "human rights" were not normally part of domestic political discourse. However, to defend itself from international criticism after the Tiananmen Square Massacre, and to meet the Western challenge of human rights delegations, initiated by Australia and China in June 1991, China launched a national version of "human rights" in its first White Paper on human rights in November 1991 (Information Office of the State Council of the People's Republic of China 1991). This placed a priority on "subsistence" rights, rather than merely economic, social, and cultural rights. While not denying the universality of human rights, it made clear that civil and political rights were second-order rights, to be bestowed only gradually according to the historical circumstances of each country and as its economic base developed. In this way, Chinese views both stimulated, and fed into, the body of theory that was developing more generally in the Asia-Pacific region.

Apart from the timing of this new Chinese theory, the most obvious pointer to its instrumental character was that it stood in direct contradiction to existing Chinese practice. Whereas during the era of the Democracy Movement of 1978–1980 economic and social rights had indeed prevailed over civil and political rights, which at that time were in abeyance, by the late 1980s, China's actual hierarchy of rights had been reversed. China's initiation of an era of economic modernization in 1978 had brought creeping marketization and, with it, the rationalization of the urban and rural work force and an end to the "iron rice bowl," which had hitherto dispensed economic and social rights to all working people. The cataclysmic change this represented for the individual Chinese citizen was exemplified by the replacement in practice of the right to work (an economic right guaranteed by the state) by the (qualified) civil right to freedom of movement (i.e., the freedom of the individual either to look for a job for himself/herself or to be unemployed). More generally, the civil and political rights of citizens expanded, with increased access to freedoms of speech, of the press, and of movement, while economic, social, and cultural rights steadily contracted (Kent 1993: 93).

China's Human Rights in Practice, 1991–1997

Even after the suppression of the Democracy Movement in 1989, this contradiction between China's theory and practice of rights was maintained. Apart from breaching innumerable obligations that China had voluntarily assumed when it ratified international human rights treaties in the 1970s and 1980s, the violent suppression of the Democracy Movement set back the gradual improvement that had been occurring in China's civil rights, and further entrenched the government's tendency to subordinate economic, social, and cultural rights to the imperative of economic growth. It also reinforced the leaders' determination to retain control over the transition process. To this end they invoked long-held popular fears of *luan*, that is, "social disorder."

The suppression thus proved to be a turning point in the relationship between China's leaders and the led. Rather than opting to slow down the modernization and globalization process, thereby allowing Chinese society the chance to adjust more gradually to economic and social change, and rather than expanding popular access to civil and political rights, as the students had demanded, China's leaders chose to accelerate economic reform, while reaffirming their authoritarian Leninist political system (Kent 1993: 209–211). Influenced by the free market ethos of globalization, they also made a deliberate decision to pursue stability through the "trickle-down effect" of economic growth, rather than through more egalitarian redistributive forms of economic and social development. They embarked on a move to downsize and "rationalize" the inefficient state-owned enterprise sector (SOEs) and to speed up China's accession to the WTO. In exchange for the structural instability and human insecurity such a choice entailed, China's leaders struck an implicit social contract with the people to maintain an annual high growth rate of at least 7–8 percent in China's GDP (Kent 1993: 193–194).

The government's undertaking to maintain a high annual growth rate placed it in a triple bind. The more social instability its international and domestic policies generated, the more its leaders clung to the globalization mantra of economic growth to mask that instability and the more, in turn, China's economy became tied in with the processes of globalization. While this produced a new class of affluent, middle-class consumers, its negative effects domestically were that, in deference to its new market-driven policies, the government became even more prepared to sacrifice social values that were seen as peripheral to the

globalization process. The physical and social well-being of its citizens was imperiled by new policies privatizing the provision of health, education, and social welfare, as well as the toleration of high unemployment in the cause of overall national prosperity. Likewise, the government felt free to ignore the civil rights of workers, as well as the citizens' need for greater autonomy from the state. Critical to this hiatus was the government's continuing denial of the right to freedom of association, central both to workers' rights and the opening up of civil society. This blind spot permitted, for instance, governmental persecution of the Falungong, a religious sect charged with attempting to set up a center of power independent of the Party and state, as well as ensuring that workers were unable to establish independent trade unions to defend their rights.

The suppression of the Democracy Movement thus brought the regime time to continue to modernize without excessive civil disturbance and without having to worry about redistributive policies and inequality. However, because of the government's lack of attention to social justice, and to the constitutional guarantee of employment, from the mid-1990s, as the rationalization of industry proceeded, civil unrest became an increasing problem. Unlike 1989, the protesters were now primarily workers and peasants, and their grievances were articulated more in the name of economic and social rights than of civil rights. From 1994, the intensity of industrial unrest was ratcheted up. By 2002, a veritable explosion of industrial unrest and demonstrations had broken out in the industrial rust belt areas of Daqing, Sichuan, Hunan, Hubei, and Liaoning, which was quickly suppressed. The protests, most of them directed against SOEs, were usually over actual and feared job losses, wage or benefit arrears, or allegations of management corruption. Labor disputes, which could be anything from a wage conflict to a full strike, were a potent indicator of dissatisfaction. From 1992 to 1999, the number of registered disputes in a year increased 14 times to over 120,000 (ILO 2004). Since other cases were not heard and not officially registered, the actual number was probably even higher. In addition, despite a new work safety law enacted in 2002, in September 2003 alone, 11,449 workers died in accidents, an increase of 9 percent over September 2002 (Kahn 2003).

This unprecedented degree of industrial unrest, disputation, and loss of human security reflected the enormous economic and social changes that China's workers were enduring. It also underlined their lack of industrial rights, such as the rights to collective bargaining and freedom of association and their need for greater protection

under the law (Chang Kai 2000). With the rationalization of industry and the downsizing of SOEs, between 1982 and 2000 China was estimated to have laid off 25 million workers (UNDP 2005).

By contrast, China's theory of its human rights value, embedded in its 1991 Human Rights White Paper and those succeeding it presented a strange mix of Maoist norms, new and old priorities of rights and guarantees of rights that were purely aspirational, which no longer existed in substance or which were already on the point of being formally abandoned. Thus, the 1991 paper not only insisted that "the Chinese people have gained extensive political rights," but also identified the "right to subsistence" as "the most important of all rights, without which the other rights are out of the question." In other words, while continuing to stress the old value system, it also implicitly acknowledged that, under the new system, access to the full gamut of economic and social rights had diminished. Nevertheless, it still stressed the right to work, and the "social security benefits guaranteed to every worker," despite the fact that these rights were a product of the pre-1976 Maoist era and were currently being dismantled.

Response by the West, 1991–1997: Multilateral Monitoring and Human Rights Delegations

At the international level, however, Western powers chose not to expose the increasing dissonance between the theory of "Chinese values" and prevailing Chinese human rights practice. Rather, while disputing alleged Chinese priorities as wrong-headed, they accepted the Chinese theory at face value. This was not only because they themselves had a stereotyped notion of the "China difference," which derived from their knowledge of China under Mao rather than from any understanding of current policies, but also because to raise distributional issues of economic and social rights with China's leaders could possibly have been seen as challenging China's new market reforms, which Western states themselves were enthusiastically supporting. It therefore suited both sides to accept the theoretical East-West divide. The latter became the subsequent focus of the diplomacy of the human rights delegations and of debates over Chinese human rights in the UN human rights system (Kent 1999: 20–25). In particular, it suited both sides to accept the alleged "trickle-down" benefits of the market economy, and to promote China's economic growth through the expansion of civil rights like the right to freedom of movement and the right to "choose" one's job, rather

than stressing the continued provision of economic and social rights (Kent 1993, 2004). The theory of "Chinese values" therefore remained strangely disembodied, existing in the rarified international and diplomatic stratosphere, but separated from Chinese realities on the ground. Despite this dissonance, no foreign power was prepared to point out that the Chinese emperor had no clothes.

Because they faced no external challenge, from 1991 to 1997 "Chinese values" served the Chinese government well as a diplomatic device. China's suppression of the 1989 Democracy Movement had made it the subject of sanctions by international organizations such as the World Bank and the ILO, and attracted condemnation and sanctions from individual states. For a considerable period, Tiananmen also stymied China's bilateral relations with the United States, Japan, and Taiwan. To offset the effect of such international and unilateral sanctions, China embarked on the initiative to establish "human rights" delegations with Western states, an idea originally issuing from consultations between Australian and Chinese diplomats. Between 1991 and 1992, Australia sent two parliamentary delegations to China to discuss human rights. These were followed by similar delegations from the United States and a host of European states. They were open, accountable missions that produced objective public reports on their findings. They also occurred in parallel with international debate and votes critical of China's human rights in the UN Human Rights Commission. Thus, for a time, China's human rights were subject not only to multilateral monitoring by international human rights bodies like the Human Rights Commission, the ILO Freedom of Association Committee, the UN Committee Against Torture, the Special Rapporteur on Torture, the Committee on the Elimination of Racial Discrimination and other treaty bodies, but also to unilateral oversight by the United States, United Kingdom, Australia, Norway, and other European states (Kent 1999). While China's use of the concept of "Chinese values" helped protect itself from excessive international criticism, the outside world still managed, through these multifarious monitoring mechanisms, to probe and politely critique the situation of civil and political rights in that country

The year 1997 marked a turning point in the fortunes of "Chinese values" and "Asian values" diplomacy. For Asia in general, in late 1997, the Asian financial crisis suggested the weakness, rather than the strength, of "Asian values," and thereby decreased its attractions (Ghai 1999: 255). For China specifically, a shift in approach had already occurred some months earlier. Since 1995, the Chinese

government had been aggressively lobbying both developing and developed states against the draft resolution on China's human rights that, since 1990, had been annually sponsored by Western states in the UN Human Rights Commission. The vigor with which it approached its task was in itself evidence of the effectiveness of commission oversight. By 1997, China was even threatening loss of trading and diplomatic opportunities to those preparing to cosponsor the draft resolution, while, to those who decided against cosponsorship, it offered the carrot of future dialogue, as well as the possibility that China might sign the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) (Kent 2001: 616). In the end, Australia, Canada, France, Germany, Italy, Spain, and Japan failed to cosponsor the resolution as they had in previous years, leaving the responsibility to the northern European states. On the final vote, a number of Latin American and Eastern European states also changed from their previous positions of support. Thus, the final vote on the no-action motion against the 1997 resolution was 27 in favor, 17 against, and 9 abstentions (Kent 1999: 75–79). Following this success, China proceeded to implement its threats against the sponsoring states. The decision by the United States and the European Union not to even sponsor a China resolution in the 1998 Commission represented the final nail in the coffin of this monitoring route.

The 1997 commission vote had a profound impact on the effectiveness of the UN human rights system as it applied to China. For one thing, the failure of the resolution against China bilateralized what had hitherto been an objective, multilateral process. It not only enabled China to bypass monitoring by an important part of the UN human rights system, but also ushered in the current period of bilateral human rights dialogue, which did not require China to mount such a vigorous international defense of its human rights policies as had the original human rights delegations.

Thus, from 1997 the importance of "Chinese values" to China's diplomacy lessened, both because China had discovered a way to compartmentalize its human rights diplomacy, and because, like other Asian states, it now saw the negative side of stressing such values, even though, for a range of reasons, China had been less affected than others by the Asian financial crisis. However, although no longer trumpeting those differences, China continued to insist on the priority of economic and social rights in its human rights White Papers, and thereby maintained the theoretical fiction. Where necessary as an adjunct to its diplomacy, it also occasionally reanimated the

concept of "Chinese values," as in its ripostes to the annual U.S. human rights reports, where it rebutted U.S. criticism of China's human rights with a vigorous critique of the condition of economic and social rights in the United States.

China's Human Rights Dialogues

The post-1997 era of bilateral human rights dialogues between China and many Western states both highlighted the change and facilitated the compartmentalization of human rights into a discrete corner of international diplomacy enabling China's return to full participation in the international community (Human Rights in China 1998). As one specific example, the Australia-China human rights dialogue, which began in Beijing in August 1997, was not as transparent as the human rights delegations of the early 1990s, nor did it publish a report. It was neither representative nor accountable, being conducted entirely in camera by government officials, who included only one China specialist. In response to domestic criticism, efforts were made in subsequent dialogues to include more parliamentary representation: but the most that participants have claimed privately was that their dialogue was held at "a more senior level" (Kent 2001: 616–620) than those of the Europeans and that it had the advantage of establishing continuity.

Although China sent reciprocal human rights dialogue delegations to Australia, their achievements were also more symbolic than real. In sum, the human rights dialogues could scarcely match the achievements of the 1991–1992 human rights delegations. Not only was the "human rights dialogue" not accountable, it did not make policy recommendations. In comparison with the United States, which continued to hold regular talks on human rights through its embassy in Beijing after May 1994, and which maintained its public accountability through regular human rights reports, Australia emphasized the style of its dialogue at the expense of content and outcome (Kent 2001: 620–622). While the money and effort directed to technical human rights assistance were useful for China, the dialogue itself, as Australian Foreign Ministry submissions on Australia-China relations made clear, made no discernible progress (616–619). Most importantly, it narrowed Australia's tactical options, as it did those of European dialogue partners, because of China's insistence that continuing bilateral dialogue was conditional upon states refraining from cosponsoring a China resolution in the UN Human Rights Commission.

The beginning of the "War on Terror" also diminished international pressures on China to improve its human rights. This was especially true with respect to China's minorities. China's agreement on 21 September 2001 to work with the United States in combating terrorism had the unanticipated effect of legitimizing China's suppression of minorities, particularly those in Xinjiang and Tibet (Congressional Research Service 2003). Moreover, to the extent that it focused the attention of Western states on security issues rather than on the human rights concerns that had been its preoccupation in the 1990s, the "War on Terror" also diverted Western attention from China's human rights in general.

From 2003 to the Present: The Realignment of China's Theory and Practice of Human Rights

The main challenge to the gap between China's theory and practice of human rights thus came primarily not from outside, but from within, and then not until the early twenty-first century, when the social, environmental, and political downside of economic progress had became glaringly obvious. By 2002, although the number of people in absolute poverty had dropped from 250 million before modernization to 26.1 million, China's Gini coefficient, measuring the inequality of income distribution, had risen from 0.30 in 1982 to 0.46. China thus ranked ninetieth among 131 countries for which data was available, leaving only 41 countries with a greater income inequality than China (UNDP 2005: 1–2, 13).

By 2004, an estimated 26 million Chinese people had been laid off from their jobs because of SOE reform alone (ILO 2004: 1). Particularly disadvantaged were unskilled workers in the forty-fifty-year-old bracket from the Cultural Revolution generation. Competing with them for jobs were 10 million new graduates entering the market each year and migrants from rural to urban area, estimated at 140 million people by 2005 (UNDP 2005: 2). Women were also laid off at a higher percentage than men. According to International Labour Organization (ILO) figures, unemployment and underemployment in China also afflicted over 30 percent of the rural population, who had no unemployment benefits (ILO 2004). As a result, peasant unrest, particularly over forced resumption of land for developmental purposes, also became an increasing problem.

Apart from the UN Development Programme (UNDP) and the ILO, international organizations advising China on its economic and financial development also became increasingly outspoken about

China's future. As early as 1997, the World Bank's China Program Director, Yukon Huang, had observed that, "China's economy looks like a huge giant perched upon a three-legged stool." As he saw it, the three legs—financial reform, state enterprise reform, and social protection—were interrelated and could not be improved in isolation from each other (China Securities Bulletin 1997). This view was in keeping with long-time efforts by the bank to persuade China that it should be emphasizing more equitable development, and not just growth (Kent 2007: 142–143). By 2001, A World Bank report, *China and the Knowledge Economy*, was urging China to create "at minimum" 100 million jobs by 2010, for people moving out of agriculture and those laid off by SOEs (Dahlman and Aubert 2001). From 2001, IMF directors were also urging China to strengthen the social safety net and reduce widening income disparities (Kent 2007: 137–139).

Remedies to these problems, however, had to await the emergence of China's new leadership line-up in 2003. From that time, economic and social rights returned as a practical focus of Chinese political life. The concern of the new leaders, President Hu Jintao and Premier Wen Jiabao, to promote redistributional policies was not based on principle, ideology, or their discomfort about the conflict between China's human rights theory and its practice. It was primarily dictated by political pragmatism and the regime's need to stem mounting social dissent. Even international advice from the World Bank and the IMF was accepted only when China's domestic situation appeared to its leaders to warrant a change. The new approach, however, represented not so much a return to the former socialist institution of the "iron rice bowl" as a readjustment of priorities and the establishment of the type of welfare state commonly associated with developed Western economies.

In the face of such radical socioeconomic challenge, the new government moved to address the roots of growing inequality. At first, its promises to redress the economic and social imbalances were more rhetorical and aspirational than real. However, it began slowly to adjust its labor policy and improve labor conditions. While, before February 2002, only 13 million people received the minimum social insurance, by the end of 2004, according to Chinese government estimates, the numbers of people (in a population base of 1.3 billion) participating in basic pension insurance, unemployment insurance, medical insurance, and industrial injury insurance in urban areas had reached 164 million, 106 million, 124 million, and 68.4 million respectively. By contrast, in the rural areas that still constituted the majority of China's population, only 55 million people participated in the social old-age pension system and only 2.2 million farmers actually received old-age pensions

(Information Office of the State Council 2005). The minimum wage was increased and a plan to directly elect union representation in foreign and privately owned factories with less than 200 employees was instituted, even though these unions were still under the leadership of the official union, the All China Federation of Trade Unions (ACFTU). Increasingly, China cooperated with the ILO branch in Beijing, which worked to alleviate problems of unemployment and the lack of social security. However, the three prongs of China's attempts to remedy the situation—the growth of the nonstate sector, the "reemployment" project, and the program of social insurance—were still largely inadequate to the task (Solinger 2002).

At the same time, civil and political rights deteriorated. The government's reemphasis on economic and social rights was offset by increased political supervision of intellectuals, particularly lawyers, of the Internet, and of alleged terrorists in Xinjiang and Tibet. Such regression was in part facilitated by the relaxation of international pressures on China. It was also hastened by the U.S. agreement to work with China to combat terrorism. Both developments inevitably returned the onus of human rights scrutiny onto China's own intellectuals and dissidents, who worked hard to gradually liberalize the government's increasingly hard-line position on dissent. In particular, the start of the one-year countdown to the 2008 Beijing Olympics provided the impetus for an open letter to Chinese and world leaders signed by thirty-seven prominent Chinese writers, academics, and lawyers. In it, they complained that

> Little has been done, in practice, to carry out the promises that have been made on paper. On the contrary, we have experienced and witnessed violations of human rights many times—in press censorship and control of the Internet, in the persecution of human rights defenders and of people who expose environmental or public health disasters, in the exploitation of poor or disadvantaged social groups in retaliation against them when they protest, and even in abuses by corrupt officials who are involved in the construction of Olympic facilities and city beautification projects that are aimed to prepare for the Olympics. All of these actions violate not only international standards but provisions of the Chinese constitution as well.

Referring to China's "One World, One Dream" slogan for the 2008 Beijing Olympics, they pointed out that

> Without the protection of the human rights of all Chinese citizens equally—i.e., without abolition of the rural-urban residential control

> system, without an end to discrimination against women and sexual, ethnic and faith minorities, and without ending the suppression of political dissent—it is senseless to talk about "One Dream" for all of China. (China Rights Forum 2007: 71)

China's new practical emphasis on economic and social rights saw its clearest expression in the report by President Hu Jintao to the Seventeenth Party Congress on 15 October 2007 (Hu Jintao 2007). This emphasized Hu's determination in his second term to address more vigorously the challenges of social fissures, a degraded environment, and official corruption. His main emphasis was on the need for harmony in society; his insistence that development must now be "people-centered" was the most conspicuous shift in his report. For the first time, he replaced the party's original goal of quadrupling the overall GDP from 2000 to 2020 with the far more ambitious plan of achieving a fourfold increase in "per capita GDP," thereby signaling an official change from overall growth to redistributional, sustainable, or what he called, "scientific," development. The connection between this new concept, which was to be inculcated in China's constitution, and the need to neutralize growing urban and rural social unrest was underlined by his insistence that "scientific development and social harmony are intrinsically related. Without scientific development there will be no social harmony. Without social harmony, it will be difficult to materialise scientific development" (ibid.: 9). In arguing for this linkage, Hu stressed not so much socialist ideology as "pragmatism." Human rights were mentioned in his report, but the emphasis was almost entirely on economic, social, and cultural rights. Significantly, he now believed that "the people's standard of living has developed from below subsistence to *generally* well-off" (ibid.: 5, emphasis added). With the enhanced power of a second term, what he wanted now was to achieve "a well-off society in an *all-round* way" (ibid.: 10, emphasis added).

By implication, such a society would address the outstanding problems he still found in China:

> [China's] economic growth is realized at an excessively high cost of resources and the environment. There remains an imbalance in development between urban and rural areas, among regions, and between the economy and society. It has become more difficult to bring about a steady growth of agriculture and continued increase in farmers' incomes. There are still many problems affecting people's immediate interests in areas such as employment, social security, income distribution, education, public health, housing, production safety, administration of justice

> and public order and some low-income people lead a rather difficult life. (Ibid.: 3)

By contrast, he called only for greater "intraparty" democracy and insisted on the need to maintain the party's monopoly on power (Kahn 16 October 2007). No timetable was given for the expansion of grassroots democracy beyond the choice of village chiefs.

Conclusion

The concept of "Chinese values" was a diplomatic device that, from 1991 to 1997, helped China to deflect the intensity of international scrutiny in a post–cold war period of human rights diplomacy. Like "Asian values," it was a deliberate measure to allow the country time to develop while maintaining its authoritarian political structure. The fiction that it propagated, that economic and social rights were prioritized in China's human rights practice, was by and large accepted by the international community. In the year 1997the value of this diplomatic device began to diminish. For China, it was weakened first by China's own success in diverting Western attention away from strong multilateral and unilateral oversight of its human rights to the secretive and uncritical forum of the "human rights dialogue," and later the same year, by the Asian financial crisis. The onset of the "War on Terror" in 2001 further weakened international pressures on China to improve the condition of its civil and political rights.

Where international pressures were most effective, paradoxically, was in the arena of economic and social rights. Thus, both the World Bank and the IMF urged China to adopt a social safety net to protect the weak from the rigors of an unregulated market economy. Coinciding with these pressures, by the early part of the twenty-first century, the huge expansion of its economic power, and the achievement of such goals as entry into the WTO, allowed China the "luxury" of returning to earlier socialist values of social justice and equity. In this case, however, its policy shift was derived from pragmatic concerns about social unrest rather than from ideological scruples. It was paradoxical that this shift should occur on the eve of the 2008 Olympics, when the international community fully anticipated that, as a result of enhanced international scrutiny, China would become more sensitive to the civil rights of its citizens. On the contrary, while China responded to international pressures to be more proactive on human rights issues in the international arena, leading it to be more sensitive, for instance, about the breach of civil rights in Darfur, about

the suppression of protests in Burma, or even about its own treatment of foreign workers employed in Chinese businesses abroad (Kamm 2007: 1–3), its concern to stage a peaceful Olympics led it in the opposite direction domestically. To China's leaders, it made more sense to suppress citizens' civil and political rights, and, at the same time, to expand their economic and social rights. This, after all, had been the standard formula used to enforce and encourage social harmony, from the declaration of the People's Republic in 1949 until the onset of economic modernization in 1978.

The result is that, after almost three decades, China's human rights theory and its practice have come back into closer realignment. Once again, as they did before 1978, China's leaders are emphasizing economic and social rights in practice and downgrading civil and political rights. This convergence, however, has only been made possible at the expense of the freedom of China's academics, dissidents, and minorities, and at the cost of depriving its workers and peasants of a voice in their own—and their country's—future. As China's academics and dissidents currently indicate in their writings, and its minorities, workers, and peasants through their protests, economic and social rights are vital, but insufficient. China's leaders are clinging to the notion projected in the concept of "Chinese values" that economic and social rights are prior rights, to which civil and political rights must be subordinated until the country attains its full economic potential. By contrast, China's citizens have made it clear that they believe in the universality of all human rights, irrespective of historical conditions. They, like the rest of us, also want to enjoy civil and political rights, not just in the distant future, but now.

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Chapter 5

From Marsinah to Munir: Grounding Human Rights in Indonesia

Leena Avonius

In early May 1993, Marsinah, a young female labor activist and watch factory worker, was brutally murdered in Sidoarjo, East Java. With her fellow workers she had organized protests demanding better working conditions and increases in salaries that were far below the minimum wages. As was common in those days, the factory had called in the military to restore order on the premises. The military had arrested some protesting workers. Marsinah had gone to a nearby military compound to inquire about her colleagues. Some days after she had gone missing, her mutilated body—bearing signs of physical and sexual torture—was found in a rice field some two hundred kilometers away from the place where she disappeared.

Marsinah was murdered just one month after Asian leaders had closed their regional meeting in Thailand with the Bangkok Declaration, which was devised to outline an Asian version of human rights.[1] With other Asian leaders Indonesian President Suharto proclaimed that the UN Human Rights Bill could not be directly enforced in Asian countries, as Asia was culturally different from the West. According to "Asian values," they stated, citizens of Asian nations were not free to criticize their leaders. Instead, they were obliged to show respect to their leaders, just as family members were expected to defer to the male head of the household. Throughout his three decades of rule, Suharto, who viewed himself as the father of all Indonesians, insisted that he knew best what was good for his nation and its citizens.

In May 1998, Suharto lost his credibility as a fatherly leader. As the Asian financial crisis brought the country to the verge of economic collapse, frustrated citizens led by students crowded the streets in

mass demonstrations. The children of Suharto's nation had had enough of authoritarian rule and were now demanding real democracy, and Suharto was pushed to step down. Since then, the "Asian values" argument seems to have passed into oblivion in Indonesian public debates. But has this really happened? After a whole decade of political reforms it appears that the echoes of "Asian values" are never far away from the Indonesian struggles over freedom of expression, judicial reform, and other human rights debates.

In October 2004 Munir bin Thalib, the leader of Imparsial, a Jakarta-based human rights organization, took the Garuda flight from Jakarta to Amsterdam. He was planning to continue his study of law in the Netherlands. During the course of the flight, however, Munir began to feel sick; and three hours before the plane landed at Schiphol airport, he died. Two months later, the Dutch authorities confirmed that Munir had died of arsenic poisoning. Since his death various efforts have been made to establish the truth about what happened before and during that fatal Garuda flight. Although Indonesian authorities continue to investigate the crime, they have so far failed to bring together enough evidence to establish who were behind Munir's murder. Like the unsolved case of Marsinah, the whole truth remains hidden.[2]

This chapter focuses on the period between the murders of these two Indonesian civil society activists. By tracing the processes of grounding of rights in a changing sociopolitical situation in the country, this chapter will provide a thick account of human rights in Indonesia. Joseph Chan (2000: 61), following Michael Walzer, differentiates between "thin" and "thick" accounts of human rights. A thin account refers to the core human rights principles, such as "do not kill" or "do not torture," that have generally been accepted globally but remain rather abstract. A thick account of human rights shows to what extent and how these rights are being embedded in particular political moralities, how they are being implemented and interpreted in particular historical contexts. If thin accounts remain abstract and straightforward, thick accounts are characterized by qualification, compromise, complexity, and disagreement. My aim here is thus to explore Indonesian processes that have assisted in developing a political morality that is supportive of rights principles that are generally called universal human rights.

In such processes "key cases"—such as the murders of Marsinah and Munir—are particularly important, often due to the wide publicity they receive. Public debates on key cases are essential for the grounding of rights; after all, they are more than simply debates on

particular incidents, they are debates on the prevailing political morality. Public debates on these two cases reflect developments within the field of freedom of expression in Indonesia. Although freedom of expression in Indonesia is related to cultural traditions and ideas about justice, it is also profoundly shaped by Indonesian politics and nationalism. In the following section I will juxtapose Indonesian cultural practices that are supportive of exchange of opinions in dispute situations with the nationalist culture of authoritarian one-way communication practices.

To understand the dynamics of the processes of grounding human rights it is necessary to pay attention to the actors in public debates on human rights. What is being said is important, but it is equally important to understand the aims and chosen strategies of the various actors. Actors that participate in and direct Indonesian public debates on human rights include Indonesian national and regional parliaments, the president, judges, the National Human Rights Commission (Komnas HAM), representatives of the Indonesian security sector (Indonesian military TNI, national intelligence agency BIN, national police POLRI), Indonesian human rights organizations, and the media.[3] All of them have their own agendas in the debates. At the same time, these various groups are beset by internal struggles and organizational developments, which, at least to some extent, are bound to influence their statements and their level of participation in any particular debate. Through the positions and statements of these institutional actors in two key human rights cases, we can see how Indonesian human rights rhetoric and practices have changed since the early 1990s.

From Expression to Silence

The Universal Declaration of Human Rights of 1948 stresses three points of particular importance for guaranteeing the freedom of expression: that the freedom of opinion and expression belongs to all human beings without exceptions; that all persons have the right to seek, receive, and impart information and ideas; and that the flow of information and ideas must not be limited by (national) frontiers (UDHR, Art. 19). As a general principle, the state should ensure that the national legislation supports and guarantees freedom of expression. The formulation and implementation of the national legislation is invariably informed by the prevailing political morality, which, in turn, reflects cultural traditions. Thus, it is necessary to take the examination beyond the Indonesian national legislation's compatibility with

international human rights standards. This can be done by exploring how local cultural traditions resonate with these principles. Much of the "Asian values" literature focuses on how religious traditions have been used to reject freedom of expression. It is just as easy, however, to detail features in Indonesian cultures that do support positive attitudes toward international human rights principles.

A number of ethnographers have analyzed local dispute settlement mechanisms in Indonesian communities. According to their studies, these mechanisms stress the right of all individuals involved to be heard by the community meeting authorized to rule on the dispute (Acciaioli 2002; Keeler 1990; Tsing 1990; Avonius 2004). All persons involved are also similarly held responsible—and punished if found guilty. As Tsing (1990: 105) states in her description on Meratus dispute settlement, "anyone may attend, anyone may speak." Generally speaking, such community meetings and dispute settlement mechanisms appear to resonate well with the global principle of freedom of expression.

One could characterize these community meetings as forums where local political morality becomes constructed and maintained in face-to-face communication among community members. Many of these local dispute settlement mechanisms have become less important since the Dutch colonial period and particularly under Suharto's New Order (1965–1998) that aimed at building a unified nationwide justice system. Meetings among community members were replaced by courts where professional judges made decisions based on law books. Nevertheless, community meetings continue to be used to settle smaller disputes; in fact, the decentralization of power since 1998 has seen the revitalization of local dispute settlement mechanisms in many regions.

Yet, one should not jump to any conclusions: dispute settlement mechanisms and community meetings are not prime examples of indigenous grassroots democracy in Southeast Asia. Many constraints and limitations encumber these practices; what is more, they include features that fail to concur with the general freedom of expression principle. Most often, it seems, those whose freedom of expression is limited in dispute settlements are women (and children). According to Anna Tsing (1990), performative practices in Meratus communities give men a privileged position in the dispute settlement mechanism, even though structurally the mechanism is not gender-biased. Similarly, Ward Keeler (1990) has noted that women in Java are considered to be of lower social status and less verbally adept than men. For these reasons, men represent households at formal meetings.

The same holds true for Lombok: in principle, women are not expressly prohibited from representing a household, and indeed they do if the household is headed by a woman, but, in practice, women are not appreciated or respected as speakers.[4]

In spite of these limitations, traditional systems offer positive examples compared with repressive nationalist policies characterizing the first fifty years of Indonesian independence. In wide-scale societies political moralities are built up differently from the face-to-face contacts of community meetings. After all, the former are based on public debates conducted by national leaders and other influential political agencies. National political morality in Indonesia appears to have been based more on the desires and political ambitions of the ruling elite than on the fulfillment of the rights of all citizens. Indonesia's first two presidents, Sukarno and Suharto, were both reluctant to accept international human rights standards; what is more, they both imprisoned protestors and sent them into exile, thus continuing the tradition that had begun under the Dutch colonial regime. Neither of them was enthusiastic about giving local cultural traditions more than a decorative role in the nation, even though the position of *adat* was acknowledged in the Indonesian Constitution.

Legislation in Indonesia has largely reflected the national leaders' lack of enthusiasm for freedom of expression. Initially, Indonesia's 1945 Constitution wasted few words on a definition of the freedom of expression. It stated that "the freedom to form associations and to assemble, to express thoughts orally and in writing as well as otherwise will be stipulated by law."[5] It was only in 2000 that the Indonesian Constitution received an article on freedom of expression: "Everyone has the right to communicate and to obtain information in order to develop oneself and one's social environment, as well as to seek, receive, have, hold, process, and impart information via all available means."[6] An Indonesian law on human rights (UU 39/1999), predating the amended constitution, had already included that article and further elaborated: "Everyone has the right to hold, express, and disseminate opinion of one's conscience, through whatever oral or written means via print or electronic media, with taking into consideration the values of religion, ethics, openness, common good, and the unity of the nation."[7]

These articles reveal that even today Indonesian national legislation allows freedom of expression only with some noteworthy limitations. Indonesian national unity—as well as the common good and religious values—takes precedence over the individual citizen's freedom to express his/her opinions. The constitutional article also has a

developmentalist echo that points out that free communication should be undertaken with the purpose of benefiting one's personal development and/or the development of one's social environment.

Under the New Order regime it was not the constitution but the practices of political life that determined Indonesian freedom of expression. These practices varied but were generally restrictive and repressive. After the initial period of freedom, the more systematic silencing of opposing voices began after the so-called Malari incident in 1974.[8] In its aftermath several newspapers were closed down, and protesters were arrested. Since that year the military took a stern hold of the nation and its people (Honna 2005: 9). In 1978 the Campus Normalization Law forbade political activities at university campuses that had until then been havens for protesting voices (Schwarz 1994: 35–36). From then on the disappearances of protesting activists became the trademark of the New Order regime's control mechanisms. In the 1980s Pancasila[9] was forced upon all organizations and was taught at schools and workplaces. Open discussions characteristic of traditional community meetings were replaced by the practice of *sosialisasi*, a one-way communication from the state authorities to citizens. This had widespread effects on the public talks in Indonesia, as was pointed out in 1992 by Goenawan Mohamed, one of the dissenting voices in Indonesian journalism: "The carnival of expression seems absent from the Indonesian language today. Our language has been ripped from the world, stripped of shape, smell, color and form, cleansed of the grit and graffiti, the rumpus and commotion that make up real life . . . The language that we see forms a landscape almost barren of vegetation . . ."[10]

Marsinah

Marsinah was killed when the New Order regime was still strong, but as Adrian Vickers (2001: 73) points out, the early 1990s were already the first years of a long goodbye. Suharto and his cronies were put under increasing pressure at both international and domestic forums, and, in the name of self-interest, had made a priority of plundering the economy as best they could. In order to do so, however, they had to make at least nominal adjustments to some policies, including the human rights policy. The New Order regime had in the 1980s managed to weaken the political opposition, but by the early 1990s critical voices started to be heard again. Trade union activists stood at the vanguard of the opposition. Strikes and demonstrations occurred in factories that manufactured products with the lowest prices available at the world market during that time (Wolf 1992: 40–42).

The watch factory where Marsinah worked in Sidoarjo was one example of such production. The New Order state had pronounced all unions outside the state-run official labor union SPSI illegal. Strikes and lockouts were forbidden, as they were considered disturbances to national development and discordant with the state ideology (Wolf 1992: 41). If protests took place, like the one Marsinah was involved with in 1993, the state authorities took stern measures to stop them. A ministerial decree from 1986 allowed military intervention in industrial disputes, particularly in the form of worker demonstrations. Due to this policy, the local military was invited to intervene in the labor protests in Sidoarjo (Ford 2003: 76–77).

The monolithic nature of the New Order state can be seen in the way Marsinah's killing and other similar cases were handled by the authorities. Government authorities, military, courts, and entrepreneurs appeared to form a unified block with shared interests and opinions. To handle labor disputes an "intelligence system" had been developed that was a network formed by the labor office, the military, and local entrepreneurs (Kingsbury 2005: 176, quoting Fehring and Lindsay 1995). It was thus not surprising that protesting workers during the watch factory demonstrations were not only dealing with the company management but also with the representatives of regional military command and the sociopolitical department, which was under the New Order system serving as an intelligence and indoctrination office of the state (Waters n.d.). All these agencies offered relatively unanimous views in their public statements on the case, insisting that Marsinah's killing had no connection with the labor dispute at the factory.

But the case of Marsinah also illustrates that in the early 1990s Indonesian civil society activists had become more organized and that they were capable of making efforts to change the prevailing political morality according to which the state view was unquestionably correct. During that time, as pointed out by some activists who were involved in Marsinah support campaign, the civil society activists around the legal aid foundation YLBHI had concluded that it was necessary to expand regular legal aid activities to so-called structural cases. Structural cases were cases that could potentially bring about changes in national human rights policy and government structures.[11] Unlike in regular legal aid work, the working methods for structural cases were nonlitigious. In Marsinah's case, Indonesian civil society actors for the first time demonstrated their ability to direct publicity to the wider issues they sought to raise. Just over two weeks after the body of Marsinah had been recovered, the Workers Solidarity Forum

(FORSOL) established an independent fact-finding team. It took less than a month for some twenty NGOs to form a solidarity committee (Komite Solidaritas Untuk Marsinah, KSUM) to investigate and monitor the actions of authorities in this case (Waters n.d.).

Initially, the Indonesian media said nothing about the watch factory incident. Indeed, two entire weeks passed before the first article appeared in a local newspaper, the *Surabaya Post*. Soon after FORSOL's independent fact-finding team was established, however, both domestic and international media attention was drawn to the case.[12] In June and July almost seventy articles were published in Indonesian newspapers, while the more strictly government-controlled electronic media kept quiet about the case. According to Waters, the Marsinah case then suddenly vanished from the Indonesian press media in late July due to warnings or threats by the authorities. A leading police officer in June had already told journalists not to link up Marsinah's killing with labor protests, warning them that doing so might lead to more protests and threaten national security. But the fact that the media had the courage to discuss the incident illustrates a shift in Indonesian public human rights talk in the early 1990s.

The early 1990s was also a period of growing international pressure on Indonesia in human rights issues. The massacre in the East Timorese capital Dili in 1991 had drawn wide attention and criticism from the international media regarding the New Order regime's actions. The response of the Indonesian regime did not wholly reject international human rights standards, but appealed to the developmentalist argument. President Suharto discussed the Dili incident at length in front the People's Consultative Assembly (MPR) in 1993, arguing that poor countries like Indonesia that were arduously struggling against poverty should not be expected to adhere to the same standards as richer nations. Yet, as his Vice President General Try Sutrisno pointed out, the military did not hesitate to use any means to ensure stability: "It is necessary to fire on those who do not follow the official line. [Indonesian military] is determined to eliminate whoever disturbs stability" (*The Economist* 1993: 18).

On the one hand, Indonesia responded to growing international pressure by showing great reluctance to accept any international human rights monitoring from the UN or international NGOs such as Amnesty International. Nevertheless the pressure from abroad was increasing.[13] On the other hand, Indonesia needed to take some action to maintain its position in the international community. One such effort was to establish a National Human Rights Commission (Komnas HAM) in 1994. Although the commission was most

probably conceived as a form of window-dressing for the international human rights forum, it actually emerged as an influential tool for change due to the courage of the individuals appointed as its first commissioners.[14] Komnas HAM's first report covered the Marsinah case, pointing out how the state authorities had erred in their handling the case. This report signaled a new era in which the Indonesian military was pushed to respond to accusations concerning military violence against civilians (Honna 2005: 97).

Although international pressure should not be overestimated, combined with domestic factors it certainly compelled Indonesia to adjust its human rights policy. The Marsinah case illustrates how Indonesia successfully avoided responsibility even in cases that were taken up at the United Nations Human Rights Commission. In 1994 the UN Special Rapporteur on Torture discussed the case with the Indonesian government. In his report to the Commission on Human Right (UN 1995), he pointed out that the Indonesian government had failed to reply to this and several other cases. His own request to enter the country to investigate the allegations had been ignored. In the following year the Marsinah case was mentioned again at the UN Human Rights Commission session (UN 1996), as the Indonesian government had responded that in the Marsinah case "those found guilty had been punished in accordance with the law." The response had been given on 28 December 1996; one year and seven months after the Indonesian High Court had released all previously sentenced suspects on the basis of insufficient evidence and the report of Komnas HAM that indicated that the confessions had been acquired through torture. In February 1996, both the police and the military investigation teams had also announced that they would stop all inquiries in relation to the Marsinah case.

Subtle Changes and Harsh Reactions

As Jun Honna (2005) has shown, ever since the late 1980s some important changes have been made in Indonesia toward openness and the acknowledgment of international human rights standards. It was partly due to this policy of openness (*keterbukaan*) that the human rights violations in the country became common knowledge and were addressed by domestic and international actors. In 1989 President Suharto opened access to East Timor, a region that Indonesia had occupied in 1975. A year earlier, in 1988, Kopkamtib (Operational Command for the Restoration of Security and Order), which had been the major body for the regime to detain "subversive" citizens,

was dismantled by a Presidential Decree. More and more, Indonesians were demanding democratization and that the national focus should be redirected from the "security approach" to development and prosperity.[15] The more conservative military leadership stressed stability and order, insisting that the role of the military in assuring internal security was imperative for national prosperity. This domestic debate was an important signifier of the changing atmosphere in the country.

Despite the policy of openness, the Indonesian military continued to inflict severe human rights abuses throughout the late New Order period. Human rights practice thus failed to keep pace with the changing rhetoric. On the one hand, the New Order regime was willing to allow more openness in public debates over politics and security, but, on the other hand, as soon as the media or activists criticized the regime or demanded changes, the state authorities reacted with oppression or open violence. This was, for example, seen in the banning of Tempo and two other magazines in 1994 after they had reported on Indonesia's plan to buy warships from East Germany (Steele 2005: 233–242). But throughout the 1990s, Indonesian civil society grew more assertive in its protests. Tempo's banning was followed by two weeks of demonstrations in several Indonesian cities. Tempo even filed a lawsuit against the Department of Information, stating that the ban on Tempo was against the constitutional freedom of expression and the Press Law. Journalists from the banned magazines established the Alliance of Independent Journalists (AJI), an independent journalists' association that itself was banned almost immediately by the government. Led by Goenawan Mohamed, the editor-in-chief of Tempo magazine, and with financial assistance from USAID, the journalists developed underground news services, making use of the emerging new information technology like the Internet (Steele 2005: 260–269).

As civil society groups grew more assertive and dissident voices emerged also within the regime circles—particularly from Komnas HAM—it became increasingly difficult for the state authorities to silence the dissenting voices. As the official rhetoric from the mid-1990s onward held that free speech must be allowed, straightforward violence or banning was replaced by more furtive methods of silencing the dissident voices. There are three identifiable methods that work against freedom of expression, all of which are being implemented in the post-Suharto era as well. The first one is to prevent a public event from taking place by appealing to procedural reasons. In 1997, Indonesian artist Ratna Sarumpaet prepared a monologue

entitled "Marsinah Accuses," a horrifying story of Marsinah's last hours at the hands of her killers.[16] After seven performances across Java in November 1997, the police prevented Ratna's performance from taking place in Surabaya. The police stated that the organizers were lacking the necessary permits, and blocked the entrance from the audience to the Surabaya Art Centre. Once again, Marsinah was consigned to silence, less than half a year before Suharto's presidency was to come to its end.

The second method is criminalization. This has been widely used against the media, but also against civil society activists. The most famous case in the post-Suharto era concerns the editor of Tempo magazine. When a traditional textile market burned down in Jakarta in 2003, Tempo reported on allegations that Tomy Winata, a conglomerate with connections to the Indonesian military, was benefiting from the destruction, as he was funding an initiative to replace the market with a shopping mall. Winata denied these accusations and filed a case against Tempo, accusing the chief editor and two journalists of libel and defamation of character (Steele 2005: 272). After the article was published, Winata's supporters attacked Tempo office premises and the journalists working there. Tempo pressed charges against the attackers, but only two of them were tried, one of whom was found not guilty and the other given a suspended sentence of five months (Amnesty International 2003: 4). In the case against Tempo, Bambang Harymurti, the magazine's chief editor, was found guilty by two lower courts, but was finally released of all charges by the Supreme Court in 2006. State authorities have also made use of Criminal Code in order to silence critical voices. In relation to the case of Munir, Hendropriyono, the former Head of Indonesian Intelligence, pressed similar charges against two human rights advocates who were members of the fact-finding team and had criticized him for refusing to be interviewed about the case by the team. All Indonesian presidents in the post-Suharto era have also made use of the defamation articles in the Criminal Code against civil society activists.[17]

The court rulings in these cases have shown, however, a high degree of inconsistency. For example, in the case described briefly above, the Tempo chief editor was sentenced on the basis of Criminal Code by the two lower courts, but the Supreme Court dropped the charges. The Supreme Court based its decision on the new Press Law, which can be a sign that Indonesians will enjoy greater press freedom in the future. However, reverse development took place in a court case against the international *Time Magazine*; President Suharto,

claiming that Time had defamed him in a 1999 article, took the magazine to court. While two lower courts had concluded that no defamation had taken place, the Supreme Court ruled in August 2007 that Time was guilty of defamation. It seems that while the laws and regulations are slowly improving in Indonesia, the court practices are not necessarily adhering to these changes.

The third method against freedom of expression is the use of violence. Militia groups that are known to have connections with the military are used to cause disturbances at public events and to forcibly break up public meetings. Recent examples are from Java where some Muslim activists have tried to organize reconciliation meetings between Nahdatul Ulama (NU) and ex-communists over the events that took place in the late 1960s. In 1965–1966 Muslim activists from NU had assisted the military in the killings of communists. Not only have some of these local reconciliation meetings been cancelled due to threats by militia groups, meetings have also been disrupted by aggressive militia.[18] Munir's assassination in 2004 can also be seen as an example of the hidden violence.

Munir

The examination of various public statements on the Munir case can help us to understand the shifting dynamics between national security and the recognition of human rights principles. Perhaps the most dramatic change during the period between the killings of Marsinah and Munir can be seen in the manner the press has taken advantage of the more liberal legislation. The Indonesian press was quick to disseminate news about Munir's death, with the first news item appearing on the Internet the very day he died. However, it was only after the autopsy report was released by the Dutch authorities—two entire months after his death—that the poisoning was officially confirmed and the media began the speculations on his assassination.

After Marsinah's murder, the Indonesian media could still be threatened to stop writing about the case. Nowadays, the media writes freely about the Munir case, presenting views of all parties. Ever since October 2004, there has been a more or less continuous flow of articles, reports, Internet discussions, documentary films, and campaigns over the Munir case. This confirms that freedom of expression in Indonesia has improved remarkably. The new Press Law (UU 40/1999) that was rapidly pushed through by President Habibie has generally been regarded to have greatly improved press freedom in Indonesia. The newspapers and magazines no longer need to worry

about their publication permit being cancelled if the stories they publish are critical.[19] But, as discussed above, improved press freedom has to some extent become nullified by the use of defamation articles of the Criminal Code against free media and human rights activists.

The contents of media articles on the Munir case reflect the state authorities' changing attitudes toward human rights. During the Marsinah case, the state authorities—both at the national and local level—police, military, and even the entrepreneur involved in the case appeared as a monolithic body with just one official opinion. The only state-connected agency that departed from this unified front in public was the newly established Komnas HAM, when it stated that the court case against the alleged perpetrators did not fulfill the requirements. In the Munir case, various authorities can and do offer differing opinions. Despite all messiness and inconsistencies of the Munir case, one can still observe positive developments in the cacophony of voices that participate in this ongoing debate on political morality and freedom of expression in Indonesia.

One of the most prominent voices in this debate has been Munir's widow Suciwati, who has led the campaign both at home and internationally. Her core statement is simple and has been consistent throughout the years: she and her children seek justice and want to see that the murderers of the head of their family will be lawfully tried and punished. In addition to keeping contact and putting pressure on the Indonesian state authorities and pursuing the case through the Indonesian court system, she has traveled in Europe and in the United States to ask for support.[20] Lobbying has made the Munir case internationally known and has once again increased pressure on the Indonesian government to improve its human rights record. One sign of international pressure was that the president of the European Commission, Jose Manuel Barroso, made inquiries about the development of the case to President Susilo Bambang Yudhoyono during the Asia Europe Summit (ASEM) in Helsinki in September 2006.

Suciwati's campaign is supported by a civil society coalition known as KASUM (Komite Solidaritas untuk Munir) that consists of fourteen prominent NGOs.[21] Ever since the release of the autopsy report, the organizations have presented the results of their own investigations and pointed out the weaknesses and inconsistencies of the procedures by the state authorities in frequent press statements.[22] The independent investigation team TPF (Tim Pencari Fakta) was also formed by the president after a civil society initiative. Unlike Suciwati, the civil society groups stress Munir's political role as a human rights advocate and one of the most prominent civil society actors in

Indonesian reforms during the late New Order period and in the post–New Order era. The civil society organizations are convinced that Munir was murdered because of his human rights work in cases of disappearances, the killings of students in Trisakti and Semanggi, the postreferendum violence in East Timor in 1999, and the shooting of civilians in South Sumatra in 1989 (KontraS 2006: 12–19).

Not atypically, the statements of Indonesian police concerning Munir case have been rather technical. As soon as the autopsy report was received from the Netherlands, the National Police Chief Da'i Bachtiar formed an investigation team. The team flew to the Netherlands to "ask for the authentic autopsy report" and the police speculated whether Munir's grave should be reopened for an additional autopsy. Intentions were announced but results rarely released to the public. The police have also refused to reveal what key witnesses have stated or why the police have drawn certain conclusions. In 2005, for example, police stated that the main suspect, former Garuda pilot Pollycarpus Priyanto, was not the chief perpetrator, but did not explain why they had come to such a conclusion.

According to one civil society activist, thanks to changes in the leadership of the criminal investigation department, the police appear to have become more cooperative since April 2007.[23] The police have also provided some crucial new evidence to the prosecutor's office concerning Pollycarpus' linkages with the National Intelligence Agency BIN. A new attitude also has prevailed in the Attorney General's Office, after the new Attorney General Hendarman Supandji took over in 2007. Swiftly he decided to review the case, thus opening a possibility to put Pollycarpus on retrial.

Without a doubt, the public and political uproar following the acquittal of the main suspect by the Supreme Court in October 2006 influenced the decision to make further investigations. After all, the Supreme Court's decision to acquit Pollycarpus after the lower court had sentenced him to fourteen years in prison for murder made police, the Jakarta district court, and the Attorney General's Office look foolish. Thus, the Supreme Court's decision in January 2008, which reversed its own previous ruling in the case by reinstating Pollycarpus' previous conviction and increasing his sentence to twenty years, can be seen to have resulted at least partly from gradual institutional reforms in Indonesian police and judiciary.

As has been stated by many observers, the Munir case is far from over, and the masterminds behind the murder are yet to be found. The greatest obstacle to overcome in the whole process seems to be to investigate the role of the Indonesian intelligence body (BIN) in

Munir's murder. Clear linkages have been established between BIN, Pollycarpus, and Garuda's former director Indra Setiawan, who was arrested in April 2007 and is charged for assisting Pollycarpus in carrying out the murder. Yet, BIN appears to be above the law. Muchdi Purwoprajonjo, an intelligence chief who has been proven to have had frequent telephone contact with Pollycarpus before and after the murder has refused to be interviewed. The former head of BIN, Hendropriyono, managed to avoid being interviewed by the TPF even though he was ordered to do so by president, the head of BIN, and the national parliament.[24] The reluctance of former intelligence chiefs to cooperate in the murder investigation raises the question as to whether they would prefer to see the case remain unresolved. Particularly so as Munir had been involved in investigating cases of alleged human rights violations in which both these two men had played a role (Imparsial 2006: 70). Muchdi Purwoprajonjo was expelled from Kopassus after Munir brought up his role in the disappearances of students in 1998. Munir had also conducted advocacy work in the case of military killing of civilians in South Sumatra in 1989, which took place during the time Hendropriyono served there as a leading military commander.[25]

President Susilo Bambang Yudhoyono is correct in characterizing the Munir case as "a test of Indonesia's history." He has also repeatedly stressed the importance of finally solving the case. Susilo was elected to be Indonesia's president only weeks after Munir was murdered and the expectations about his presidency were very high. President Susilo has been successful in redeeming his promise to find a political solution for the Aceh conflict, and his efforts to bring about justice in the case of Munir appear to bear fruit as well. But the history test is far from over. The process is likely to last years, but the fact that the case was not dropped after the first trial already shows that there is more willingness in Indonesia today to solve these kinds of human rights abuses than there was a decade ago.

Indonesia has seen positive developments in the realm of human rights. Indeed, the political morality underscoring the importance or human rights principles, equality in front of the law, and the openness of public debates is clearly gaining ground in Indonesia. On the other hand, arrogant statements by some persons involved in the case reflect the remaining strength of the culture of silence, a legacy from the New Order era. Pollycarpus stated once in public that he found it funny that the director of the national airline could be suspected of murder, since even the president and other high state officials flew in Garuda airlines (Antara News Agency 27 April 2007). Hendropriyono

dismissed any allegations that BIN would have been involved in Munir's murder by saying that Munir was too insignificant for BIN, which was focused on targeting terrorists (Roberts 2005). Such statements are undermining the rule of law. The public debate on Munir's case illustrates that such statements are in the minority, but it remains to be seen how powerful that minority is in Indonesia.

When Everyone Talks about Human Rights

Making a clean break from the past is no more possible in Indonesia than it is anywhere else. It is impossible for Indonesians to suddenly shake off the culture of silence that was long-imposed by the New Order. Nevertheless, the process to move away from it and toward a political morality based on adopting international human rights standards is on its way in Indonesia, as has been shown through the examples above. Key cases, exemplified in those of Marsinah and Munir, play a crucial role in such a process, since they provide opportunities for pinpointing the weaknesses and necessary reforms in the field of human rights. Key cases are actively brought into public debates by civil society organizations that skillfully use the media in their nonlitigation work in trying to influence human rights policy and practices. Indonesian human rights groups have for years stressed the nonlitigation strategy in their human rights work. This is mainly because the country's court system has been dysfunctional due to the widely spread corruption and the influence of political agencies on the work of the judiciary.

Remarkable changes have taken place in public debates on human rights. As the Marsinah case was instrumental in breaking the wall of silence, it also encouraged civil society groups to coordinate their actions and thus gain more visibility. What is more, it provided an opportunity for those few reformists in the New Order government to act more independently, as can be seen from the Komnas HAM report on the case that differed from the official state rhetoric and was crucial in changing the course of court rulings in the case. Lack of press freedom was a crucial limitation in the early 1990s. Another murder case, a few years after Marsinah, brought about more permanent changes in this field. When Udin, a Yogyakartan journalist, was beaten to death in 1996 his journalist friends jointly with the local legal aid bureau formed their own investigation team and kept publishing their findings despite the pressure from the state authorities.[26] The ongoing debate on Munir's case shows that nowadays the

Indonesian media can function as a forum for genuine public debates.

The necessary framework for genuine public debate has been created by the new legislation that has been pushed through in Indonesian legislative since the fall of the New Order regime. For the first time, human rights legislation has been written for the country, and Indonesia also signed and ratified the Human Rights Bill in 2006. The New Press Law and the abolition of the licensing system for publication enterprises in 1999 has enabled more critical journalistic reporting in Indonesia. Despite these changes, in Indonesia efforts are still being made to silence the news media through the use of Criminal Code's defamation articles. But even this seems to be changing gradually, as can be seen in the Indonesian Constitutional Court recent decisions to revoke defamation articles of the Criminal Code by ruling that they were limiting the freedom of expression.

While the legislative framework has improved and public debates on human rights are open and show that during the past two decades the grounding of international human rights standards has taken place in Indonesia, the human rights practice has been less encouraging. Munir's assassination is a proof that human rights abuses continue to take place—even in post–New Order Indonesia. Indonesia's human rights record is certainly improving but still has a long way to go. The lameness of human rights practices can also be observed in inconsistent and controversial court rulings. Indonesian courts still appear to be influenced by political pressures. Perhaps the biggest obstacle for the current human rights practice is that some state institutions seem to be untouchable and above the law. Despite the initial inefficiency, the police, prosecutors, and courts have shown willingness to pursue proper investigation in Munir's case, but they seem to encounter insurmountable obstruction blocking their access to the National Intelligence Agency (BIN). All persons under investigation or under suspicion have so far been civilians—Pollycarpus and Garuda Director Indra Setiawan may have worked for BIN, but are not its regular staff members—and in this respect Munir's case is not that different from that of Marsinah. Indonesian human rights practice thus still seems to undermine the universality of human rights.

This chapter has illustrated that the process of grounding of international human rights standards in Indonesia already started during the heyday of the "Asian values" debate. But the process is far from over, and will have to overcome many obstacles in the coming years. A part of the dynamics of the grounding of human rights in the new Indonesian political morality is taking place through some major

incidents within the human rights field that force various parties to adjust their positions and strategies. Civil society groups and human rights NGOs in particular, have managed to put forward some key cases by seeking wide publicity through the media and lobbying both in domestic and international forums. Human rights NGOs are key actors in this process, but they are far from controlling it. The role of various state actors is paramount to the grounding of human rights.

Notes

1. The Bangkok Declaration was drafted and signed at a meeting of ministers and representatives of Asian states in Bangkok from 29 March to 2 April 1993. Like the Universal Declaration on Human Rights by the United Nations, the Asian human rights declaration contains thirty articles.
2. Munir and Marsinah were also linked: Munir worked as an advocate in Marsinah's case in 1994. Both Marsinah and Munir were recipients of the Indonesian human rights award, Yap Thiam Hien award (Marsinah in 1993, Munir in 1998).
3. Besides observing the Indonesian actors, one should also pay attention to the role of international human rights actors such as international human rights organizations, and international bodies such as UN and regional organizations (EU, ASEAN), but also to individual states. This chapter will, however, focus on Indonesian agencies.
4. Due to these limitations some Indonesian women activists have been concerned that the return to *adat*, or in other words the increasing adaptation of local decision making to the practices of customary law or local cultural practices in the post–New Order era, may actually threaten the rights of Indonesian citizens. They are worried that in the name of local *adat* traditions women are being sidelined and their right to express themselves in public may become seriously restricted in some regions.
5. "Kemerdekaan berserikat dan berkumpul, mengeluarkan pikiran dengan lisan dan tulisan dan sebagainya ditetapkan dengan undang-undang" (Indonesian Constitution 1945: Art. 28).
6. "Setiap orang berhak untuk berkomunikasi dan memperoleh informasi untuk mengembangkan pribadi dan lingkungan sosialnya, serta berhak untuk mencari, memperoleh, memiliki, menyimpan, mengolah, dan menyampaikan informasi dengan menggunakan segala jenis saluran yang tersedia" (Indonesian Constitution: Art. 28F).
7. "Setiap organ berhak untuk mempunyai, mengeluarkan, dan menyebarluaskan pendapat sesuai hati nuraninya, secara lisan dan atau tulisan melalui media cetak maupun elektronik dengan memperhatikan nilai-nilai agama, kesusilan, ketertiban, kepentingan umum, dan keutuhan bangsa" (UU 39/1999: Art. 23(2)).

8. The Malari incident refers to anti-Japanese riots in January 1974 during the visit of the Japanese prime minister. The rioters burned down showrooms presenting Japanese products such as cars. On the second day of rioting the military opened a fire against the rioters.
9. Pancasila is Indonesian state ideology, which was first formulated by president Sukarno. It has five basic principles: belief in God, nationalism, humanitarianism, social justice, and democracy.
10. Goenawan Muhamed in a speech in the Netherlands in 1992 (Quoted in Schwarz 1994: 230).
11. Interviews with Indonesian human rights activists in November 2007. See also Culla (2006).
12. For an extensive list on Indonesian press coverage of this case, see Michele Ford (2003: 76–77).
13. See, for example, the Amnesty International report "Shock Therapy in Aceh," 28 July 1993. In its report Amnesty asserted that the international community had been too weak in its response to the reports on serious violations in Aceh. According to AI, the member states of the UN had effectively acquiesced in them, and by doing so had helped to perpetuate the problem. This and other similar reports during that time show that human rights organizations put more pressure on Western governments to act more sternly in the field of human rights in international relations.
14. Interviews with Indonesian human rights activists in November 2007.
15. On the term and debate on "security approach," see Jun Honna (2005: 89–96).
16. See Barbara Hatley's account on Ratna's performances in Inside Indonesia (1998).
17. However, this may change in the future due to two important rulings by the Indonesian Constitutional Court: in 2006 the court annulled three articles of the Criminal Code, which provided special protection for president and vice president; and in 2007 the court ruled that the two articles criminalizing defamation against the government are unconstitutional.
18. Personal communication with the organizers.
19. The Press Publication Enterprise Permit (SIUPP) that was obligatory under the New Order was revoked by President Habibie's government in 1999.
20. Suciwati has talked about the Munir case at UNHRC in Geneva, at the EU in Brussels, the Dutch parliament, and at the U.S. Congress in Washington.
21. KASUM members are KontraS, Imparsial, Demos, HRWG, SHMI, Perkumpulan Prakarsa, Infid, PBHI, Cetro, Mitra Perempuan, YLBHI, VHR, KRHN, and LPHAM.
22. The organizations started their investigation even before the autopsy report was released by the Netherlands Forensic Institute in early

November 2004. They had met with Garuda personnel several times and tried to reconstruct the events during the flight.

23. Interviews with civil society activists in November 2007.
24. When these developments took place in mid-2005, the police stated that they had interviewed Hendropriyono, but offered no information when this took place and what was discussed.
25. In September 2007, the National Human Rights Commission Komnas HAM announced that it had established a new ad hoc team to reinvestigate the mass killing in South Sumatra in 1989.
26. Just like the cases of Marsinah and Munir, Udin's murder remains unsolved. Yogyakarta police still keep the case file open though no further investigation has taken place since the early years after the murder.

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Chapter 6

From "Asian Values" to Singapore Exceptionalism

Laurence Wai-Teng Leong

Whenever a given state defies human rights principles, it tends to create discourses to rationalize the paucity of those rights. During the 1980s and 1990s, officials in Malaysia, China, and Singapore had relied on the "Asian values" argument to forestall political reforms aiming for democratic governance. Singapore figured prominently in the international arena because its leaders fielded a ready supply of intellectual elites such as Tommy Koh, Kishore Mahbubani, and Bilahari Kausikan for drumming up an Asian alternative to the universalist notion of human rights (Rodan 2001). So loudly vocal were these proponents that their ideas collectively came to be known as the "Singapore school" (Brems 2001). Singapore authorities were "always quickest on the Asian values trigger" to defend their policies in the face of international criticisms (Jayasuriya 2001: 345).

As one of the fastest growing economies in the region, the State of Singapore was also the most articulate proponent of "Asian values." When the tiger economies were racing ahead of the West, they could arrogantly sneer at the West for its decadence and economic decline. Singapore leaders also used "Asian values" to explain the economic boom: education, discipline, respect for elders (including authorities), consensus over conflict, as well as communitarianism over individualism were said to be the key ingredients of an industrious work force subservient to capital and the state (Deyo 1989).

"Asian values," however, proved to be a casualty of Asia's financial meltdown in 1997. The financial crisis exposed the hollowness of these values that were supposed to account for the Asian development miracle (Mead 1998; Thompson 2001). Virtues once championed were now seen by many as vices: family centeredness spelled nepotism,

the importance of personal relationships meant cronyism, consensus turned into corrupt politics, respect for authority implied rigidity and a lack of entrepreneurship (*The Economist* 1998).

If the notion of "Asian values" enjoys little currency in the economic realm today, it is still deployed on ritual occasions, such as festivals appearing to be rooted in ethnic heritage. "Asian values" is an invention particularly relevant to diasporic societies of migrants so anxious of their identities that they constantly need to reemphasize their cultural roots. Thus for the overseas Chinese, the Lunar New Year is a festive occasion for the invention and reinvention of customs. Invoking "Asian values" in this context is a ritualistic exercise of the cultural imagination.

In his 2007 Chinese New Year speech, Singapore's Prime Minister Lee Hsien Loong reproduced the essentialized constructions of communitarian East versus individualistic West: "Singapore must avoid the pitfalls of Western-style welfare, where generous state benefits for the jobless and elderly have weakened the family unit, and cause family members to often feel little responsibility to care for one another. . . . The centuries-old family networks that have provided people in Asian societies with mutual care and support through wars, famines and family crises remain useful and relevant today" (Li 2007a; Yin 2007). Here Lee commends Asians for being family-oriented, while he censures the West for irresponsibility and indifference.

Since "Asian values" are still invoked in cultural occasions, the rhetoric has not completely disappeared and may resurface in other forms at opportune moments. "Asian values" were once used to downplay human rights in Singapore, but if the discourse is now no longer in vogue (Ng 2007: 152; Macan-Markar 2006), what is its relevance today? Does it metamorphose into a "different but same" form? This chapter looks at the ideological framing of human rights in Singapore and examines the continuities and discontinuities between the "exceptionalism" argument and the "Asian values" debate.

Framing Human Rights in Singapore

For most Singaporeans "human rights" has no place in their vernacular parlance and conceptual repertoire. The language of human rights is underdeveloped because civil liberties are strictly curtailed and alternative discourses have been silenced (Chee 2006). Forty-eight years of single-party hegemony have meant an autocratic type of government imposing many duties on its citizens but bestowing few rights in return.

Singapore is not a signatory to many of the international human rights treaties, except to the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)—and the latter with reservations and no optional protocols. Although the CRC makes provisions for human rights education, Singapore schools have not incorporated human rights into the curriculum. In fact, the majority of students and youth are not aware that their country has ratified the convention that speaks on their behalf.

The limited vocabulary of human rights in Singapore is symptomatic of a broader, institutionalized restriction of expression. A long history of press intimidation includes costly litigation, banning and closure of publications, curtailment of distribution, and prior restraint on content through "out of bound" markers (taboo topics like ethnic policies) (Seow 1998; George 2000). The lack of press freedom results in a media situation largely bereft of journalists, but teeming with reporters and copywriters. The professional wings of journalism are clipped when the fourth estate is subservient to the state and when there is little leeway to access and report information. Instead of doing investigative journalism, news workers end up rewriting press releases or mechanically reporting who did what, when, and how.

As reporters have been long socialized into self-censorship (Gomez 2000), even more stringent surveillance has been exacted on independent media practitioners. As the latter are not bound by a bureaucratic hierarchy of editors serving as gatekeepers, they are freer to pursue different types of subject matter in a variety of presentation formats. Yet, all local and independent filmmakers bear the brunt of a much harsher regime of censorship under the Media Development Authority (MDA).

In April 2007, the MDA banned Martyn See's film, *Zahari's 17 Years*, which chronicled former journalist Said Zahari's seventeen years of experience as a political detainee under the Internal Security Act (Loh 2007a). Earlier in 2006, police also seized another of Martyn See's film, *Singapore Rebel,* which is an account of the trials and tribulations of Chee Soon Juan, an opposition party leader who was incapacitated by defamation lawsuits filed by top leaders. Both documentaries suffered the fate of being defined as "political films." This kind of frame sidelines the human rights aspects of the film's contents (detention, civil rights, political rights) and the film's medium (freedom of expression and the freedom of the audience to view the film). Martyn See also made *Speakers Cornered,* a film about the public demonstration against IMF-World Bank meeting held in Singapore

in September 2006. His films, while not shown publicly in Singapore, travel the circuit of human rights film festivals in America, New Zealand, Malaysia, and Taiwan (Brownlow 2006).

The social construction of human rights discourse in Singapore is one of social destruction: what an international audience would clearly see as a human rights issue is framed domestically in Singapore as something else altogether. Films that plainly deal with human rights abuses are redefined as political films, which in turn are claimed to "undermine public confidence in the government," and are thus deemed "contrary to public interest" (Chan 2007). Another example of how human rights issues are obscured can be seen in the treatment of foreign domestic workers (FDW).

The abuse of FDWs is by far the most visibly blatant, recurrent, and recalcitrant of human rights abuses in Singapore. Local employers have inflicted physical violence on these FDWs. More atrocious forms of torture include caning (Chong, E. 2005; Poon 2005), submerging the face in the toilet bowl (Lum 2005c), rubbing chillies on the face (Chong, E. 2006c), and molesting them (Lum 2005a, 2005b; Chong, E. 2006a). Hot irons (Chong, C.K. 2006; Chong, E. 2006d) or hot oil (Chong, E. 2006b) have been used to burn the workers' body. Food deprivation has forced some workers to beg neighbors (Arshad 2007).

In ever more extreme cases, all forms of violence are combined and inflicted over such prolonged periods of time that they eventually result in serious injuries and/or death. Thus, an Indonesian domestic worker was subjected to ten months of torture with a variety of objects (Chong, C.K. 2005). Another worker was caned, kicked, cut, burned, and bruised so badly that her nipple fell off (Wong 2002). In arguably the most horrendous case, a domestic worker had two hundred injuries and scars on her emaciated body. Underfed, she weighed only 36 kilograms, and she died from a stomach rupture due to severe kicking by her employer (*Bangkok Post* 2002).

Another pattern of disregard for the lives of domestic workers can be found in the daily chores of cleaning and washing. Employers living in high-rise apartments endanger the lives of these workers when they order them to clean windows and hang out the laundry (Sua 2006; Chong and Teh 2007; Chong 2007a; Tan and Boo 2007). From 1999 to 2004, approximately a hundred Indonesian maids fell to their death while cleaning windows or drying laundry (Nadarajan 2004; Zainol 2004).

All FDW abuse incidents are treated as criminal cases, in which the guilty have to serve one to ten months in jail, or in the most appalling cases, eighteen years of imprisonment. While human rights abuses are

often criminal in nature because of the danger and harm inflicted on the person, it is insufficient to construct them solely as crimes. Criminalization individualizes the problem as each case is seen as peculiar to the errant employer. On the other hand, conceptualizing the abuse of foreign domestic workers as a human rights issue—and not just a crime—demands more collective solutions that apply to the whole class of migrant workers.

The local NGO, Transient Workers Count Too (TWC2), has been lobbying for such collective solutions such as standard contracts stipulating hours and terms of work, remuneration, and rest days (Lyons 2005). In Singapore, the state has yet to accede to such recommendations, preferring to treat employment of FDWs as individual cases. This leaves a great deal of discretionary power to employers who can dictate unilaterally the labor conditions for the workers.

Since Hong Kong's policy toward migrant workers follows some minimum labor standard (Bell 2006: 285), there is no shortage of lessons one can learn from or solutions one can draw upon. But the refusal of the State of Singapore to emulate this Hong Kong model or to enforce some basic minimum safeguards for FDWs implies that it is also partially responsible for the abuse of FDWs.

Moreover, the state collects a monthly "maid levy" of US$130–$192 (S$200–$295) from each employer who hires a FDW, and given that there are over 150,000 FDWs, the state accumulates US$235–$346 million (S$360–$531 million) in monthly revenue from this particular sector of employment (Human Rights Watch 2005). This vast fund of money could have been used to set up shelters for abused maids, but no such policy exists at the moment. Instead, the responsibility is passed on to respective embassies or to NGOs such as TWC2.

In sum, framing the FDW abuse problem as a crime rather than a human rights issue shifts the burden of monitoring and enforcement of norms away from the state and absolves the state from the need to offer collective solutions to the problem. The problem is individualized or isolated as one concerning malicious employers who ill-treat their maids. Once these employers are sentenced to jail, the aggrieved party (i.e., the abused maid) has no redress and no recourse for compensation—what is more, she is burdened by debts incurred from her passage to Singapore.

The Nut-Case of Singapore's Exceptionalism

Michael Ignatieff (2005: 3) has identified three aspects of "American Exceptionalism" in relation to human rights: (1) "excemptionalism,"

where America supports some international human rights treaties, but also indulges in its own reservations and noncompliance; (2) "double standards," where America judges itself and its allies by more permissive criteria than it does its enemies; and (3) "legal isolationism," where international human rights law is seldom used as a guide to America's domestic jurisprudence. Taken as a whole, American Exceptionalism is a paradox in that America has been associated with religious freedom, gender equality, democratic rights, free speech, and the abolition of slavery, and at the same time, has maintained capital punishment, supported dictatorial regimes, and has violated the Geneva Conventions and international humanitarian laws. In this sense, America is "simultaneously a leader and an outlier" (ibid.: 2).

Since America is a major player in international politics, commanding a hegemonic influence on the rest of the world, American Exceptionalism is partly a manifestation of a big bully that believes its values are superior, and that strays from international norms whenever its interests are at stake. Singapore is not a major power either in the international arena or on the regional level of ASEAN. However, its economic strength and financial resources make for smug confidence in advocating a peculiar position on human rights. Singapore's policy on human rights, while different from American Exceptionalism, contains several incongruities or paradoxes resulting in a unique pattern that may be termed "Singapore Exceptionalism." There are two aspects of Singapore Exceptionalism: an objective one, grounded in empirical facts that show Singapore to be a society of contradictions, and a subjective one based on the leaders' self-understandings and/or rhetorical justifications that the country is indeed unique and exceptional.

Some objective facts position Singapore as an outlier when compared with its neighbors or along certain indices. First, all the advanced East Asian economies (Japan, Hong Kong, Taiwan, and South Korea) have official and independent human rights commissions; Singapore is the exception. Interestingly, the country with no human rights institutions is also the one whose officials shout the loudest about "Asian values."

Within ASEAN, Malaysia, Indonesia, Thailand, and the Philippines have recognized human rights bodies, while Singapore keeps company with Brunei, Cambodia, Laos, Myanmar, and Vietnam—countries that do not officially endorse human rights organizations within their own borders. Cambodia in recent years has witnessed a mushrooming of NGOs. Singapore's exceptionalism stands out as a "poor little rich girl" syndrome: it is rich in financial resources, but

poor in both civil society and human rights organizations. Amnesty International has not been able to set a branch office in Singapore—despite pledging its code of neutrality of not investigating cases in Singapore. Locally, Think Centre deals with human rights issues, but is run by a handful of people with no resources and no influence.

Second, Singapore Exceptionalism is magnified when viewed under a global lens. International human rights monitoring bodies have compiled various types of data to rank countries along some indices. Freedom House has political rights and civil liberties checklists that rate countries on a scale of 1–7, with the former representing the highest level of freedom and the latter the lowest. From 2003 to 2006, Singapore has consistently scored 5 for political rights and 4 for civil liberties (Freedom House, 2006). In May 2007, World Audit Democracy (2007) rated 150 countries along the dimensions of political rights, civil liberties, press freedom, and corruption, and then grouped them into 4 divisions. Singapore fell into the lowest range of countries (Division 4), and occupied the eighty-second position for Democracy Rank and the hundred and fifth position for Press Freedom Rank. Countries like the Philippines, Indonesia, Kenya, Mauritania, and Togo were ahead of Singapore.

Similarly, Reporters without Borders (2006) has an annual press freedom index based on a survey of 168 countries. Singapore's 146th place puts it in the league of third world countries like Zimbabwe, Congo, Somalia, Gambia, and Yemen, and losing out to ASEAN neighbors like Malaysia (92), Indonesia (103), Cambodia (108), Thailand (142), and the Philippines (142). When Singapore's leader Lee Hsien Loong justified state control of the press, he mused that the Asian countries that yielded "the best financial results were those whose media was less aggressive" (Reporters without Borders 2007).

If high economic growth is proudly valorized over press freedom, a paradoxical situation arises when Singaporeans in the Information Age appear to be "so wired and yet so clueless" (Coronel 2001: 10). As one of the world's most globalized nation, Singapore is an education, media, trading, and financial hub, with the highest penetration of newspapers, radio, television, and Internet. As the most connected country in the region, more than 1.7 million citizens have access to the Internet (Latif 2004). Yet, these same people seem to be "in the dark about what is going on where it matters most: their own country" (Coronel 2001: 10).

Following up on the "wired but clueless" conundrum of media usage in Singapore, Cherian George (2005) has pointed out a "penetration/participation" paradox based on a comparison of Singapore and

Malaysia. Singapore has higher Internet connectivity than Malaysia but lower levels of political activism online. While fewer Malaysians own computers, the usage of this medium is far more relevant for social movements and with greater impact on Malaysian politics than in Singapore. George argues that the differences can be explained not by the countries' regulatory regimes, but by existing networks to organize dissent. Thus, Malaysia has plenty of opposition parties, newspapers, and an online newspaper called Malaysiakini. There are also hundreds of NGOs in Malaysia, plus a National Human Rights Commission (SUHAKAM), and an independent human rights body (SUARAM). Singapore, being the poor little rich girl, has high Internet accessibility but no civil society base to advance social change.

If Singapore boasts of its economic growth and hardware of infrastructural developments, one would expect the civilizing tendencies of an advanced nation. For example, there is a worldwide trend, particularly in wealthy countries, to abolish the death penalty. Singapore, however, retains the barbaric practices of caning and capital punishment (mandatory in the latter for drug trafficking, murder, treason, and firearms offenses). This is the third aspect of Singapore's exceptionalism: the country is cast into disrepute among a peer of murderous states like China, Vietnam, and Saudi Arabia. Singapore has earned the infamous distinction of being "the world execution capital" (*The Economist* 1999). Amnesty International reported in 2004 that Singapore tops the world in terms of the highest per capita execution rate relative to a population of just over four million people. Over four hundred people have been hanged in a period of thirteen years, putting Singapore three times ahead of Saudi Arabia. Most of the executed belong to marginalized groups, such as foreign migrant workers, drug addicts, the poor, and the uneducated (AI 2004).

In spite of the high execution rates, public debate on the death penalty is muted partly because information on such hangings is not always forthcoming; partly because the issue of capital punishment is framed not as a human right to life, but one of crime, law, and order ("the death penalty is primarily a criminal justice issue, and therefore is a question for the sovereign jurisdiction of each country" according to Singapore's representative to the UN, quoted in AI, 2004); and partly because public debate is foreclosed by simple prohibition. Thus, the Think Centre, a local independent abolitionist group, has tried to organize forums on capital punishment, but with great difficulty.

The lack of debate on any human rights issue is not surprising given the high levels of state control on expression. Daniel Kaufmann

and his colleagues at the World Bank have constructed Worldwide Governance Indicators along six dimensions (World Bank 2006). Singapore scores 100 points for Government Effectiveness (GE), 100 for Regulatory Quality (RQ), 99 for Control of Corruption (CC), 96 for Rule of Law (RL), 84 for Political Stability (PS), but a measly 38 for Voice and Accountability (VA). By contrast, Finland has a better record, with 100 for VA, 100 for CC, 99 for GE, 99 for RQ, 98 for RL, and 98 for PS. Singapore's low percentile rank in Voice and Accountability is in accord with countries like Tanzania, Zambia, Sierra Leone: here, the advocate of "Asian values" has more in common with African states than with its Asian neighbors.

The Rhetorics of Singapore Exceptionalism

The poor little rich girl characterizes Singapore as one rich in financial and infrastructural resources, but poor in civil society, voice, accountability, and human rights in general. It is a society with global connections but low democratization. Beneath the hypermodern surfaces, there is a "struggle over the soul" (Tamney 1996), or there lurks something sinister, as implied in the epithet "Disneyland with the death penalty" (Gibson 1993). Yet, Singapore leaders have never denied these apparent incongruities and in fact have argued that contradictions are good in themselves, and are best for the country.

In the official proclamations of Singapore Exceptionalism, it is acknowledged that Singapore is "unique" and "different" from other countries. Several claims follow from this line of reasoning:

1. The difference is positive, serving the country "well."
2. The difference means there is no obligation to comply with international norms.
3. "Foreign" (equated as "Western") criticisms are invalidated by this difference.

For example, the Ministry for Home Affairs' Press Secretary wrote, "the term 'human rights' has been appropriated by Western liberals to describe political values that they espouse and champion aggressively. Our starting point should not be any abstract ideal of human rights, or what advocacy groups like Freedom House or Amnesty International want Singapore to become, but what works for Singapore" (Ong-Chew 2004). Although she did not specify "what works for Singapore," there was some reference to "stable, effective government," but no

mention of multiple voices concerning the direction of society or the autonomy of persons. Ultimately, it is still the nanny state that decides what is best and what works for the country.

At a May 2007 conference on transparency and governance, Singapore was criticized by academics for failure to disclose state investments, political funding, and politician's assets, as well as for the lack of fairness and competitiveness of political participation, and the absence of an independent media. In defense, Kishore Mahbubani, once an advocate of "Asian values," now head of the Lee Kuan Yew School of Public Policy, described Singapore as a "uniquely vulnerable state" that needs to be protected by "stronger government":

> We are a uniquely vulnerable state. I don't think Singapore has the luxury of having a weaker government. Part of having a stronger government is that if you give the government greater freedom to manoeuvre, then essentially you also have less right to know on the part of the people. Singapore actually has real secrets to worry about. (Li 2007b; Loh 2007b)

In March 2007, the Australian National University conferred an honorary doctorate on eighty-three- year-old Minister Mentor Lee Kuan Yew. Some fifty students protested with banners reading "No doctorates for dictators." Unfazed by the hostile reception and criticisms that he "cut human rights corners," Lee dismissed Australian-style governance as irrelevant to Singapore: "It's not going to change me; I'm not going to change you. We are going to prosper. But if I allow you to run my country, it will spiral downward and we will hit rock bottom" (Lim 2007).

Arguing along the same lines, his son the prime minister rejected liberal democratic style of governance in favor of an unique path of development. Lee Hsien Loong held that "each Asian country must take its own route and strike its own 'point of balance' to evolve its political system and media model. . . . 'Unthinkingly importing institutions from other countries and grafting them into the local political system can end up doing more harm than good.' . . . Mindful of the unique circumstances of each country, Mr Lee said that Singapore will also make changes in its own way . . ." (Peh 2006: 3). In this rendition of Singapore Exceptionalism, Singapore need not comply with universal standards because its unique history justifies its own model of evolution. Singapore has to do things its own way.

This discourse of uniqueness and difference has an element of xenophobia: foreign ideas and institutions are perceived as interfering

agents that infect and contaminate the local population (Kingsbury et al. 2000). Arguing that Singapore's media model was "different" (Latif 2004: H8), Lee Boon Yang—Minister for Information, Communications and the Arts—spelled out the official aversion to foreign journalists: "Foreign journalists are welcome to report on local developments and write for Singapore newspapers, based on the principles of accuracy, fairness and balance. But they should not use the local media as a platform to influence Singaporeans with their ideas of governance or the policies of the government, including policies on the media" (Lee 2003: 20). A year later, his speech underscored the subordination of local media to "national" interests: "Our media has a tremendously important role in the national effort of rallying Singaporeans to do the things which matter most to Singapore. This is certainly more important than to gain the favours of international ranking associations" (Latif 2004: H8).

On 13 April 2007, the Singapore Democratic Party led by Chee Soon Juan organized a public forum on democracy and human rights in Europe and Asia, inviting seven European Parliament Members (MEPs) from the Alliance of Liberals and Democrats for Europe (ALDE). But the seven Europeans, plus a Cambodian and a congresswoman from the Philippines, were denied permission to speak. The Ministry of Home Affairs ruled that it was an offense to organize a public forum with foreign speakers without a permit, and an offense for foreigners without professional visit passes to be speakers at such a forum. The MEPs were barred from speaking "on the grounds of public interest." "Singapore's politics are reserved for Singaporeans. As visitors to our country, foreigners should not abuse their privilege by interfering in our domestic politics" (*Today* 2007: 10; Paulo 2007). On the other hand, overseas management gurus who lavish praise on Singapore are not barred from speaking at consultancy workshops.

In August 2007, a Canadian law professor was invited by an academic institute to lecture on international trends toward the decriminalization of gay sex. Singapore, which still retains the 135-year-old penal code against gay acts imposed by the British, banned his visit as his talk was "deemed contrary to public interest."

The official rhetoric of Singapore Exceptionalism is deployed not only to bar foreign commentaries and dismiss critics of the regulatory regime, but also to justify steep pay increments for government elites. In April 2007, a 60 percent increase in ministers' salaries was announced: the prime minister's revised salary of US$2 million would be five times more than the $400,000 paid to American president George W. Bush, and more than eight times that of Japanese prime

minister Shinzo Abe (Mydans 2007). Citizens who were outraged by this increase collected about 1,800 signatures from an online petition. The elder Lee Kuan Yew rebutted:

> " 'The biggest mistake any Singaporean can make is to believe that Singapore is an ordinary country that can behave like an ordinary country like Malaysia, like Indonesia, like Thailand, the Philippines, Vietnam, Australia, New Zealand, Denmark,' Lee said. That is why Singapore needed an extraordinary government, filled with top talent who will ensure the system remains efficient and the country prosperous. . . . 'If Singapore ever loses this kind of government of capability and integrity, of always looking into the future, planning ahead, it will just sink into nothingness and become an insignificant island. Talent will bleed out. It will never recover.' " (Peh 2007: 1)

Lee also posed this threat at a personal level that if ministers were not paid well, "Your apartment will be worth a fraction of what it is. Your jobs will be in peril, your security will be at risk, and our women will become maids in other people's countries" (Mydans 2007: A10).

In addition, Lee Kuan Yew defended his long-running, one-party dominance against any change of power: "Our ministers have been in the job for 10, 15, 20 years and produced results, because they are capable, they are honest and they learnt on the job quickly. If we have a government switch every six months, we are finished. European countries can change government because their economy is broad-based, it has a long cycle of dynamic, so the country will go on. But in a new young country, you falter, the music stops" (Neo 2007).

The ideology of Singapore Exceptionalism is self-serving: Singapore is an exceptional country, governed by an exceptional elite who deserve exceptional salaries. Singapore's historical circumstances are exceptional and so universalist norms do not apply; only the exceptional leaders are fit to decide the course the country should take. And the outcomes would be truly exceptional: a materialism without any humanism, fattening the citizens' stomachs without nurturing their souls, economic achievements without voice and accountability.

Singapore Exceptionalism: "Asian Values" Redux?

If the whole debate on "Asian values" in the context of human rights is conceptualized as an ideology (to justify autocratic regimes, to forestall political reforms, to nullify criticisms, to persuade citizens that they do not need human rights), then this ideology would not wither

away because of the necessary functions it plays. If it is no longer in vogue to talk about "Asian values" because the economic conditions under which the debate was conducted have changed, the ideology may mutate and appear in a different format while retaining the core elements of the original. Singapore Exceptionalism does indeed contain many of the principles of the "Asian values" argument; it fulfills the same ideological functions and comes from the same people who have ruled Singapore for nearly half a century.

The "Asian values" debate is also an "Asian Exceptionalism" argument: "Asia" is culturally different from the "West," and therefore should follow its own standard and path of development (Fukuyama 1998; Dittmer 2002; Chong, A. 2004). But while "Asia" encompasses countries far too diverse to be lumped into a single monolith of presumptively shared values, Singapore Exceptionalism is scaled down to a single country. Singapore no longer presumes to speak on behalf of Taiwan, Hong Kong, Tibet, Thailand, or Indonesia.

But Singapore Exceptionalism still bears the telltale traces of its precursor. The same cultural determinism of "Asian values" ideology is evident in the Singapore Exceptionalism's assumption that culture is invariant, uniform, unique, and inviolable. Lee Kuan Yew's classic slogan that "culture is destiny" (Lee 2001) is recycled in the Exceptionalism argument that Singapore's fate is sealed by its own internal logic of uniqueness.

Whereas the "Asian values" debate pits a decadent West against a virtuous East, betraying an essentialist understanding of cultures and breeding a sense of xenophobia against the "West," Singapore Exceptionalism also reproduces the West versus East dichotomy, and is repulsed by "Western" institutions. Thus Prime Minister Lee spoke with distaste when he referred to a free and independent media as "the Western model of a rambunctious press" (Peh 2006: 3).

Kishore Mahbubani's claim that Singapore is "a uniquely vulnerable state" that requires a stronger government (Li 2007b; Loh 2007b) replicates the vulnerability argument found in the "Asian values" debate (Brems 2001: 46). A siege mentality of perpetual fear is propagated by the claim that Singapore is constantly under external threat from its Islamic neighbors and internal threat from its own multicultural diversity. Such "vulnerabilities" then justify a strong government that sidesteps individual rights for the sake of social order. Thus, issues dealing with ethnic discrimination are classified as "out of bounds" in the news and public debate, and subject to criminal penalties if breached.

Finally, both the "Asian values" debate and the Singapore Exceptionalism argument share the same underlying philosophy

about human rights. Against the universalist position that various dimensions of human rights are indivisible and interdependent, Singapore leaders place economic prosperity ahead of civil liberties and freedom. Amartya Sen's thesis (1996) that civil and political rights form part of the holistic right to development is rejected by Singapore leaders. The cornerstone of most of the ruling party's policies is one where economic growth must be achieved at all costs, even if political liberties must be sacrificed. Rejecting the right of people's participation and decision making, the ruling elites believe that they know better than anyone what economic and social well-being is and how to advance it. They have tied the notion of legitimacy with the delivery of economic goods. One does not need to be a Marxist to appreciate that in Singapore, it is economics—not culture and certainly not "Asian values"—that propels the society.

The Costs of Singapore Exceptionalism

Under George W. Bush's administration, American Exceptionalism has been associated with a moral high ground, a culture of impunity, and unilateral arrogance in foreign policy (Ignatieff 2005: 24). Singapore does not have the weight of the superpowers, and its version of Exceptionalism is not so aggressively developed or entrenched as that of the United States. Nevertheless, Singapore Exceptionalism is just as unpopular as is American Exceptionalism.

When Lee Kuan Yew claimed in April 2007 that "the biggest mistake any Singaporean can make is to believe that Singapore is an ordinary country like Malaysia, like Indonesia, like Thailand, the Philippines, Vietnam, Australia, New Zealand, Denmark," many Malaysian parliamentarians responded negatively. These lawmakers felt that the remark asserted the superiority of Singapore and demeaned the rest of the neighbors. Dr. Rahman Ismail opined that "They (Singapore) think they are the best; that is why they talk like that. But they forget they may have to turn to their neighbours one day" (*Straits Times* 2007: 13)

Foreign dignitaries also have little regard for Singapore and used various metaphors to reduce Singapore's high and mighty complex into diminished size. In September 2004, Taiwan Foreign Minister Chen Tan-Sun derisively described Singapore as "a country the size of a booger." Singapore's Foreign Minister George Yeo told the United Nations General Assembly that Taiwan's factions leaning toward independence would lead to war with mainland China. Disgusted by this comment, Chen derided, "Even a country the size of a booger

brazenly criticised Taiwan and former president Lee Teng-Hui in the United Nations."

In 1998, Indonesian President B. J. Habibie told Taiwanese reporters, "Look at that map. All the green is Indonesia. And that little red dot is Singapore." The "little red dot" reference was meant to taunt Singapore for being a racist country that discriminated against Malays from occupying high military positions, and for being a city-state that harboured corrupt Indonesians while refusing to sign an extradition treaty that would bring these people to justice. In February 2007, after more than a decade of failed negotiations over the extradition treaty, Indonesia banned the export of sand to Singapore where a boom in property construction has been fueled by an influx of foreign purchases, including cash sales made by wealthy Indonesians (Arnold and Fuller 2007).

Indonesia's sand export ban was one of a series of "Singapore bashing" by its neighbors: Malaysia blamed their floods on Singapore's land reclamation, the Thai junta accused Singapore of spying on Thailand, using the satellite telecommunications Singapore bought from Thaksin (Devan 2007). Singapore has become "the rich little place that the others love to hate" (*The Economist* 2007). It is both an object of envy and a butt of scorn.

On the domestic front, Singapore Exceptionalism has major impact on the lives of Singaporeans and residents. When the imperatives of economic development and the will of a strong government prevail, human rights are at stake. Voice, freedom of expression, freedom of the press, civil society, the right to life, the protection of minorities like migrant workers and gays/lesbians are all relegated to the margins of insignificance.

In 1835, Alexis de Tocqueville made very acute observations about despotic forms of democracy, and these may ring true for the Singapore model that prioritizes economy ahead of basic human rights:

> Above this race of men stands an immense and tutelary power, which takes upon itself alone to secure their gratifications and to watch over their fate. That power is absolute, minute, regular, provident, and mild. It would be like the authority of a parent if, like that authority, its object was to prepare men for manhood; but it seeks, on the contrary, to keep them in perpetual childhood: it is well content that the people should rejoice, provided they think of nothing but rejoicing. For their happiness such a government willingly labours, but it chooses to be the sole agent and the only arbiter of that happiness; it provides for their security, foresees and supplies their necessities, facilitates their pleasures, manages their principal concerns, directs their industry,

> regulates the descent of property, and subdivides their inheritances: what remains, but to spare them all the care of thinking and all the trouble of living? . . .
>
> . . . After having thus successively taken each member of the community in its powerful grasp and fashioned him at will, the supreme power then extends its arm over the whole community. It covers the surface of society with a network of small complicated rules, minute and uniform, through which the most original minds and the most energetic characters cannot penetrate, to rise above the crowd. The will of man is not shattered, but softened, bent, and guided; men are seldom forced by it to act, but they are constantly restrained from acting. Such a power does not destroy, but it prevents existence; it does not tyrannize, but it compresses, enervates, extinguishes, and stupefies a people, till each nation is reduced to nothing better than a flock of timid and industrious animals, of which the government is the shepherd. (Tocqueville 1988: 318)

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Chapter 7

Human Rights in Thailand: Rhetoric or Substance on "Asian Values"

Naruemon Thabchumpon

This chapter examines the notions of human rights in the Thai context. It argues that the discourse of human rights in Thailand emerged as a national issue when politicians and local authorities were forced to react to human rights situations and conflicts at the grassroots, especially in the far south of Thailand. The apparent contradiction between state security and human rights protection invariably emerges, especially when the rhetoric of "sovereignty" and "national interest" were appealed to for protecting the government's stability, instead of the people.

The chapter first discusses debates and challenges to the universality of human rights arising from the Asian perspectives. Second, it explores the discourses of human rights in the Thai context, especially the discussion of the institutional framework for human rights in Thailand. Third, the chapter examines the human rights practices in Thailand and its limitation of promotion and protection of such rights. Finally, it argues that the notions of the human rights discourses and the Thai style of human rights practices should be seen as rhetoric rather than substance.

Throughout the chapter, I argue that the idea of "Asian values" has never really caught on in Thailand. In reality, a Thai style of human rights notions has always been used as rhetoric by authorities and politicians to support their political agenda. Since the 19 September 2006 military coup, the freedom of information even appears as mere rhetoric as most newspapers imposed self-censorship and refrained from printing any news that might offend incumbent authorities; what is more, the atmosphere of self-censorship is clearly evident in public,

especially regarding the role of the monarchy in modern Thai politics.

Challenges to the Universality of Human Rights from the Asian Perspectives

This section discusses debates on and challenges to the conception of the universality of human rights, which have been proposed mainly by relativists who believe that human rights are related to the particularity of each country's history and culture. Their arguments are based on perceptions that the notions of human rights differ from country to country, for example, since they are related to and depend upon socioeconomic and cultural conditions. Other arguments include debates arising from communitarian advocates, whose arguments are based on the cultural differences between Asian and Western societies; according to them, these cultural differences shape ideas about individual rights.

Among such debates, the arguments also contend that the basic concept of human rights is based on Western values that are not rooted in Asian cultures. Examples of such arguments include the differing religious connotations, for example, between Islam and Christianity. During the cold war period, there was also a debate between the different emphasis on the civil and political rights prioritized by the liberal Western countries against those socialist countries that emphasized economic and social rights. Recently, there is a debate on the contrasting perceptions of the North and the South—in other words, "the Asian values debate."

The logic of the "Asian values" debates can be examined using two categories: as either an element of cultural relativism or a communitarianist approach, which has been advocated for some years. First, the culturally specific approach is based on the belief that the notions of human rights exist in the context of particular political, economic, social, and cultural conditions. Some Asian governments even maintained that the cultural context between individuals and the state is fundamentally different in Asia. While Asian societies stress the interest of the community, Western societies stress the importance of the individual (*Bangkok Post* 1993).

One example was the 1993 Bangkok Declaration of Human Rights adopted by the Asian governments for their preparatory meeting for the Vienna World Conference on Human Rights. The Bangkok Declaration asserted that "while human rights are universal in nature, they must be considered in the context of a dynamic and evolving

process of international norms-setting, bearing in mind the significance of national and regional particularity and various historical, cultural and religious backgrounds" (*Bangkok Post* 1993).

Such an argument of the Asian leaders should be seen as a reflection against the universality conception of human rights discourses. Some leaders even argued that the idea of rights should be considered a matter of national sovereignty. For example, according to Li (1996), the 1991 White Paper of the Chinese government argued that the issue of human rights was within the sovereignty of each state. It argued against Western countries commenting on human rights in Asia, exposing the double standard, cultural imperialism, and the imposition of their own pattern using the pretext of human rights.

Second, the so-called "Asian communitarianism" is a challenge to what is perceived as the essence of human rights, such as the individual-centered approach. In other words, this "Asian concept of human rights" suggests that the circumstances that prompted the institutionalization of human rights in the West do not exist in Asia and Asia's community-centered approach is different from and possibly superior to the Western idea that is alien to Asian traditional values (*Bangkok Post* 1993).

One example included an argument proposed by the Singaporean government (1991) that emphasized the idea of community as a key survival value for Singapore. It argued that human rights, according to the Asian view, are individualistic by nature and therefore destructive to Asia's social mechanism. Increasing rates of violent crime, family breakdown, homelessness, and drug abuse are cited as evidence that Western individualism has failed. To put it briefly, the "Asian value" of "community harmony," proposed by the Singaporean government, should be seen as an argument on "cultural" differences between Asian and Western societies, showing that the idea of individuals' unchallengeable rights does not suit Asian societies.

It is necessary to understand the historical context of the debate on the universality of human rights: this idea was derived from the existing international standards ratified by various governments as its legitimacy. It is based on global norms, such as the idea of the suffering and hope of all humanity, or the respect for the dignity of every human being, regardless of whether they are Europeans, Asians, or Africans. Still, those who believe in cultural relativism continue to advocate the need for seeking cultural legitimacy for human rights. They have argued that the problematic nature of the universality of human rights derives from its lack of cultural legitimacy. For them, to enhance the cultural

legitimacy of rights would facilitate the mobilization of political forces within the community and help force those in power to be more accountable for their implementation or enforcement of rights. Those who support cultural diversity and politics of identities would argue that these matters should be respected and put into consideration. The important thing for human rights advocates is to find ways to legitimize a particular human right in the cultural tradition of a community, especially when that right is not recognized by the community, rather than arguing for the cultural superiority of a particular society (Pannikar 1996: 201; cited in Ravindran 1998: 48).

In this category, the conception of human rights still has the grounds to be seen as a universal culture, but it needs the recognition of human pluralism and the cross-cultural philosophical approach in order to contribute to the appreciation of human rights. Amartya Sen (1991: 44–64) has argued that "the idea of Asian Values"—as appropriated by authoritarianism—has to be questioned, and what is needed is not the claims of the superiority of the so-called "Western values" but a broader historical study of Sanskrit, Pali, Chinese, Arabic, and other Asian literatures.

According to Sen (1996), cultural differences and value differences between Asia and the West were emphasized by the Asian official delegations at the World Conference on Human Rights in Vienna in 1993, especially the Chinese foreign minister who played the leading role for its counterarguments against the universality of human rights and argued that "Individuals must put the states' rights before their own." However, Sen argued that the claim that "Asian values" are less supportive of freedom and more concerned with order and discipline needed to be reconsidered within the Asian context itself.

According to Sen, personal freedom for all is important for a good society; and the exercise of civil and political rights in Asian countries can make a real difference for those who are marginalized in these societies. He further argued that the claim on the value and equality of toleration addressed in Western writings can also be seen in Eastern societies. It should rather be seen as the thought of universal tolerance. As Sen sees it, the real issue is not whether the restricted perspectives are present in Asian traditions, but whether such freedom-oriented perspectives are absent from Asian traditions.

One example is the role of Buddhism as a form of thought, which is known as an idea attached to freedom, allowing considerable space for passion and free choice. Since much of the debates on "Asian values" focus on Confucianism, this form of thought is therefore worth examining. Although many people have heard of Confucianism as a

pillar of "Asian values," Confucius's own teachings do not echo the rhetoric emphasized by Asian authoritarian leaders. For instance, Confucius's teachings never recommended blind allegiance to the state. On the contrary, such a concept has clearly argued that "Asian values"—loyalty to family and obedience to the state—can be in conflict with each other, and the role of Confucianism is to stand on its unbending integrity, including criticizing those who commit unlawful activity. In other words, so-called "Asian values," as invoked by authoritarian Asian leaders, should be seen as their rhetorical means for justifying their political practices.

In relation to the conception of rights in the Asian perspectives, the traditional form of Asian belief, for example, Buddhism or Confucianism, still include the idea of liberty and political rights, and the practices should be examined throughout examples in Asia. Rather than emphasizing a dichotomy between the West and the East, according to Sen (1996), we should recognize the diversity among different cultures, such as Western civilization, "Asian values," and African Cultures, as well as Arabic traditions in order to understand normative ideas of freedom and democracy enduring in every society in different form.

Responding to the "Asian values" debate, from civil society perspectives, Ravindran (1998: 49), who is an Indian human rights activist, cited Yash Ghai (1994) in order to argue that the statement supporting community rights against individual rights is also used by Asian leaders to deny the rights of local communities in many aspects. While Asian governments have underscored the importance of community values, they have failed to respect the freedom of expression and organization that energize and strengthen community life. Quite the opposite, the Asian states impose restrictions on the social and political activities of citizen groups on the pretext that these community groups pose a threat to the state. In other words, it can be argued that the intolerance of opposition, which is inconsistent with traditional communal values and processes, has been applied by many Asian states.

According to Ravindran (1998: 54), those who speak on behalf of the Asian perspectives on the universality of human rights need to understand the conditions that generate challenges for universalism, from social, economic, political to cultural factors. In his opinion, the Asian states contest universalism for two reasons: as a bargaining tool against the West; and as a way to enter into the globalization process without democratizing their societies (ibid.). In other words, it is a way for Asian states to create modernity without democracy.

The Discourses of Human Rights in the Thai Context

The debate on the notions of human rights accompanies the struggle of Thai social movements for the country's democratization process. This country has a political history of long periods of authoritarianism alternating with periods of "semidemocratic" government, witnessing more than twenty changes of government and seventeen written constitutions since the abolition of the absolute monarchy in 1932. The most recent coup took place in September 2006, when Prime Minister Thaksin Shinawatra's government was overthrown by the military group known as the Council of Democratic Reform for Constitutional Monarchy (CDR), which later removed the words "for constitutional monarchy" to avoid international criticism. The 2006 military coup was very controversial and created deep divisions among human rights activists and civil society organizations regarding their stance on this coup.

In the Thai context, there have been a number of studies on the universality of the concept of human rights. According to Vithit (1992), the universality of human rights is derived from the basic standard according to which human beings should be treated by the state, no matter where they are residing. Its intention is based on the protection of and support for human progress and dignity, rather than the superiority of one society over the other. Therefore, such a concept should be compatible with every society. In practice, however, the emphasis of the human rights concept has been perceived as a Western concept, and it should be based on the particular conditions of such a society. For example, the proposal on the community and the collective rights of local communities to have access to natural resources, as addressed in the 1997 Constitution, was also considered part of the expanding concept of human rights in Thailand.

Regarding the compatibility of such a concept with local beliefs, such as Buddhism, Brahma, Hinduism, and Confucianism, however, there was suspicion from some local religious leaders in Thailand. For example, PraDhampidok (1993), a famous Buddhist monk, contends that the Western idea of the universality of the human rights concept should be regarded as a set of negative rights deriving from natural law that aims at the survival of the human being. Such rights would emphasize the method of struggles in order to achieve its mission; and this might lead to a destructive process deriving from anger or the aggressive feelings of those who practiced. He therefore argued for positive ethics such as the notions of love and compassion that are

also universal concepts to be stressed as a basic concept for human emancipation, rather than the concept of rights. Worasak (1999) also maintained the importance of non-Western culture, which places emphasis on the relationship between rights, liberties, and duties, thus shaping how people perceived and practiced human rights in Eastern societies.

Among such arguments, however, Saneh (1993) claimed that those who examine the notions of human rights in Thailand should avoid a "sectarian sense of self-righteousness." What is more, he contends that the concept of human rights needs to be divested of all its parochialism and sectarian prejudices. Rather than arguing from the possessive instinct of sectarianism, we need to consider human rights holistically, aiming for emancipation and the progress of human dignity that includes an examination of the moral and spiritual foundations of both the theory and practice of human rights.

The notions of human rights in the Thai context have always been more associated with the issue of civil and political rights than with economic, social, and cultural rights. Even though Thailand adopted the UN Human Rights Declaration in December 1948, it did not ratify the International Convention on Civil and Political Rights (ICCPR) until 1996. It was not until the late 1990s—when the idea of economic, social, and cultural rights, in relation to the conflict over natural resources management in Thailand, had been proposed and discussed in Thai civil society. Subsequently, the Thai government ratified the International Convention on Economic Social and Cultural Rights (ICESCR) in 1999. Particularly in the public domain, discussions on the notion of human rights had not been taken into account in Thai society until after the October 1973 democratic uprising by which the Union for Civil Liberty (UCL), the first human rights NGO, was established in November 1973. According to Saneh (1999), the studies on human rights were published and discussed among academics in the 1970s, but most of them were based on the legal aspects of human rights.

Although the idea of human rights had been proposed by human rights NGOs and academics since the 1970s, the notions of such a concept were widely discussed only after May 1992, when a democratic movement overthrew the military government and brought democracy back to Thai society. In an account of the May 1992 events in particular, as Hewison (1998: 214) points out, "the inconsistent role of the Thai middle class during 1991 and 1992 should be considered as an unpredictable political factor which was not necessarily animated by liberal democratic values." In other words, as Callahan

(1998: 235) argues, the events of May 1992 derived from an oppositional consciousness: agreement among those who opposed someone or something as "a common enemy" but with no clear collective political vision to follow.

After the May 1992 events, while the military were forced to leave Thai politics in the hands of elected politicians, the idea of political reform and human rights protection were proposed by a group of academic and human rights movements in order to make the country's political system more efficient and help foster the democratic process and protection of human rights. The Anan Panyarachun government, an interim government set up after the May 1992 events to take care of the 1992 election, even agreed to consider the ratification of the ICCPR and set up a national mechanism to protect and promote human rights concepts.

Resulting from such a process, those human rights NGOs and marginal movements argued that democracy in Thailand cannot be guaranteed unless it is made more relevant to the majority of Thai people and protective of marginalized segments of the population. They argued that the urban civil society has grown and gained more political power as a result of economic development, in contrast with the bureaucracy. In rural areas, however, the evidence of inequity (especially income distribution problems) ranging from the most macro level to small incidents is clearly seen. The reason is that the success of Thai economic growth is based on a function of low wage rates and price stability in Thailand, which means that laborers and farmers form the backbone of Thai economic success. The more the country is industrialized, the more central governments will have to pay attention to the ever louder voices and demands of marginalized people. As villagers have become more and more conscious of the inequity of the distribution of resources, they have also organized their associations in order to fight for more equitable distribution and greater opportunities.

In this context, local NGOs and human rights organizations in Asia adopted the 1993 Bangkok Non-governmental Declaration on Human Rights that argues that

> Democracy is more than the ritual casting of a ballot at one party or multi-party elections. True democracy involves participatory democracy by the people at all levels so that the people have a voice in the discussion by which they are governed....It also involves the protection and participation of those groups which are not in the majority, namely minority and disempowered groups. It is intertwined with the

> issue of land and social justice for rural people and other disadvantaged groups. (Bangkok NGO Declaration 1993).

It took five years for advocacy groups to campaign for Thai state to recognize the protection of human rights and to establish such a concept in the 1997 Constitution. During the drafting process, several human rights activists and academics campaigned for the establishment of a national human rights mechanism in the constitution. At the end, the 1997 Constitution demonstrates that this reform agenda was focused on making the political system more accountable to the public by establishing several new bodies; examples include the Administrative Court, the Ombudsman, and the National Human Rights Commission. All of these institutional arrangements were aimed to deal with cases of human rights violations.

Among these new bodies, the most promising, when it was first set up, was the National Human Rights Commission (NHRC). The NHRC, however, proved to be ineffective. Its legal powers were limited and its implementation was incompetent, largely due to the limitations in articles 199 and 200 of the 1997 Constitution, which did not give it the power to penalize those who were responsible for abuses. The commission's incompetence was also attributed to its restricted budget and its deficient manpower. The commissioners of the NHRC had to work without payment for nearly two years before they received a salary and an annual budget. They had to recruit staff from other bureaucratic organizations in order to avoid budgeting problems. These limitations not only had a negative impact on the effectiveness of the NHRC but also created conflicts of opinion on how to deal with cases of human rights violations (Naruemon et al. 2000: 67). It was not until 2004—after five years in office—that the NHRC presented its first annual report on human rights and democratic situations in Thailand to the parliament. Although some human rights activists were selected as commissioners, they failed to perform their functions as the public expected. The only public role that members of the NHRC seemed able to perform was to give interviews, issue statements, and publicly comment on human rights abuse cases with no guarantee that the government would change its policies and practices (*Nation*, 19 September 2004).

Ten years after the promulgation of the 1997 Constitution, according to Saneh (1992), there were many studies on human rights concepts and practices taking place at the grassroots, especially in relation to the economic, social, and cultural rights, as well as liberal concepts of democracy. He argued that there have been more discussions on

the contemporary idea of human rights concepts, especially in relation to the democratic struggles and rights of access to natural resources at the grassroots. Some examples included the notions of community rights allowing indigenous groups access to natural resources, as well as earth rights that were linked between human rights and environmental protection. In practice, however, various documents also indicated that the recognition of human rights concepts has yet to be established in the society.

Human Rights Mechanism under the 2007 Constitution

The 2006 military coup against the Thaksin government resulted in the polarization of Thai society and the division of Bangkok into those in favor of the 2006 military coup and those opposed to all kinds of military coups. The 2006 military coup was very controversial and deeply divided human rights activists and civil society organizations regarding their explanations on the relationship between human rights and electoral democracy as well as their positions on the coup—either for or against.

For example, according to Chaiwat (2006), those who had been in favor of the 2006 military coup and had believed that there was no other practical choice that would argue that the coup did not kill the 1997 Constitution because it had already died long ago at the hands of the Thaksin government. Some members of the 1997 NHRC and human rights activists were criticized and faced furious protests from anticoup activists when they argued that the 1997 Constitution was already dead because of the government's intervention in all independent monitoring channels and autonomous agencies through its control of capital, people, and the media. Alongside endemic corruption, Thaksin's war on drugs and his bellicose approach to the conflict in the Malay Muslim majority in the Southern border region also resulted in the loss of thousands of lives. In the end, the conflicts were intensified to the point that Thaksin's opponents started to demonize Thaksin, viewing him as even worse than Suharto or the military regime in Myanmar; what is more, his opponents no longer saw democratic means as appropriate solutions for removing Thaksin's government.

Although there was a furious debate between academics and civil society organizations on whether this coup should be viewed as a conflict between a dictatorship and a democracy, many maintained that Thai democracy faced a problem of how to deal with a

democratically elected government that was responsible for so much violence and abuse of power during the last five years of its consolidating process. For example, according to Chaiwat (2006), although the coup was bloodless, it was still considered a violent solution to political conflicts and the transfer of power. It also reflected the problem of institutionalizing of Thai democracy and the country's inability to remove elected government that abused its power and violated civil and political rights of the people through democratic means.

After the 2006 coup, the Constitutional Drafting Committee (CDC) was appointed by the CNS to draft a new constitution to be presented for public approval. The CDC presented its final draft of the 2007 Constitution on 18 August 2007 and it marginally passed the public referendum. Although several articles of the 2007 Constitution were seen as the expansion of civil rights and the increasing power of independent organizations compared with the 1997 Constitution, the practical channel for implementation was limited to the bureaucracy and complicated procedures and its political agenda was mainly focused on power politics and the containment of electoral democracy. Among these key issues, the most controversial points were the appointment of seventy-four senators from various professions and the reduction of numbers of constituency and party-list MPs.

Following the precedent of the 1997 abolished constitution, the 2007 Constitution still addressed the basic civil and political rights of individual citizens, especially the rights of local communities to participate in resource management policy through institutional channels such as public referenda, public hearings on state projects, and the voter's right to propose bills to parliament. Many new rights were also introduced in the 2007 Constitution. These include the right to free education, the rights of traditional communities, and the right to protest peacefully against coups and other extra-constitutional means of acquiring power, the rights of children, the elderly, handicapped people's rights, and equality of the sexes. Freedom of information, the right to public health and education, and consumer rights are also recognized. A total of forty rights, compared to only nine rights in the Constitution of 1932, were recognized in the 1997 Constitution (CDC, 2007).

By and large, it can be argued that the idea of popular participation and unorganized protests in the context of the 2007 Constitutional agenda is still limited and not accepted by the public. Radical movements that use street politics will find that they have less bargaining power to counteract the state and face the problem of being regarded as

illegitimate from a strictly legalistic perspective. From the state's point of view, it will not be appropriate to use the politics of direct action without first trying all legal processes and institutional channels. The antagonism between participatory democracy and a version of formal democracy was evidenced again and again even after the promulgation of the 2007 Constitution. In the end, it can be forecasted that although radical movements and marginal organizations at the grassroots may attempt to create collective actions performed by different grassroots movements coming together to form a broad coalition of democratic forces, the possibility of success is still in question.

As far as the institutional framework for human rights protection is concerned, although the 2007 Constitution grants more power to the National Human Rights Commission (NHRC) to take action on human rights violation cases, the selection process of the commission is more influenced by the bureaucracy. In terms of the selection process, for example, this mechanism will be more influenced by the bureaucracy since the selective committee is composed of bureaucratic officers and elitist groups addressed as follows:

> The National Human Rights Commission (NHRC) consists of a president and six other members appointed by the King with the advice of the Senate from persons having apparent knowledge and experience in the protection of the rights and liberties of the people, having regard also to the participation of representatives from private organizations in the field of human rights. The President of the Senate shall countersign the Royal Command appointing the president and the members of the National Human Rights Commission. The provisions of Section 204 paragraph three, Section 206, Section 207, and Section 209 (2) shall apply mutatis and mutandis. The selection of the Selective Committee shall be made in accordance with the provisions of Section 243. (Constitution 2007: Section 256)

In other words, according to Section 256, the Selective Committee of the NHRC will be composed of seven members: the President of the Supreme Court of Justice; the President of Constitutional Court; the President of the Supreme Administrative Court; the President of the House of Representatives; the Opposition Leader in the House of Representatives, a person elected at a general meeting of the Supreme Court of Justice, and a person elected at a general meeting of the Supreme Administrative Court. Of these seven persons representing the elite, five are from the courts and the rest are leading electoral politicians, while civil society organizations that were the main components of the 1997 NHRC are excluded from this institution.

In terms of the power of the NHRC, the NHRC will have more legal power, both during the investigation process and after completing its investigation report as it can submit its complaints after the investigation to the courts of justice as well as to the constitutional and administrative court on behalf of victims and ask such organizations to take action (Constitution 2007: Section 257) as follows:

> The National Human Rights have the powers and duties to examine and report the commission or omission of acts which violate human rights or which do not comply with obligations under international treaties to which Thailand is a party, and propose appropriate remedial measures to the person or agency committing or omitting such acts to be acted upon. It has a power to submit to the Constitutional Court or Administrative Courts any assessment of any law, regulations or other actions that affect human rights and are inconsistent with the provisions of the Constitution; and a power to file lawsuit with the court of justice on behalf of the injured when requested and deemed appropriate to solve problems of public human rights violation as specified by law. The National Human Rights Commission also has the power to demand relevant documents or evidence from any person or summon any person to give statements of fact and has other powers for the purpose of performing its duties as provided by the law.

Human Rights Situations at the Grassroots

At the grassroots, according to the 2007 reports from Amnesty International and the NHRC, there have been many human rights violations cases involving both civil and political rights, as well as economic, social, and cultural rights. In the wake of the 2006 Thailand coup d'état, the right to free speech has been oppressed since the military implemented a ban on meetings of political parties and banned all criticism of them in the media. Political activities of all types were also banned. The closure of some three hundred community radio stations in the Thai provinces took place as well as the intermittent blocking of cable news channels on Thaksin and the criticism of the coup, and the suspension of some Thai Web sites devoted to discussing the implications of military intervention to Thai democracy. According to SEAPA, although there appeared to be no crackdown on journalists and foreign and local reporters seemed free to conduct interviews, and report on the coup, self-censorship was a definite issue in Thai newspapers. That martial law was imposed in thirty-five provinces also cast a shadow over Thai democracy, not to mention the violation of the political rights of the people in such areas.

As far as economic, social, and cultural rights are concerned, there were many cases regarding the basic labor rights of migrant workers. In Thailand, approximately one million migrant workers, more than half of which were Burmese, continued to work as unskilled laborers in factories, agricultural farming, fishery sectors, and private households. In practice, the working and living conditions of migrant workers, most of whom did not receive the legal minimum wage, were poor. For example, migrant workers in garment factories in Tak Province received little more than half the legal minimum wage. Other examples included the trafficking of women and children and forced prostitution and labor, which were serious problems in Thailand. According to the 2006 NHRC report, it is conservatively estimated that two hundred thousand women and children are engaged in prostitution in Thailand's illegal sex tourism industry. Of these, between thirty and forty thousand prostitutes are under the age of eighteen years; this figure does not include foreign migrants, many of whom come from Burma, China, and Laos. Thai and migrant women also are trafficked to Japan, Malaysia, Bahrain, Australia, South Africa, Europe, and the United States for prostitution and sweatshop labor. Although the government made some verbal commitments to combat human trafficking, such as in law enforcement, it has been criticized for failing to develop effective measures for victim protection and welfare, including insufficient support for child trafficking victims.

In the case of the southern conflicts, according to the report of the "Violence-Related Injury Surveillance" (2007: 1), there have been 9,236 cases of violence in the southern provinces between 2004 and 2007, resulting in 2,623 deaths and 7,494 injuries. Those victims were members of the security forces and militias, civilian government officials, Buddhist and Muslim civilians, and members of Muslim armed groups. According to the report, the numbers of Muslim victims affected by the conflicts are higher than Buddhist, which runs counter to the public perception provided by the mainstream media in Bangkok. Although the Thaksin government issued the Emergency Decree since July 2005 to empower the prime minister to declare a state of emergency, which included detention without charge or trial for up to thirty days; the use of unofficial detention centers, press censorship, and legal immunity from prosecution for law enforcement officers, the situation in the South was getting worse while the allegations of extrajudicial killings and ill-treatment by law enforcement officials continued.

The most infamous example was the killing of thirty-two Muslim men at Krue Se Mosque in Pattani provinces in April 2004. In this

incident security forces had used force disproportionate to the threat. Then there was a case of ill-treatment by the security forces of Muslim demonstrators at Tak Bai police station in Narathiwat province, when six demonstrators were killed and some thousand and three hundred arrested and transported to an army base where many were beaten. At the end, more than seventy-eight of these demonstrators died as a result of overcrowding during the journey and ill-treatment. The Thaksin government appointed an eleven-member commission to conduct an investigation but the findings were not made public; and no one was known to have been brought to justice for the killings.

Even after the 2007 constitutional promulgation, the violent situations in the South were intensified. The authorities' response to the violence was also marked by arbitrary detentions and a lack of investigations into human rights abuses while the interim government still verged on "administrative bankruptcy" in the South because of its inability to protect people. According to the 2006–2007 report of the subcommittee of the NHRC, there were more than one thousand cases of extrajudicial killings by the security forces during the 2003 "antidrug" war as well as the ongoing process of "antiterrorism."

Recently, a furious dispute has broken out regarding the military's proposal on the national security bill to expand the power of the military and security sectors to regulate the use of power for a specific purpose according to the level of seriousness of the security situation in order to confront threats to state security, maintain public safety, and the security of the nation-state and people. Such enormous power of the military includes the power to arrest and detain a person under suspicion of being involved in actions threatening internal security, to conduct suppressive operations against a person or group of persons or organization that give rise to actions threatening internal security, to investigate any person, vehicle, dwelling place, edifice, or location as necessary when there are sufficient grounds for suspicion that there is property kept there which is illegal or which came from an illegal action or which has been used or will be used in an action threatening internal security and to seize or confiscate property, documents, or evidence related to action threatening internal security. Moreover, the use of such power of the military will not nullify the power of the military under martial law or under rules, regulations, and orders already announced. Those officers working under this Act will not be subject to civil, criminal, or disciplinary liability arising from the conduct of duty for the resolution or prevention of illegal actions, provided that the conduct is honest, not discriminatory, not beyond

what is appropriate to the situation, and not beyond what is necessary (*National Security Draft Bill* 2007).

In the end, it can be argued that several human rights cases have been presented before the new bodies set up by the 2007 Constitution; these cases related to the rights of marginal people, conflicts over natural resource management, and concerned the livelihood of the poor. But since the new bodies could not resolve the conflicts, the people continued to take to the streets if they wanted their concerns to be considered by the state. Resulting from the libel lawsuits that were prompted by political motives, freedom of expression and freedom of information seemed to be mere rhetoric, since most newspapers imposed self-censorship and refrained from printing any news that might offend incumbent politicians.

Between 1997 and 2007, according to the Law Society of Thailand (2006), there were more than forty libel lawsuits against academics, NGO staff, community leaders, and editors of newspapers who had dared to comment on the activities of notorious politicians or their related business activities. Moreover, the idea that "local interests" were firmly subordinated to "the national interest" in the cause of infrastructure development and economic recovery, conflicts over development policy intensified, especially when the rhetoric of "sovereignty" was invoked to protect the government's cronies rather than the people.

Conclusion: The Thai Style of Human Rights: Rhetoric or Substance

This chapter is an examination of the notions of human rights in Thai contexts and argues that the idea of "Asian values" has always been used as rhetoric rather than substance by authorities and politicians to support their political interests and actions. In the Thai context, notions of human rights became a national issue when politicians and local authorities were forced to react to human rights situations and conflicts at the grassroots.

While the defunct 1997 Constitution was considered a national mechanism for providing an extension of civil and political rights and popular participation incorporated into the country's political system, in reality mechanisms arriving from such an intention were ineffectual when it came to protecting the rights and liberties of the people. The apparent contradiction between state security and human rights protection invariably arose when the rhetoric of "sovereignty" and "national interest" were invoked to protect the government's

stability. Since the 19 September 2006 military coup, moreover, freedom of information seems to be mere rhetoric since most newspapers imposed self-censorship and refrained from printing any news that might offend incumbent authorities, and the atmosphere of self-censorship on the freedom of expression has intensified, especially concerning the role of the monarchy in modern Thai politics.

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Chapter 8

"Asian Values," Gender, and Culture-Specific Development

Päivi Koskinen

The human rights debate has been heavily criticized ever since its inception as the key premise of the universality of all human rights. Some critics have argued that human rights are merely a Western product derived from and inherently linked to Western values, the substance of which cannot therefore be considered universally valid as legal concepts. A particular wave of this culturally specific human rights debate comes from South, Southeast, and East Asia. In these regions the argument has been propounded that human rights—as inherently Western concepts—are incompatible with "prototypical" Asian societies. Members of these societies often make the assertion that the very notion of human rights is in some way the product of the colonial and economic prerogatives of Western societies. Not only do these views simplify the issue, but ignore the Asian writings, religions, and cultural traditions from which originate the same "seeds" and inspirations for what we today call human rights.

This chapter will begin with a discussion of the concepts of human rights and development from an evaluative perspective: are they indeed Western concepts that have been to some extent imposed upon developing and non-Western countries? Second, this chapter will attempt to examine the obstacles presented by different Asian societies toward implementing the human rights–based approach to development. In terms of obstacles, the chapter will take up gender-specific rights as examples. Finally, some preliminary conclusions will be offered in the debate as to whether there truly exists a dichotomy between human rights and development in culturally specific contexts or whether these concepts can be integrated.

Universality of Human Rights—A Western Concept?

Historically, the debate on cultural relativism and human rights emerged in the 1970s, especially when the third world redistributionist claims for a new economic order were unsuccessful within the UN and when the "tiger economies" of East Asia started to thrive (Rajagopal 2003: 208–209). It has been argued as essential to make the connection between the debate on universalism and human rights and the discussion on Asian economies and their development. Furthermore, the turn to culture can be seen as a consequence of the "developmentalization" of the human rights discourse (202–203).

The emergence of an Asian view on human rights can be seen as a counterreaction to the increasing criticism of the situation of human rights in South, Southeast, and East Asia. At the end of the cold war era, the missionary zeal with which Western states were spreading their values, including human rights, seemed to threaten the vital interests of Asian states (Brems 2001: 80). This situation was particularly poignant when a country's human rights situation was connected to trade relations and development aid. As a result, for many years Asian states did nothing more about rights than to affirm their support for the Universal Declaration of Human Rights (UDHR). At first glance, the Asian states' sudden eagerness to contribute to the human rights discourse may seem puzzling. The reason may well be rooted in a newfound self-confidence derived from economic success; indeed, the most active proponents of Asian views can be counted among the economic tigers of Southeast Asia (81).

It could be argued that economic success is inevitably accompanied by demands and expectations—the prospering country must attend to its obligations under international law. Although this applies to all human rights obligations, it is especially true for the economic, social, and cultural rights; the disregard for these rights is often justified with reference to the economic obstacles to their implementation. The distinction between civil and political rights, on the one hand, and economic, social, and cultural rights, on the other, has been largely based on the assumption of the differing nature of these obligations. Civil and political rights have been considered to be absolute and immediate, whereas economic, social, and cultural rights have been perceived as programmatic, to be achieved gradually, to be of a political nature, and to be rather costly to implement when compared to civil and political rights, which were considered to be "free" (Eide 2001: 10). The cost of the second set of rights is related to their

content; they are seen as rights that oblige the state to provide welfare for the individuals.[1]

In general, Asian states have expressed a positive attitude toward human rights; an example of this positive attitude can be seen in the Bangkok Declaration, where the states reaffirm their commitment to the UN Charter principles (Brems 2001: 56). The states that are signatories to the Bangkok Declaration confirm that they adhere to the principles stated in the UDHR.[2] Nevertheless, certain hesitations or a sense of discontent as to how human rights are defined and used are still voiced. There are several controversial statements in the declaration, such as the provision on how human rights are being used in international politics as an instrument of political pressure. The signatory states refer to the use of double standards by the Western states and express their discontent about accusatory attitudes toward their own human rights practices.[3] The most controversial content of the declaration is the cultural argument, which links the universality of human rights to a claim of respect for cultural diversity. This topic is first referred to by saying that "the promotion of human rights should be encouraged by cooperation and consensus, and not through confrontation and the imposition of incompatible values." Furthermore, according to a specific provision on cultural specificity,

> Recognize that while human rights are universal in nature, they must be considered in the context of a dynamic and evolving process of international norm-setting, bearing in mind the significance of national and regional particularities and various historical, cultural and religious backgrounds.[4]

It is also of interest that the declaration does not provide any supervisory mechanism or submit itself to any preexisting supervisory system. Asia still remains the only continent without an independent regional human rights system with supervisory and monitoring capacities.

Criticism of the Western Approach

There are various methods by which human rights scholars have addressed the claims of the Western approach (Uvin 2004: 19). According to a purely formal and legal one, human rights are universal and binding on all states because the states have voluntarily ratified the relevant legal instruments. This type of reasoning presents the formalist, positive, and legal approach to the nature of human rights (Nyamu-Musembi 2005: 33). Even though some might argue

that the 1948 UDHR was a fait accompli for most states, it is reasonable to claim that by now at least certain core human rights have clearly been established in their own right to be binding on a universal level. This can be illustrated by the fact that over 140 states have ratified the International Covenant on Civil and Political Rights.[5] However, significant exceptions are still to be found among Asian countries—Malaysia, Myanmar, Singapore, Brunei, and Pakistan are among those that have not signed or ratified the covenant. Indonesia finally signed and ratified both covenants in 2006.[6] Also other treaties, such as the Convention on the Rights of the Child that has been ratified by 192 out of 194 recognized states, are almost universal in applicability.

In the field of soft law declarations, the Vienna Declaration was accepted by consensus after most states had participated for several years in the negotiations running up to the declaration itself.[7] The end of the cold war had raised hopes for a new era for human rights that had been caught between the West and the East.[8] The preparations for the Vienna Conference included regional meetings on different continents, and the Asian meeting finally culminated in the Bangkok Declaration. As a result of the statements contained in the declaration, the Vienna Conference found its theme: protecting human rights and their universality against attempts to undermine them. The Vienna Declaration affirmed the right to development as a universal and inalienable right as well as an integral part of fundamental human rights (Vienna Declaration 1993: Art. 10). According to the United Nations Special Rapporteur on the Right to Development, Arjun Sengupta, the recognition of the right to development as a human right in fact integrated civil and political rights with economic, social, and cultural rights in the way it was anticipated before cold war politics stalled such developments (Sengupta 2002: 841). Hence, there should no longer be a need to distinguish between these rights.

The Vienna Declaration actually adopted an antirelativist position: "the universal nature of these rights and freedoms is beyond question . . . human rights and fundamental freedoms are the birthright of all people."[9] From this perspective it seems that because human rights instruments have been negotiated, affirmed, and ratified so often and by so many states, they do in fact constitute the expression of a universal agreement.

Furthermore, some scholars argue that human rights may well constitute customary law and thus be considered binding on states that have not ratified the relevant instruments.[10] In order for a norm to be regarded as customary international law, it has to fulfill certain

prerequisites; it must reflect a pattern of established state practice representing *opinio juris*.[11] While treaties are only binding on those who have ratified them, customary norms are binding on all states, excluding those that have persistently objected to the implementation of that norm.[12]

Another way of arguing for the universal character of human rights is to refer to the fact that human rights should provide a universal standard because rights are inherent in every human being by virtue of being born. Subsequently, rights flow from the inherent dignity of every human being and can neither be given nor taken away by a sovereign. What is more, rights are not linked to status, race, gender, or any other denominator. This argument is congruent with the natural rights approach, often attributed to Kant (Nyamu-Musembi 2005: 32–33). This argument also finds expression in the provisions of the UDHR, where all rights derive from the inherent dignity of every person and are therefore not dependent on any cultural, social, or economic context.[13]

Another set of arguments could be called the weak cultural relativism approach. According to this approach, when human rights and various cultural traditional practices enter into conflict, the traditions give way to human rights norms (Donnelly 1999: 83; Uvin 2004: 22).[14] This entails that human rights allow space for culturally and socially sensitive variations in the implementation of the rights (Uvin 2004: 22). The idea behind this approach is that states themselves decide on the laws, institutions, and procedures they choose to undertake to implement the rights and therefore it is evident that states' value systems, cultures, histories, and politics as well as resources will affect them. In other words, in this approach the core concepts of rights derived from human rights documents are authoritative, but they are subject to differing interpretations and manners of implementation. This approach is termed "weak" relativism because it does not involve questioning the universal nature of human rights, but it does imply an acceptance that the concrete implementation can be dependant on cultural factors.

It can even be argued that human rights instruments have been designed to allow for varying modes of interpretation. For example, the UDHR contains an article where "...limitations as determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order, and the general welfare in a democratic society." Similarly, other conventions contain provisions regarding the limitation or suspension of rights under certain circumstances. Such

instances, however, are meant to be the exception and not the rule, and any derogation from rights has to be justified.[15]

This would, in other words, mean that human rights could be respected in ways that are culturally specific. This approach brings with it problems both on the theoretical and the practical level. One of them is inherent in the fact that this is a state-centered approach. It is the state that is ultimately responsible and the decision maker regarding the possible allowances made for certain social values such as morals, public order, or national security. Furthermore, this approach leaves several questions unanswered, especially when it comes to debating contested practices in the field of human rights, such as women's inheritance rights or whether the death penalty is acceptable. These debates are not about implementing human rights in a culturally specific manner, but they are concerned with the question of whether these practices are allowed to occur or not, whether they are perceived to be just or not (Uvin 2004: 24).

Although states may obtain a certain human rights credibility by ratifying international treaties, such ratification is accompanied by responsibilities regarding human rights. Economic, social, and cultural rights are of utmost significance to women, and that is still the arena where women face problems and discrimination as can be seen from the examples stated above (Frostell 2001: 331). One may argue that the significance of this specific set of rights is in the potential they bring to women's lives. Women in developing countries are often among the poorest of the poor: the feminization of poverty is a reality for so many societies in the world. Women would greatly benefit, for example, from the universal realization of the right to education, which would enhance their possibilities of finding employment. Furthermore, lacking the right to own property or the right to inheritance can place women on a very unequal footing within a family or as single parents. Without these rights, there is no independence, as women would always need someone to provide them with financial security.

One may argue that every society can make a valuable contribution to human rights, for every society holds some perceptions of what constitutes human dignity or social justice, of which human rights are just one aspect. Subsequently, if all societies with their cultures would contribute to human rights, then these rights could truly be universal. For instance, An-Na'im suggests that the way to make human rights universal is to articulate them through a range of cultural traditions, and he points out how this might impact positively on the legitimacy of human rights (An-Na'im 1992: 2).[16]

Development—Another Way of Imposing Western Values?

The development community has for a long time acted as though the central concept of development was not Western, not contested, not culturally specific, but so universal that it requires no justification. Now, however, the development discourse—just like the human rights discourse—is also facing criticism for being a Western notion imbued with a clear sense of superiority. Some argue that development field practitioners actually help to create and sustain the circumstances they are supposedly meant to remedy. Furthermore, it has been argued that the whole construction of the development discourse, the development edifice, justifies the existence of an interventionist and disempowering bureaucracy (Uvin 2004: 32).

Although other critics of the development field acknowledge the existence of a common desire for development, they disapprove of the way in which it has been put into practice; it has been culturally inadaptable, often exploitative, unsustainable, unjust, and gender-biased. According to the critics, these failings are due to the kinds of individuals involved in development work. For the most part, these persons are portrayed as Western, white, male, foreign, and ignorant about local culture and customs.

Development practitioners have also been negatively assessed from within the field itself; practitioners themselves have noted that it can be difficult to get the local people involved in the development projects they are seeking to initiate. This is because sometimes the priorities and targets set by development work practitioners fail to correspond with the expectations and aspirations of the local people who may feel left out and therefore lack the necessary motivation to participate. Several modes of operation have been established to solve or cope with the problem, such as conditionality, ownership, partnership, and capacity building, to name a few.

In other words, the universality of the development mandate has been contested, often on the same basis as the universality of human rights. In extreme cases, adherence to the development discourse might simply be due to the fact that it brings in money and opportunities and would in that case have nothing to do with a real commitment. It is worth noting, however, that this is not a clear-cut case of the West versus the rest of the world as it is in relation to the criticism directed at the notion of human rights being universal because the ideology related to development may well be subscribed to by many leaders of developing countries, even though their own

nationals might have very different views on the matter (Uvin 2004: 33).

One of the differences in the way in which human rights defenders and the development agencies work has to do with the question of resources. While human rights defenders do not generally have a great deal of money or staff at their disposal and hence rely on the local population for support, leadership, and initiatives, the development agencies mostly rely on themselves as they do have the necessary resources and staff. For instance, development organizations pay higher salaries than the local organizations and thus can end up economically and socially distorting the society. Development organizations can therefore be criticized for not engaging the local communities sufficiently in their work.

Gender, Culture, and Human Rights

How is gender related to culture and human rights? Expectations about attributes and behaviors that are considered to be appropriate to women or men and about the relations between women and men—in other words, gender—are shaped by culture. Gender identities and gender relations are critical aspects of culture because they shape the way in which daily life is lived in the family, in the wider community, and the workplace. Gender, like race or ethnicity, functions as an organizing principle for society because of the cultural meanings ascribed to being male or female.[17] This is evident in the gendered division of labor. In most societies there are clear patterns of what constitutes "women's work" and "men's work," both in the household and in the wider community—as well as cultural explanations of why this should be so. The patterns and the explanations differ among societies and change over time. While the specific nature of gender relations varies among societies, the general pattern is that women have less personal autonomy, fewer resources at their disposal, and limited influence over the decision-making processes that shape their societies and their own lives. This pattern of disparity based on gender is both a human rights and a development issue.

Concerns related to culture are often raised in connection with gender equality in development cooperation programs. On the one hand, development workers are concerned with whether the promotion of gender equality would "interfere with the local culture" and therefore feel that gender equality should not be promoted due to ethical reasons, not wanting to impose it upon the local community. On the other hand, sometimes the local cultural values are seen to be

so strongly in disagreement with the concept of gender equality and subsequent measures to implement it that the development-related efforts cannot be undertaken due to practical difficulties. How can these difficult situations be solved? What can be done within the development field to overcome the barriers between gender equality and consideration for the local cultures?

In order to enable discussion on the complex relationship between culture, gender equality, and development cooperation, the concept of culture must first be examined. Culture is commonly perceived as the beliefs and practices of a given society, in particular linked with traditions or religion. A comprehensive definition of what culture is has been proposed as follows: "Culture is the whole complex of distinctive spiritual, material, intellectual and emotional features that characterize a society or a social group. It includes not only arts and letters, but also modes of life, the fundamental rights of the human being, values systems, traditions and beliefs."[18]

Cultures are far from static; indeed, they are constantly undergoing change, revaluation, and reformation. This change can be brought about by various factors, such as new technologies, conflicts, development projects, and other influences and mechanisms. In addition, change can occur as a result of targeted efforts at influencing values by changing policies or laws, often due to pressure from the civil society. Efforts to improve gender equality and reshape gender relations could begin with a focus on girls' access to schools, women's access to paid labor, and public attitudes toward domestic violence. A change in values, or new values, is created through a process where some segments of the society are bound to oppose the changes, while others will promote them through advocacy and example (Canadian Development Agency 2003: 3). This ability to transform means that societies are not homogenous and that there is no consensus on what the cultural values are. Values are constantly being interpreted in response to changes and needs and the surrounding circumstances. When development practitioners advocate for gender equality, seeking to change attitudes and values, they should not seek to overturn the whole culture but rather to focus on what is oppressive about the culture and what obstructs equality between men and women.

Representatives of development organizations often deem cultural sensitivity a valid reason for "not" challenging the prevailing gender relations in the societies where they work. Yet, this principle appears contradictory: although these organizations are unwilling to challenge gender relations, they are openly advocating changes in other forms of traditional culture, for example, caste-based or ethnic discrimination.

If development organizations consider noninterference with culture the best approach, they are then hampered by a false notion of culture—that it is something static and coherent.

In order to consider gender-specific cultural traditions, we need to begin with the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) often described as the International Bill of Women's Rights, which sets up the parameters of what constitutes gender discrimination and the agenda and measures to bring an end to such practices.[19] The CEDAW provides the basis for gender equality and women's equal rights within all fields of a society, ranging from equal opportunities and access in political and public life to health care, education, and employment. Political parties within states have agreed to take the appropriate measures, including legislation and temporary special measures, to ensure that women can enjoy the full spectrum of their human rights and fundamental freedoms.[20] The Convention is the only human rights treaty that targets culture and tradition as influential forces shaping gender roles and family relations.[21] Against this background, it is interesting to examine the views of some of the Asian states with regard to gender-specific rights.

For example, Malaysia, Thailand, and Singapore have all made reservations to the CEDAW regarding Articles 11 and 16, which concern employment rights, marriage, and family relations.[22] In addition, Malaysia has also made reservations to Articles 5, 7, and 9, which relate to role stereotyping and prejudices, political and public life, and nationality. Malaysia defends its large-scale reservations with Sharia (Islamic law), while Singapore uses its multireligious and multiracial society as the reason for not considering itself bound to implement the right to equal employment or equality in marriage and family life. Thailand does not express any specific grounds for its reservations. These reservations made to some of the most important rights in terms of gender equality reveal a practice of ratifying an international treaty that subsequently acts to diminish its potentially positive effect on individuals.

Culturally Neutral Development Projects?

Development is essentially about *change*—bringing about change in values, attitudes, and practices that shape social relations. For instance, programs related to family planning have considerable impacts on family structures: family planning may allow women more possibilities for working outside the home for pay; it can lead to women having

more say in decision making; and it can have a positive impact on women's health.

Even if gender is not explicitly a concern when decisions are made with regard to a development project, the decisions will have an impact on gender equality in the end. If women are included in decision-making processes, the outcomes may be more likely to benefit them and give them the opportunity to claim their rights, whereas if women are not included or consulted at all, the end results are most likely to reinforce the prevailing gender roles and perceptions of what is women's role and position in the society.[23]

Although cultural sensitivity has a key place in development work, showing respect for diverse cultures should not be equated with unconditional acceptance of all cultural practices. For example, gender discriminatory practices are not in accordance with the human rights obligations of states and therefore do not deserve to be respected. Women's rights and the general principles of international law, including nondiscrimination and equality, should be upheld and not undermined; the assumption that cultural values always come first—even when they do not coincide with human rights norms—can be counterproductive. However, we do need to pay attention to the fact that cultural values are not static, as that assumption would disregard the work of those who are striving to question certain values and working toward equality in a given society. Even if human rights norms sometimes appear to impose very different standards from what has previously been the standard within a culture/society, it does not mean that all has to be adopted. It is not for "outsiders" to decide on what aspects of culture and tradition need protection, but they can influence the decision making by allowing women to get involved and thus learn from women's views on gender issues—what they would like to see changed and how.

Development practitioners are presented with an opportunity: they can facilitate gender equality by supporting women's empowerment, which can contribute to women's ability to formulate and advocate their own visions for their society, including interpretations and changes to cultural and gender norms (Canadian International Development Agency 2003: 8–9). Empowerment denotes an expansion of choices and capabilities for women, which in turn increases their ability to participate in decision-making processes. The definition of empowerment includes one crucial element: the recognition that empowerment is not something that is done to persons, as it cannot occur from the outside. Instead it is a process of realization and understanding of capabilities and potential, and how to channel that

into claiming rights and implementing them. The United Nations Development Programme's Human Development Report from 1995 introduced the concept of an "engendering approach," stressing the significance of women's empowerment and its importance for social and cultural change (UNDP 1995: 2).

Human Rights and Development—What a Difference Culture Makes?

Even though both human rights and development emerged after World War II, they were largely separate until the 1970s. While human rights were perceived as a field for lawyers, development was mostly concerned with economy and growth. This division gradually lost its relevance as developing countries, some of them eager to gain independence from the era of colonialism, began to use human rights as a strategy to fight racism and colonialism, especially apartheid, and focused on achieving fair and equitable economic conditions under the New International Economic Order (NIEO) (Thirlwall 1983: 5–9).

Human rights and development discourse have been traveling along different paths for a very long time and have only recently begun to draw closer to one another. For development practitioners, the highly organized and structured system of human rights with its legal language has seemed inappropriate and invasive, whereas human rights professionals have stumbled on the fundamentally pragmatic nature of development work (Archer 2006: 82). The recognition of how important it is to work with all categories and aspects of rights, including the economic, social, and cultural rights, instead of focusing solely on civil and political rights, has brought these fields together. It is important to discern what emerges as the added value in learning and borrowing from one field to the other (88).[24]

The strength of the human rights framework is its systematic character; it is based on a body of principles from which policy can be deduced. The framework is logical and consistent and human rights proponents emphasize the universality of rights as one of the strong points, which can be seen in the wide application and acceptance of the legal framework. The weakness in human rights practice is in its lack of flexibility and negotiation capability; and this is where it differs from the development practice where changes in methodologies are made if and when necessary. Human rights and development practitioners are not only committed to successfully improving people's lives, but they are also concerned with making the processes better and sustainable.

A general recognition of the linkages that exist between the denial of rights, poverty, vulnerability, and conflict has facilitated the integration of rights-based approaches into policy formulations and practice of various actors, ranging from UN agencies, such as the UNDP and UNICEF, and major donors (Canadian International Development Agency, Swedish International Development Agency) to international NGOs such as CARE International and Oxfam, to name a few. A human rights–based approach has its basis in the international legal framework and it is directed at promoting and protecting human rights. The goal is to analyze the underlying reasons for inequality and the obstacles to development and to address discriminatory practices and the unjust distribution of power that is a hurdle in development processes. The human rights–based approach is not about charity; on the contrary, it is about having plans, policies, and processes of development that are anchored in a system of rights and corresponding obligations established by international law. This helps to promote the sustainability of development work, and the empowerment of people, especially those who are most marginalized. When linking development and human rights, it has to be accepted that certain activities that have been previously labeled as development assistance do actually fall under a rights-agenda and that there are particular authorities responsible for their implementation. This link leads to the identification of rights-holders and duty-bearers, an essential concept in the human rights–based approach (Sano 2000: 745).

The era of and discourse around development began in the 1950s, as overseas aid against a background of independence movements saw the gradual end of the colonial period. European countries provided aid to their former colonies, which soon would demand it as the "Europeans' duty," whereby the main idea was that modernization projects would act as catalysts for economic improvement (Gready and Ensor 2005: 15). Aid was primarily aimed at growth, whereas human rights issues remained peripheral, if they were considered at all. However, as it became evident that economic growth alone would not suffice to help the poorest of the society, and aid did not have the desired immediate impact, states had to reevaluate their positions. That eventually led to the institutionalization of aid mechanisms and the establishment of a longer-term goal known as development. New visions of development emerged, where focus was directed at antipoverty measures, welfare and gender strategies, and "as a broad-based, people-oriented or endogenous process, as a critique of modernization and as a break with past development theory" (15). This type of distribution was the beginning of the needs-based approach. Even

though the focus now shifted from economic growth to public services and improving the conditions of those worst off, the participation of those affected was yet to become a central element.

The meaning and contents of a rights-based approach depends primarily on how rights are understood. Rights can be understood as the obligations and entitlements enumerated in international or regional treaties. These treaties and subsequent standards can be employed as benchmarks by international organizations and NGOs against which to evaluate the conduct of states vis-à-vis their citizens and they can offer mechanisms for redress when necessary (Ensor 2005: 254). For proponents of the rights-based approach, achieving these rights is understood as essential for securing human dignity, aiding in overcoming poverty, and resolving conflict. For rights-based approaches to be successful, however, the understanding of rights needs to be broader and deeper to provide an answer to the question of how rights fit into the connection; and an understanding of the relationship of individuals to their respective culture and values is essential. In order to better understand this complex relationship, a cultural theory of rights is necessary (ibid.).

In the cultural theory the starting point is that rights provide protection for individual interests that stem from the particular cultural framework. Rights are framed as socially agreed standards relevant for human well-being. Subsequently, when rights protect interests that have been commonly agreed upon, they are not only protecting individual interests but also the society that facilitated shaping those interests (Ensor 2005: 255). Including the community and its culture has implications in terms of the rights-based approach, as there are very few, if any, references to culture or community within the views on the human rights–based approach. When examining the core elements of this approach, the requirement of participation is the closest term to imply that rights need to be considered in their local context, in other words, against the existing cultural framework. When developing programs and projects, consideration for culture and context could be an important part of the programming. This is seldom the case, however, as few organizations are willing to go that far in their programming.

When development agencies adopt the human rights–based approach, they should be careful in considering whether the model they are projecting on the local community corresponds with their perception of a "good life" or whether it includes the people and the underlying social norms in that society. This kind of consideration of the principles and values is necessary to justify the interference with the

local community that will in turn provide a beneficial outcome for the community. It has been stated that the human rights–based approach is not about quick fixes; it is not about giving funds and technical assistance in order to enable economic growth or providing for basic service delivery (Jones 2005: 79). The human rights–based approach is about establishing a wider set of human conditions necessary and conducive for individuals to live a life in dignity and to develop themselves with an aim to fulfilling their potential.

Although many cultures share a common understanding of what is good or bad for all human beings, we still must recognize that such understandings are sometimes not even shared within a single culture (Perry 1999: 471). This proposition challenges the idea of overcoming cultural barriers regarding what is held to be good or bad. It can potentially be modified to ascertain whether the particular practice is in fact a violation of human rights—even if it is congruent with a particular culture and set of values.

An example of a culturally specific practice is female genital mutilation (FGM),[25] which is still widely practiced primarily in African countries. It is not only a religious practice but more of a cultural one, associated with female sexual purity.[26] Opponents of this practice regard it as a violation of women's human rights as it causes unnecessary suffering and can be dangerous to women's health. If FGM is a specific African cultural practice but is still universally considered unacceptable under international human rights law as a violation of women's rights,[27] why should it be acceptable for Asian states to claim that they can restrict the application of rights related to gender equality within the home by making reservations to CEDAW?

Traditional practices might cause tensions when they are interpreted to be in conflict with human rights standards (Brems 2001: 489).[28] The dichotomy between cultural rights to maintain traditions and human rights gives rise to the question of how to resolve the possible contradiction between the rights of the individual and the rights of the group. The answer lies in balancing the collective rights in function of the individual; if the group's right to maintain certain cultural practices is upheld, it is in view of their nonharmful effect on individual rights. Persons who voluntarily participate in a particular cultural practice have made their own choice between the tradition and the fact that it might interfere with their individual rights, and so, although it might offend some, it remains legally within the realm of acceptable human rights practices. However, whether a voluntary choice is possible in an environment where a certain practice is endorsed is questionable. Yet, if an individual refuses to participate or

is not given the choice to decide for himself/herself, that person's individual right must take precedence over the group's right, assuming that the group's collective right is protected under international law. This means that harmful cultural practices, such as FGM, could not be prohibited or endorsed by law (490).[29]

FGM exists in some parts of Asia, but there are other problematic cultural practices that occur on a wider scale in Asian countries, such as the ban on abortions, the insufficient protection for women's reproductive rights, and the right to health in general. For example, women are tested for pregnancy when they migrate for work purposes from Indonesia to Malaysia, and if they test positive, are either sent back or denied travel (HRW 2005). Indonesia, Sri Lanka, Burma, and Bangladesh prohibit abortion except when it is performed to save the mother's life; Laos and the Philippines have a total prohibition of abortion. In South Asia, many girls/women are still constantly controlled by their families in the name of guarding their sexual purity and honor. If girls/women are suspected of having disobeyed these sexual norms, they are likely to face violence and to become cast out by the family, sometimes even criminally charged with adultery. Early and forced marriages are still current practices in many Asian countries, for example, Nepal, India, Pakistan, and Bangladesh; what is more, honor killings, as well as various other violent attacks against women, also frequently occur in these countries (Child Rights Information Network).

Restrictive family planning policies can lead to serious concerns for women, not only in terms of sex-selective abortions or the killing of female babies, but also in terms of discriminatory treatment of girls and women in health care services, educational opportunities, to name but a few problematic areas (Pickup et al. 2001: 89). All of these practices, which are claimed to be justified as cultural traditions, prevent girls/women from enjoying their reproductive rights as well as their right to physical integrity and privacy—rights protecting women from interference with their personal autonomy. These include a woman's right to make decisions regarding her own body, such as using contraception, choosing to have an abortion, or the right to be free from bodily harm and violence.

It is important to discern how or whether a development cooperation project with the aim of improving women's reproductive health, for example, can succeed in an environment where FGM is a frequent practice. These questions ought to be asked: should development practitioners accept FGM as an unchangeable tradition because of its cultural significance and thus dismiss it as a problem or should development

practitioners try to work their way around the problem by making women aware of other available alternatives. It is a matter of law versus development: if the law prohibits a certain practice as discriminatory toward women, development workers cannot support practices contradicting that law. Furthermore, development workers are required to abide by their code of conduct, which regulates the standards of aid delivery.[30] However, when a certain practice does not contradict the law but is based on cultural values, development workers need to pay attention to those values, and try to frame their projects accordingly—a task most easily accomplished with the participation of the locals. The human rights–based approach could be the right tool for development work as it combines rights and development and takes into account not only the outcome but also the process of development as a whole.

Conclusion

The emergence of specifically Asian views on human rights, which emphasize the importance of a culturally specific understanding of rights, can be interpreted as a counterreaction to the criticism by Western states regarding the implementation of rights in Asia. That criticism—at least in part—is deserved since Asia continues to be the only continent without a regional human rights treaty or supranational supervisory and monitoring mechanisms.

There is no easy answer to whether human rights can be dismissed as Western concepts that have been imposed on other states. It is true that the drafting of the UDHR was concluded largely by a group of Western states, although other states were neither absent nor excluded. Indeed, it is due to non-Western states that the UDHR contains references to minorities as well as economic, social, and cultural rights. The universal character of human rights can be argued through several different viewpoints. A widely held opinion is that human rights are universal because rights belong inherently to every human being without regard to social status, gender, age, religion or any other factor. According to the weak cultural relativism approach, human rights as such provide space for culturally and socially sensitive variations when implementing rights. However, this approach does not question the universality of human rights but merely points out that culture can be factored in at the implementation stage. This approach is questionable when it comes to addressing contested practices within the field of human rights. If states can have recourse to cultural values in their implementation of human rights standards, where can the line

be drawn between what is permissible as a cultural value and what is not? Regardless of which viewpoint one takes, it is crucial to bear in mind that the question is not how many states have ratified certain treaties but instead how well the contents of those treaties reflect the diversity in the international community in order to give legitimacy to the treaties.

It is important to acknowledge and understand the underlying reasons for specific cultural practices and from what values they originate. That is not to say that everything could be justified by referring to culture-specific values. Basic human rights are to be respected, also within development projects, but it should be acknowledged that certain rights are not interpreted similarly in all contexts. It is not conducive to achieving change if local customs or traditions are portrayed as flawed or wrong, for a blame campaign will not produce the desired results. Human rights could be included more thoroughly in development work through education and dissemination on the substance of rights and correspondingly how they can be claimed because the language of rights and their specific meaning is not always evident. Through this kind of human rights–based approach, a change from within the society could be enabled, which is more conducive for sustainable and longer-term results.

Notes

1. This means at least some form of welfare for guaranteeing social rights. For more on this topic, see Eide (2001: 23–24). However, there is a misunderstanding of these rights when it comes to the matter of state obligations; individuals are the active subjects of all economic and social development and they are therefore expected, whenever possible, through their own efforts and resources, to try and ensure that their own needs are met. state obligations seen in this light are actually threefold: obligations to respect, to protect, and to fulfill.
2. The final declaration of the regional meeting for Asia of the 1993 United Nations World Conference on Human Rights is generally known as the Bangkok Declaration. The Bangkok Declaration preamble states both that "reaffirming their commitment to principles contained in the Charter of the United Nations and the Universal Declaration on Human Rights" and "reiterating the interdependence and indivisibility of economic, social, cultural, civil and political rights, and the inherent interrelationship between development, democracy, universal enjoyment of all human rights, and social justice, which must be addressed in an integrated and balanced manner." UN Doc., United Nations General Assembly, A/CONF.157/ASRM/8-A/CONF.157/PC/59, 7 April 1993.

3. The declaration states that "stressing the universality, objectivity and nonselectivity of all human rights and the need to avoid the application of double standards in the implementation of human rights and its politicization"
4. Bangkok Declaration, *supra* note 10, Art. 8.
5. International Covenant on Civil and Political Rights, entry into force 23 March 1976. The track record for Singapore is rather poor in terms of treaty ratifications, as it is not party to other treaties except CEDAW and CRC.
6. Indonesia ratified the covenants on 23 February 2006.
7. Even the United States supported the consensus.
8. The former group of countries advocated for civil and political rights, such as freedom of speech and free and fair elections and the right to participate, while the Eastern countries were concerned with social, economic, and cultural rights, with a focus on work-related rights. In other words, neither side saw the full spectrum of rights. Without a common recognition of that spectrum, the implementation and enforcement of all rights would not be possible. The aspiration was that the end of the polarization would mean an innovative new beginning for human rights standards starting at the Vienna World Conference on Human Rights.
9. Vienna Declaration and Programme of Action, UN Doc. A/CONF. 157/23, 12 July 1993, para. 1.
10. For instance, Steiner and Alston (2000: 367) argue that the UDHR, regardless of its declaratory and thus nonbinding nature, has become so widely accepted as a landmark instrument that it has evolved into customary international law. This type of law refers to norms that have evolved from state practice over time and are binding even on states that have not ratified them.
11. The Statute of the International Court of Justice, para. 38.1, states that international custom is a source of international law when it fulfills the requirements stated above. See also the *Case Concerning Military and Paramilitary Activities in and against Nicaragua*, ICJ Reports (1986) para. 183.
12. A state that wishes to deny the existence of such a binding norm must show its persistent objection, either as a member of a regional group or as a member of the international community. See the *North Sea Continental Shelf Case*, *Federal Republic of Germany v Denmark; Federal Republic of Germany v Netherlands* [1969] ICJ Reports 4. However, *jus cogens* rules apply regardless of a state's dissent.
13. Universal Declaration of Human Rights, adopted by the General Assembly Resolution 217 A (III) of 10 December 1948, preamble and paras. 1 and 2.
14. This has also occurred in the West with practices such as discrimination based on gender or race.

15. The treaty monitoring body for the ICCPR, the Human Rights Committee, has in its General Comment No. 31 States of Emergency given its interpretation of Article 4 of the covenant and lays down the conditions under which such derogation can be deemed as justified under international law. See U.N. Doc. CCPR/C/21/Rev.1/Add.11 (2001). Furthermore, the language of some provisions is vague enough to leave room for differing interpretations and implementation: for instance, when the covenant on Economic, Social, and Cultural Rights speaks of "appropriate measures," "available resources," or "progressive realization" of the rights of the convention, the wording is rather unclear and leaves the reader to analyze the contents (Covenant on Economic, Social and Cultural Rights 1977: Art. 2).
16. This point of view has been called the "retro-active legitimization" of human rights; in other words, if it is acknowledged that human rights are largely the creation of the Western states, and these basic norms also need to be made a part of non-Western societies, they should also be open to revision and reformulation. For more on this, see Nyamu-Musembi (2005: 34). This point has also been echoed in the Bangkok Declaration by Asian states.
17. Organization for Economic and Cultural Development, OECD, report on *Culture, Gender Equality and Development Cooperation*. The report is available at: http://www.oecd.org/dataoecd/47/37/1850708.pdf
18. World Conference on Cultural Policies, Mexico 1982, available at http://www.unesco.org/culture/laws/mexico/html_eng/page1.shtml.
19. Convention on the Elimination of All Forms of Discrimination against Women, hereinafter CEDAW, was adopted 18 December 1979 and came into force on 3 September 1981. As of 2 November 2006, 185 states are parties to this convention.
20. CEDAW Articles 3 and 4.
21. CEDAW Art. 5 a): "States Parties shall take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women."
22. Declarations, reservations, objections, and notifications of withdrawal of reservations relating to the Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/SP/2006/2, 10 April 2006, pp. 18, 27, and 28.
23. For instance, in order to reform the civil code, it would be necessary to conduct research and public consultation on the equality of law provisions related to marriage, inheritance, property ownership relations between spouses, and procedures for divorce. If such initiatives

are ignored, the opportunity to review the legislation regarding aspects that constitute discrimination against women in many countries is missed.

24. Archer seems to think that while borrowing ideas and practices is a good and necessary thing, some things might get lost in the process unless they are given adequate attention. For example, in the development field the focus is primarily on poverty and the test is now whether they manage to reduce it or not. This implies, according to Archer, a political risk, in case quick progress is not made that leads the greater public to become disillusioned with the whole project. Another concern is to make sure that development in the end benefits all. On the human rights side, the universality of rights remains at the center of their credibility.
25. Female genital mutilation is a collective term for practices that involve total or partial excision of the female genitalia. It is practiced in many African countries and also within African immigrant communities. The term FGM has been in use since 1994, when the Programme of Action was adopted by the International Conference on Population and Development in Cairo in 1994, Report of the International Conference on Population and Development, UN Doc. A/CONF.171/13. The Program refers to female genital mutilation as a "basic rights violation" and urges governments to "prohibit and urgently stop the practice . . . wherever it exists." During the Fourth World Conference on Women, in Beijing 1995, FGM was cited as both a threat to women's reproductive health and as a violation of human rights.
26. The World Health Organization defines FGM as follows: "in cultures where it is an accepted norm, it is practiced by followers of all religious beliefs and also by animists and non-believers"; available at http://www.who.int/mediacentre/factsheets/fs241/en/
27. The Declaration on the Elimination of Violence against Women, GA Resolution 48/104, 20 December 1993, para. 2. a) recognizes FGM as a practice amounting to violence against women.
28. This is when traditional practices are considered harmful practices.
29. An unqualified legal prohibition, which exists in many states in terms of FGM, would in fact violate the (collective or individual) right to a cultural practice. Similarly, an unqualified legal endorsement would violate the individual rights of dissidents.
30. The International Committee of the Red Cross has established its own Code of Conduct for NGOs working in disaster relief, a code which is also to be found in the SPHERE project's Humanitarian Charter. Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief, Twenty-Sixth International Conference of the Red Cross and Red Crescent, Geneva 3–7 December 1995. Also see the Sphere Project, Humanitarian Charter and Minimum Standards in Disaster Response.

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Chapter 9

The Nation-State and Its Violence: Debates in Post–Cold War Japan

Mikako Iwatake

This chapter discusses two strands of an ongoing debate in a post–cold war context and a subsequent postcolonial turn in Japan: a feminist attempt to build antimilitarist theory; and a general—not necessarily feminist—critique of the national flag, anthem, and of the state's insistence on "love of country." What these two debates have in common is their critique of the nation-state and the violence—both physical and symbolic—it entails. The nation-state is taken to mean a sovereign state with strictly defined spatial boundaries within which people ideally share a common language, culture, history, and identity. Since its invention in the late eighteenth-century in Europe, it has become the global model for the modern state. Japanese critics pay attention to coercion, oppression, hierarchization, and discrimination that the building and maintenance of the nation-state necessarily commands. The violence embedded in the nation-state is brought into critique not only in war making but also in its symbolic means to create and sustain a sense of national unity. An important aspect of the debates is that their critique is not particularized in the Japanese context. Rather, those engaged in debate are seeking to get at the very foundation of the nation-state as it was invented and permeated by Western colonial modernity.

Another important aspect of the debates in Japan is that they invite reflection on the human rights discussion—a discussion that tends to assume that the "West" is a heroic vanguard of universal human rights whereas the non-West is its problematic violator. In fact, the Japanese case illuminates the opposite: one of the major forces to pose a threat to human rights and to ignite antimilitant and antinationalist discussions in contemporary Japan is U.S. militarism, although, as

I will outline shortly, U.S. militarism and Japanese antimilitarism have been interlinked in a complex manner.

By discussing the ongoing debates in Japan, this chapter tries to destabilize the lingering "Asian values" issue in the discussion on human rights, which derives from and draws upon the persistent "West" versus "non-West" polarity. The persistence is rather unfortunate if one remembers how much has been written over the past decades in an effort to elucidate complex, contradictory, and ironical historical processes in which the concept of the West and non-West (or its variants such as the Orient, the Rest, East, and the Other) have been constructed in specific political conditions of colonial modernity (Hall 1992; Said 1978; Sakai 1997; Wolf 1982).

Anthropologists hold that within human rights discussions "the competing claims of universalism versus cultural relativism have been exhaustively debated and it is generally agreed that the debate has reached an impasse" (Cowan et al. 2001: 5). However, the habitual association of the West with the universal and the non-West with the particular continues. Examination of the emergence of the human rights concept in the late eighteenth century (as God-given natural rights), its long oblivion and resurgence in the form of the Declaration of Human Rights only in 1948 as a reflection upon the atrocities committed by the Nazis illuminates that what gives rise to and provides current significance to the political concept are not so much inherent in "Western" or "universal" as an outcome of the contingent historical circumstances. In fact, the human rights concept has contained more historical disjunction and discontinuity, both in time and place, than seamless continuity.

It is well known that behind the Declaration of Human Rights was the interest of the cold war powers in undermining each other's legitimacy. The principle whereby only a loser commits atrocities enabled the formulation of the Nazis as an easy-to-understand evilness. This served to exempt the dropping of atomic bombs on Hiroshima and Nagasaki from being counted as atrocities. By saying this, however, my intention is not to render Japan simply as a victim of the atomic bomb. Rather, my aim is to draw attention to the issue of an unsettled identity problem within Europe and by extension the West. Germany—or the ideology that has a German background—has often been associated with the East rather than the West in recent European history.[1] This includes labeling Herderian nationalism as Eastern (ethnic, organic, romantic) nationalism as opposed to Western (political, rational, civic) nationalism in the style of the French Revolution, and Marxism/communism as an Eastern ideology. It could

be assumed that the accusation of Nazism would have been less problematic than that of the United States, which has maintained itself as the core of the West. Edward Said used the term Orient and East interchangeably (Said 1978: 138). Yet, it is important to note that in an incipient stage of its history, Europe (or more specifically the Roman Empire) was divided between East and West and contained East within, rather than without, itself. Later, the Eastern orthodox religion became a significant representative of otherness. Equating the non-West with East seems to have worked to obscure the disturbing presence of otherness within Europe, although in human rights discourse, Eastern Europe and the Balkans are often assigned the roles of otherness.

Going back to the formulation of the human rights discussion into "universal human rights" versus "Asian values," it could be understood as an effort to maintain differences in a world that is increasingly becoming hybridized and dehierarchized. Such a change could pose a threat to a particular worldview that underlines differences based upon dichotomy. In fact, it is possible to see a commonality between "universal human rights" and "Asian values" in the sense that both are unhistoricized and essentialized, and both draw upon the same dichotomy.

This chapter also tries to offer a critique of the way in which "Western feminism" tends to deal with human rights issues. For instance, the introduction of *Human Rights and Gender Politics; Asia-Pacific Perspectives* (Hilsdon et al. 2000) discusses women's rights as human rights in reference to the recent spectacular growth of a global feminist public (Stivens 2000: 3, 4–9). In addition, Maila Stivens writes that "women's rights discourse developed in tandem with that of human rights, sharing common origin in eighteenth century Europe. . . . The uneasy relationship between human and women's rights was flagged early in the piece, when Olympe de Couges's *Declaration of the Rights of Women and Citizen* (1791) attempted to rewrite the Declaration of the Rights of Man and Citizen" (Stivens 2000: 5). Yet, despite the promise that the introduction seems to offer, that is, women's rights as a global forum, the ideal of human rights and individual case studies are divided by a Western and non-Western racial line. Subsequent articles discuss the human rights problems of non-White populations only. New Zealand and Australia, which are sufficiently important in the hyphenated concept of Asia-Pacific, are not fully represented. There is no discussion of New Zealand. One article deals with Australia, though it does not concern itself with the majority population of European descent; instead it

discusses minority Salvadorian immigrant women in an Australian city.

This style of scholarship, which is both oppressive and selective despite its language of emancipation and universalism, is reminiscent of two genres. The first is, unsurprisingly, writings on human rights by male authors. For example, Michael Freeman's introductory book begins with a description of a 1999 event in Pakistan where a 16-year-old girl was brutally raped and then shot to death by her tribal council as "honor killing." He then writes that "many people in many countries have been direct victims of state violence in recent times" (Freeman 2002). Yet "many countries" and "recent times" consist only of non-Western and East European countries and their histories. The roles of the United States in Grenada, Panama, and the Persian Gulf in the 1980s and 1990s are omitted from these "recent times."[2]

The second genre is classical anthropological writing in which Western theories and non-Western cultures constitute two separate entities. Although this style of writing has increasingly come under attack, native informants and cultural practices from the non-West have long provided "materials" for testing or proving authoritative anthropological theories (Ota 2001: 88–89).

"Western feminism" has generated a great amount of literature about how Western women have been structurally marginalized and subjugated to the male principle (i.e., de Beauvoir 1949; Butler 1990; Scott 1996). Yet, when it comes to human rights debates, participants mostly tend to locate problems in the non-West (e.g., Human Rights Watch Women's Rights Project 1995; Peters and Wolper 1995). This style of formulating the problem continues to prevent a reflexive examination of critical issues that lay at the core of human rights such as liberal tradition of Western colonial modernity and its political product, the nation-state. This is where I wish to bring in the ongoing debates in Japan, although this is not to say that they are uniquely Japanese. On the contrary, they have been influenced by different strands of scholarship conducted in English, French, and other languages.

My personal experience as a Japanese scholar living in Finland also has provided a perspective here. Over the years, I have begun to see that a greater degree of human rights is secured in relation to the right to refute and openly criticize state militarism in Japan than in Finland. Finland is one of the few European countries where compulsory male military service exists. Article 127 of the Finnish Constitution stipulates the obligation of the citizen to take part in national defense as follows: "every Finnish citizen is obliged to participate in defense of fatherland or to assist it in accordance with

the stipulation of the law." This is specified in Article 1 of the Military Service Law that says "for the defense of the fatherland and of legal social organization, all Finnish men are drafted. The obligations to participate in defense of the fatherland or its assistant is . . . specified separately." The separately specified regulations include women's voluntary military service and the Civil Service Law (Mäki 2007: 114, translation is mine). In Finland, for those men who refuse military service, a year-long civil service is an alternative. For those who refuse to take part in the civil service, the only alternative is a prison sentence. In other words, male citizens do not have the right to refuse to be part of the state military or to act according to their belief against the state. Although not specifically discussing Finland, Miyoko Tsujimura argues that as a principle, compulsory military service constitutes a violation of human rights. And the fact that it is only compulsory for male citizens makes it a violation of the human rights of men (Tsujimura 2007: 223).

The military is visible in Finland in various ways. Discussion on militarism or the more subtle ways that the militarization infiltrates the every day, however, is not within the spectrum of Finnish feminism. It is interesting to note a contradictory relation between the nature of the state and the location of the feminist concerns in two countries. Since 1945, Japan has been a nonviolent and nonmilitant state (Katsenstien 1996). Yet, Japanese feminists are developing a critical theory of the state, partially drawing upon a Weberian idea that defines the state in terms of its monopoly of the means of violence, sustained by the military (Iwatake 2008, forthcoming). Although militarism is more prevalent in Finland, Finnish feminists have not put militarism on their agenda. Their major concerns have been child care and other domestic services (Kantola 2006: 47–72). The Finnish state, or for that matter the Nordic state, is seen as a benign, utopian, and women-friendly welfare state (Anttonen 1994: 203; Julkunen 1992: 40).

After this rather lengthy introduction, I will first outline the antimilitarist and antinationalist ambiance of the post-1945 years, which were followed by the efforts of Japanese feminists to build a theory of antimilitarism. I then delineate a critique on the national flag, anthem, and the state's insistence on "love of country." In the last section, I briefly review "Asian values" in the Japanese context.

Two Contexts of Antimilitarist Ambiance

There are at least two reasons behind the thriving antimilitarist and antinationalist discussions in both the Japanese mass media and

academia—one that goes back to the mid-1940s and the other that emerged in the 1990s. The first is the so-called pacifist constitution, which was stipulated in 1947. Article 9 renounces war forever as a sovereign right of the state, banning military possession of land, sea, and air forces. Historically, this was part of a strategic outcome of the U.S. Far East security politics, which the war-defeated Japan has embraced. A critical point of this is that Article 9 renders the Japanese state at odds with the principles of the nation-state in two significant ways: it lacks both the right to use military violence to protect its territorial sovereignty and the right to command the ultimate sacrifice from its citizens in defense of national sovereignty. This anomaly has cultivated an antimilitarist atmosphere and discourse over the past six decades, while creating tension between constitutional restriction and the drives, both international and national, to "normalize" Japan into a full-fledged nation-state, that is, potentially a warring state.

The Self-Defense Forces (hereafter SDF) was founded in 1954, with a condition that it would not be deployed for war. In order to mitigate the domestic criticism that the SDF is unconstitutional, its role as a rescue troop in case of internal natural catastrophes such as earthquakes and typhoons has been underlined. However, in a post–cold war context, in which new forms of alliance are sought and new threats are imagined, the United States and other Western states have increasingly started to urge Japan to participate in overseas military activities. It was in this context that the SDF, despite strong domestic opposition, was dispatched for the first time outside Japan in order to fulfill the military responsibility expected from the international community in the Gulf War in 1991. Japan's major contribution, however, remained financial rather than military because of the constitutional constraint. Yet, despite huge expenditures, Western states were far from satisfied with Japan's contribution. On the contrary, Japan was criticized at as an "effete" country, unwilling to shed blood (Hook and Ikeda 2007: 102–105).

Ever since its founding in 1955, there has been a force to seek ways to revise Article 9 within the Liberal Democratic Party (LDP), Japan's leading political party. However, the requirement for a revision of two-thirds support in both houses in the Diet has posed a political challenge. The LDP took the opportunity provided by the expectation from the United States and other states to change the prevailing antimilitaristic atmosphere. Richard Armitage, the former U.S. deputy secretary of state, told the Japanese ambassador to the United States to "show the flag" in a post-9/11 context. The phrase was interpreted as a request for deployment of the SDF in international

military conflicts and was used to argue for Japan's mission to be part of the military league (*Asahi Shimbun* 2007). In this context, a number of ways have been paved toward the final goal of constitutional amendment over the past decade, involving both external and internal measures.

Externally, the Peace Keeping Operations Law was stipulated in 1992 in order to meet the United Nation's Peace Keeping Operations and to expand the mission of the SDF beyond the national borders to embrace normal military and external risks. Even before its stipulation, the maritime SDF was dispatched to the Persian Gulf in 1991. Since 1992, overseas deployment has steadily increased to include Cambodia, Mozambique, the Golan Heights, Afghanistan, Rwanda, the Indian Ocean, and Iraq, among others.

Internally, the National Flag and Anthem Law was enacted in 1999, stipulating the *Hinomaru* flag as national flag and the *Kimigayo* as national anthem. The Fundamentals of Education Law, which was stipulated in 1947 and has embodied two of the pacifist principles of post-1945 Japan together with the constitution, was revised in 2006. A series of the Military Emergency Legislation was stipulated in 2003. The Protection of Nationals Law in 2004, which purportedly protect life, body, and property of the citizen in case of military attack, enables different levels of state to demand civil cooperation in a number of ways. The Defense Agency was upgraded to the Ministry of Defense in 2007. As the vision of the future that this series of actions indicates is reminiscent of the former militarist Japan, it was seen as a "turn to right." As they also touch upon unconstitutionality and the potential violation or limitation of citizens' various rights, they have provoked fervent antimilitarist discussions.[3]

It needs to be noted that Japan could afford to be without a military because of its particular relationship with the United States. From the 1860s up to 1945, Japan was a militarist and colonialist state. After its defeat in World War II and in the subsequent cold war situation, however, Japan chose to focus on demilitarization and economic development as a U.S. ally. The Japan-U.S. Security Treaty in 1951 and its revision in 1960 placed Japan under the American military umbrella. This means that Japan allows the presence of the more than one hundred U.S. base camps across the country, of which over 75 percent are concentrated in Okinawa. Okinawa is a chain of small southern islands, which used to be the Ryûkyû Kingdom but was incorporated into Japan through a series of political measures between 1872 and 1879. A distressing aspect of Japan's demilitarization is that it has been partially achieved through the militarization of colonial Okinawa.

The second reason for the lively antimilitarist discussion can be found in a radicalized postcolonial historical consciousness. During the cold war years, Japan concentrated on demilitarization and economic growth, consciously forgetting its colonial past and building its identity as a victim of the atomic bomb. The end of the cold war, however, broke the historical amnesia and ushered in a postcolonial turn that initiated a discussion on the country's colonialist past and postcolonial present in various fields such as the social sciences, cultural studies, history, and literature. Furthermore, the issue of the so-called military comfort women (*ianfu*) has radicalized feminist critique of the violence of the nation-state against the body of women. It was provoked by law suits brought against the Japanese government in 1991 by three former comfort women from Korea whose sexuality was exploited by the Japanese military during the war period. Since then, it has become one of the key issues in Japanese feminism (Suzuki 2002; Ogoshi 2007; Ueno 1998[2004]).

Japanese Feminists' Debates on the Violence of the Nation-State

Tsujimura, a professor of the study of constitution, tries to build a theory that criminalizes violence committed by the nation-state. She problematizes the fact that the nation-state can legally deploy the military when necessary and endows itself with the right to kill and destroy. They are crimes when committed by the individual, but they are not when committed by the nation-state. Since the nation-state is a political concept constructed at specific historical moments of European modernity within a specific political climate, its claim to the legitimate use of violence should be subject to critical examination, instead of accepting it as a given.

Furthermore, the nation-state claims a right to demand a citizen's sacrifice as an indication of loyalty, normally employing the trope of defense. Militarism and citizenship have been closely interlinked in terms of obligations and rights, although conditions for citizenship have been asymmetrically gendered. The supreme expression of the loyalty of male citizens has been sought in their willingness to die or to kill in defense of their nation-state. In fact, this has been central in the idea of masculinity itself. Military service has become a critical aspect of male citizenship, which in return has ensured a political right. In other words, in order to obtain a political right, men need to be willing to die or kill for the nation-state. Ueno and Tsujimura maintain that it is a violation of human rights for men (Tsujimura

2007: 223; Ueno 1998: 199 [2004: 146]). As I mentioned above, Tsujimura problematizes the fact that men in some countries have no right to refuse compulsory military service. They should have the right not to be forced to collaborate in war making, not to be forced to kill or die, and not to be physically injured. Instead of arguing for equal rights for women, she asserts that equal rights for men will provide a perspective toward building an antimilitant theory of the state. In her view, this should be a logical outcome of the idea of gender equality, instead of trying to make women on par with men, which necessarily leads to female military service and the militarization of women (Tsujimura 1998; 2006; 2007).

Until recently, in many countries women have been distanced from military service because of the idea of women being the fairer sex or in possession of a reproductive body, which needs protection by the masculine principle. Exemption from military service then has functioned to delimit political rights for women, as is the case with Switzerland where women did not have suffrage until 1971. Demands for female suffrage in Britain, France, and the United States, for example, were based on women's direct and indirect contribution to war efforts, such as being on the home front and working in the military industry. Although this line of argument that entails women's militarization in exchange for political and social rights was also made in Japan, especially in the 1930s and 1940s; it is an issue that continues to disturb a number of feminists. Yuko Suzuki problematizes the fact that the feminist aim of aspiring for gender equality necessarily leads to war collaboration (1997: 95–186). Similarly, Nagahara denounces the situation in which the social sphere is expanded through collaboration in war, calling it a "trap set by the state" (1989: 192).

In recent years, a number of countries such as the United States, Finland, and South Korea started to accept female soldiers or voluntary military service by women. In Japan also, the number of females in the SDF has increased. The profemale argument has been made from the liberal tradition of freedom of choice and of equal rights for women. Tsujimura sees the challenge from liberalism as one of the confrontations that antimilitarist feminism is bound to face (2007: 221–222).

A pacifist argument within feminism tends to draw upon an essentialist idea, according to which women are reproducers and nurturers, and therefore inherently pacifist and opposed to killing. This line of argument, which in Japan is associated with ecological feminism that tends to favor the protection of maternity, appears to be antimilitarist.

Yet, it shares the basic idea of a biological and essential gender difference with liberal feminism (different but equal), which is not unlike the classic gender division that the nation-state embraces. As such, paradoxically enough, it is susceptible to being incorporated into the militarist impetus of the nation-state. Tsujimura maintains that it does not make sense to protect the reproductive body of women alone since reproduction necessitates the uninjured bodies of both sexes. If women have to be protected for reasons of maternity, men also need to be protected for reasons of paternity. According to her, this line of argumentation will enable antimilitarist theory that does not purport to an essentialist argument of womanhood or maternity (Tsujimura 2007: 226), although this might be vulnerable to a critique questioning heteronormativity.

Aiko Ogoshi holds that the idea of protection of the body of women in reality means protection of the body of "their own" women. It is a common trope of the nation-state that men protect "their own" women: their mothers, wives, lovers, and daughters from the masculinized enemy. In other words, women are to be protected by the violence of their own men. A flip side of this is that their own women are potentially subject to the violence perpetrated by other men. This in turn justifies masculinized violence to the body of the women who belong to others. Furthermore, women's own perception of their sexualized self to be protected by the violence of their own men makes them approve of their own men's assault on other women (Ogoshi 2004: 284–286). Ogoshi sees the trope of protection of the body of women as deeply disturbing, as it implies violence on the body of woman. This is an area that was radicalized by the recent controversy over military comfort women.

The ideal of a gendered division of labor in society was advocated by Enlightenment philosophers such as Rousseau and Hegel. A woman's place was home, the most fundamental role of a woman was in motherhood, and raising moral citizens who comply with the social norms. Such an idea of womanhood was alien in Japan where few expectations were placed on women as mothers and educators until its introduction in the 1880s (Koyama 1999). Ogoshi (2004) and Igeta (2000) locate the ultimate source of the nation-state's violence in the gendered division between public and private, male and female, masculinity and femininity, war front and home front, and so on. According to them, these divisions invented by European colonial modernity are deeply implicated in the impulse of the nation-state, that is, war making. Such divisions ultimately function to facilitate and penetrate violence in various forms and spheres within the system of the nation-state.

Resistance to the National Flag, National Anthem, and "Love of Country"

Both the *Hinomaru* flag and the *Kimigayo* poem have different historical backgrounds, but there is no historical necessity for them to symbolize Japan. It was by the Meiji government (1868–1912), in its vigorous attempt to transform Japan into a modern nation-state that appropriated and reinvented them as the imperial symbols of Japan, having followed the model set forth by the French Republic's *Tricolore* and *La Marseillaise*. Both *Hinomaru* and *Kimigayo* were used as tools to demand absolute loyalty from the imperial subject between the late nineteenth century and 1945. While they stood for national unity and belonging, they were simultaneously the apparatus for violent coercion, oppression, marginalization, and exclusion of the colonial subject, minorities, as well as those who resisted or did not abide the symbols (Ishida, Ukai, Sakamoto, and Nishitani 1999; Takahashi 2005; Ukai 2005).

Following the collapse of the Japanese Empire in 1945, both *Hinomaru* and *Kimigayo* fell into disfavor because of their strong association with the traumatic memories of war and colonialism. Japan was occupied by the American Occupation Army until 1952. During this period, permission from the General Head Quarter was required in case the *Hinomaru* flag needed to be raised on an official occasion (Tanaka 2000: 3–14). In the 1950s, the Ministry of Education took the first step to introduce both *Hinomaru* and *Kimigayo* into school education in order to implant a sense of national consciousness in children. This soon led to numerous conflicts with the Japan Teachers Union, which was founded in 1947 and put forward a stark leftist and pacifist front. As the Ministry of Education has increasingly enhanced their intervention, particularly since the 1980s, it has generated a number of serious problems in relation to the freedom of thought that is secured in the constitution. Teachers who have neglected to observe the instruction to sing *Kimigayo* and to stand up to show respect to the *Hinomaru* flag at school ceremonies, as well as those who have discouraged children from singing or standing up, were penalized in various degrees. Numerous law suits have been filed and fought by the penalized teachers and citizens' groups. A number of school principals committed suicide as they were unable to reconcile the pressure "from above" and resistance "from below."

Despite strong protests by citizens, intellectuals, and scholars, the National Flag and Anthem Law was stipulated in 1999 with an aim

to "teach children to love the country." The promise at the time of the stipulation—that the law does not enforce children to demonstrate respect for the national flag and anthem—has been undone. This has ignited extensive antimilitary and antinationalist debates among citizens beyond the school setting as they are aware of its implication in a post–cold war context. Lisa Yoneyama writes that resistance to *Hinomaru* and *Kimigayo* could have a global significance if it would be linked to a wider attempt to subvert the ideology of the nation-state and its symbols. The contestation in Japan could be interlinked to transnational contestation of the symbols of the nation-state; after all, these symbols ultimately are inscribed with a history of oppression and human rights violations—the Stars and Stripes being one example. This, however, requires a disputation of the force seeking to particularize the debates in Japan as something belonging to a loser and non-Western other. Referring to the American media's indifference to the heated debate in Japan, Yoneyama contends that critique in Japan otherwise would only enforce the belief that for a "normal" country like the United States, showing respect to the national flag and anthem is a natural act (1999: 54–55). Indeed, the wide critique of the national symbol in Japan could invite a reflexive contemplation of the symbols of the nation-state, its violence and its legitimacy to those countries where such a critique is marginal, although doing so would first require a paradigm change. A paradigm such as Asian Values versus Universal Human Rights does not facilitate but forecloses the possibility of a different kind of imagination.

Another critical issue has been a revision of the Fundamentals of Education Law, which was first put on the agenda by the LDP in 2000. The Education Law was stipulated in 1947, a month before the constitution, and as such, both share a basic understanding. The Education Law departs from the wartime principle of education as it was stipulated in 1890, as the Imperial Rescript for Education, endowed by the emperor to his subjects. As debated by a number of commentators and critics, one of the intentions in revising the Education Law has been to reorient the primary goal of education from current constitutional emphasis on individual differences to the production of loyal citizens devoted to the state cause (Hirota 2005; Nishihara 2003; Ouchi 2004). One of the most debated issues was the LDP's attempt to add a word for "love of country" (*aikokushin*) as a goal for school education. The objection was made on the grounds that the demand to love one's country is unconstitutional as it would delimit freedom of thought, which is central in the concept of human

rights. For example, Professor of Law Hiroshi Nishihara holds that it is a violation of "freedom of thought, belief and conscience" guaranteed by Article 19 of the constitution (Nishihara 2003: 3–41). Despite the widespread critique, resistance, and organized protests from both academia and the popular media, as well as disapproval from the opposition party, however, the LDP succeeded in substantially revising the Education Law in December 2006. The New Education Law reveals the trace of a slight compromise, however. Instead of straightforward "love of country," it says that one of the goals for education is "to respect tradition and culture, and to cultivate . . . to love our country and *kyōdo* which have nurtured them." It needs to be noted that the word *Kyôdo* was coined around the turn of the twentieth century, having translated the German concept *heimat* (homeland), which then was internalized as a critical concept in sustaining a sense of national community.

The above-mentioned laws—the National Flag and Anthem Law and New Education Law—are meant to reorient the post-1945 pacifist Japan into a state with the potential to either participate in or wage war. They place the interests of the state before human rights, enabling the state to demand civil obligations and to delimit various rights of its citizens. Accordingly, citizens need to be reshaped to prepare for possible military situations (Komori 2004; Takahashi 2004). Celebrated in May 2007, the sixtieth Anniversary of the Stipulation of the constitution was accompanied by a serious civil concern for its possible amendment. There is a strong sense of prohibition about constitutional amendment among citizens as it immediately implies reorientation for the antimilitarist determination. The sudden resignation in September 2007 of Prime Minister Abe, who forcefully envisioned constitutional amendment with a determination for Japan being a faithful ally to the United States, could slow down the process that is meant to turn Japan into a possibly warring state. The slogan he put forward, "beautiful country (*utsukushii kuni*)," envisaging his ideal of a disciplined and militarist Japan, was teased and contested in the mass media by reading it reversely, *nikuishi kutsû*, hateful and painful. However, it remains to be seen how the post-Abe LDP will proceed gradually toward the challenge of constitutional amendment and what would be its consequence to human rights in Japan.

"Asian Values" and Japan

In the last section, I briefly delineate "Asian values" in the Japanese context. It is generally agreed that there have been two contradictory

forces in Japan since the late nineteenth century regarding its relation to "Asia": out of Asia (*datsua*) and raising Asia (*kôa*), although they are not mutually exclusive, they are often interrelated. "Out of Asia, Into the West (*Datsua Nyûô*)" was a national slogan shared both by political and intellectual leaders in the late nineteenth century. They sought to align Japan with the dominant Western states and to identify it with the West and to de-Asianize Japan. In order to survive in the harsh colonialist climate of the day and to escape Western colonialism, Japan shaped itself into a colonizer. It was imagined that Japan is located between Asia and the West in a linear evolutionary ladder. Having internalized the idea of the "white man's burden," it was thought that it is Japan's mission to raise premodern Asia under the Japanese banner.

One of the most well-known ideologues for raising Asia was Kakuzo Okakura (1862–1913), an art critic and historian. He advocated the idea "Asia is one" in the early twentieth century in order to counter Western colonial modernity. His idea of Asia, which stressed the spiritual superiority of Asia over the West as it is manifested especially in art, consisted of "continental Asia" which, according to him was the old yet fallen civilizations of India and China, and the rising Japan, the best of Asia (Okakura 1983 [1904]).

A more politically and militaristically charged manifestation of "raising Asia" was the "Greater East Asian Co-Prosperity Sphere," a euphemism for the Japanese colonial empire, between the early 1930s and 1945. According to this concept, Asia either stands up with Japan as a leader in resistance to Western colonialism and domination or Japan stands as a liberating force for Asia.

However, in the Japanese discussion on human rights issues in the post–World War II period, "Asian values" have played little role. There are at least two reasons for this. The first reason is that in a context of demilitarization and democratization with the stipulation of the new Constitution in 1947, the importance of human rights has obtained a national consensus. On the basis of the reflection on military brutalities and atrocities committed especially during the Fifteen-Year War Period (1931–1945), it would have been irrelevant to assert "Asian values" in resistance to human rights.

The second reason is that "Asian values" in practice draw from Confucianism, as asserted by their original advocators in Malaysia and Singapore. There is a general negative association of Confucianism with "feudalism" in Japan—though such an understanding is not necessarily justifiable (Kaji 1990). Although in the 1980s scholars like Michio Morishima linked the Confucian background to Japanese

economic success (1984), it failed to capture the imagination at large and remained marginal in Japan. In this relation, it is worth mentioning that "Asiatic" (*Azia-teki*) was a key concept in the 1980s, especially in relation to space. Asiatic space was imagined as triumphantly postmodern with its disorderliness, noise, multivocality, and festivity. It was argued that cities such as Tokyo and Taipei manifest Asiatic lived space that stands in contrast to orderly, disciplined, and authoritative Western cities (Jinnai 1988: 83–95).

The concept of "Asia" has provided a vast space for imaginative manipulation, contestation, and resistance in different times and locations; however, contemporary Japanese intellectuals imbued with a postcolonial consciousness would be suspicious of the political intention and motivation of the assertion of "Asian values." The Greater East Asian Co-Prosperity Sphere has left various scars, both physical and psychological, in the Asian areas that came to be under Japan's colonial rule or occupation. In 1995, when Japan was celebrating the fiftieth Anniversary of the End of the War, many nations in Asia were celebrating the fiftieth Anniversary of liberation from Japanese colonial rule. In 2007, when Japan was celebrating the thirty-fifth Anniversary of the Normalization of the Japan-China relation, China had the seventieth Anniversary of the Marco Polo Bridge Incident, which led to the traumatic Sino-Japanese War. Asian nations are divided over a number of unsettled issues and disturbing memories, rather than being united with common values.

A number of scholars have expressed their reservation or disbelief in "Asian values" (de Bary 1998; Bruun and Jacobsen 2000; Friedman 2000). Continuing their line, I would maintain that discussing human rights issues within a framework of Asian Values versus Universal Human Rights constrain rather than facilitate reflexive examinations and understandings of the critical issues in human rights.

Conclusion

In this chapter, I outlined ongoing antimilitarist and antinationalist debates in Japan. Traditionalistic Asian values are not putting human rights at risk in contemporary Japan. Rather, U.S. militarism, the LDP policy to be a loyal ally to the United States, and the force in the LDP to "normalize" Japan are some of the major forces possibly leading to human rights violations. Ironically enough, the normalization and "masculinization" of post-1945 pacifist Japan along a line of the principles of the nation-state means a possible violation of human

rights. It also needs to be noted that what is often regarded as a "turn to right" in Japan only seems to be the normalization and correction of an anomalous nation-state. This raises a critical issue regarding the nation-state and the violence embedded in it beyond particularized Asian values toward a more comprehensive critique of a political system born out of Western colonial modernity.

Notes

1. This seems to have been a perception shared also by the natives. Edward Friedman writes that "before the defeat of Nazism and the integration of a democratized Federal Republic of Germany into an Atlantic Alliance, most Germans rejected the notion that Germany was in the West. They mocked France and Britain as abstract and cold-blooded sites of inhumanity, while Germany was imagined as a warm community of truly humane values. They did not appreciate the blessings of constitutional democracy. In Germany, in the heartland of Europe, the core of the so-called West, liberal democracy actually could long be dismissed as immoral. Osward Spengler, in his famous 1917 tome, *The Decline of the West*, expressed this anti-democratic perspective. 'Democracy exists where money equals political power'" (Friedman 2000: 23).
2. For the sake of a balanced representation of human rights discourse in the English language, it would be fair to mention the presence of another style of scholarship. In social psychology, human rights have been discussed as normative social representations, which are defined in terms of organizing principles of symbolic relationships between individuals and groups. For an empirical study of the people representing five countries, Doise examines France, Switzerland, Costa Rica, Italy, and Romania (Doise 2002). Kennedy (2004) and Ignatieff (2001) also provide critical perspectives on human rights.
3. This series of actions to "masculinize" Japan have another gender dimension. Hiroyuki Tosa points out that the "masculinization" of realist politics and recent bashing of feminism and gender-free ideas are structurally linked (2005: 118).

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Chapter 10

Walking the Line between the "War on Terror" and the Defense of Human Rights

Reetta Toivanen

> *Those who would give up essential liberty to purchase a little temporary safety deserve neither liberty nor safety.*
>
> Benjamin Franklin

This chapter focuses on authoritative knowledge on terrorism and counterterrorism, its production and possible consequences for the application of internationally agreed human rights standards. Although terrorism is never an acceptable practice, there is a very wide margin of appreciation left for governments to decide what kinds of acts actually constitute terrorism. As its center of inquiry, this chapter takes the process by which counterterrorism mechanisms become a "validation" for the violation of human rights. Within this constellation, "othering" (Said 1991; Hall 2003; Toivanen 2004) emerges as a vital topic: the mechanism of othering is utilized to make both potential terrorists, as well as actual terrorists, as foreign and as strange as possible. This kind of othering is clearly helpful in legitimating governmental acts, even such acts that constitute a violation of basic human rights (e.g., the right to life, the right to a fair trial, the right to privacy).

The first two parts of this chapter discuss the theoretical frame for the study of counterterrorism measures as veiled in something that can be called expert knowledge or authoritative knowledge. This chapter is especially concerned with the authoritative knowledge of security experts who are instrumental in the production of the practice of othering. The subsequent part provides a short analysis on the popular rhetoric of the "War on Terror." The fourth part addresses

the eagerness of governments, also the ones in the Asian region, to use antiterror measures in their efforts to create stability and security in their territories; the fourth part also introduces the efforts by the United Nations (UN) to pay attention to human rights protection. The conclusion is that neither a government nor the UN has been able to arrive at a coherent policy on the question of how the universal validity of human rights can be maintained while countering terrorism. The rhetoric on the "War on Terror" makes it very easy for governments to introduce new discriminatory laws and policies and to reinterpret old laws in a way that best serves the interests of the majorities.

Despite the major role the notion of terrorism plays in the world today, there is no generally agreed definition of what constitutes terrorism in the international human rights system (UN 2006b). This failure has allowed for the enactment of inconsistent national definitions across the globe. It can, however, be argued that legal clarity is necessary for defining the very boundaries of lawful police action in order to ensure that extended powers granted by the law are not applied arbitrarily (Commonwealth Human Rights Initiative 2007: 3).

In his analysis for the report "A More Secure World: Our Shared Responsibility" produced by the UN High-Level Panel on Threats, Challenges and Change, Martin Scheinin concluded that three main factors frame the concept of terrorism. First, the degree of violence applied has to have an intent to cause death or serious bodily harm; second, the victims of the act of violence need to be "civilians or noncombatants"; and third, the motivation of the violent act has to be "to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing certain acts" (UN 2004). The International Convention on the Suppression of Terrorist Bombing from 1997 also provides some clarifying remarks in its Article 2 (UN 1997b; see also 2007b). According to it, a terrorist unlawfully and intentionally delivers, places, discharges, or detonates an explosive or other lethal device in, into, or against a place of public use, a state or government facility, a public transportation system, or an infrastructure facility and has the intention to kill or seriously injure.

The question on which there is no agreement is when and under what circumstances acts of violence are legitimate. Most of the definitions, also the ones above, drafted by intergovernmental organizations and governments try to exclude the role of states as sources of terror. For example, the aforementioned International Convention for the Suppression of Terrorist Bombing of 1997 makes the following

qualification in its preamble "noting that the activities of military forces of States are governed by rules of international law outside the framework of this Convention" (UN 1997b). The UN terrorism expert A. Schmid proposed that acts of terrorism could be defined as "peacetime equivalents of war crimes" as there seems to be a higher consensus on what constitutes a war crime (Schmid 1993: 12). The UN Special Rapporteur on the Protection and Promotion of Human Rights and Fundamental Freedoms while Countering Terrorism (SR on human rights while countering terrorism), Martin Scheinin, has stressed that for a terrorist act to qualify as an act of terror, civilians need to be seriously harmed or killed. In his reports, he has warned that confusion in terminology poses serious human rights risks as some governments clearly abuse "the term 'terrorism' to justify repression of undesirable movements" (UNPO 2007). One basic disagreement is, then, whether attacks against the military can be classified as terrorism; another disagreement is whether states can be sources of terrorism.

As a definition is lacking, it seems more suitable to describe the term terrorism through the methods used by the perpetrators than through the goals of the terrorists act as they may be impossible to grasp. The methods are "intended to cause death or serious bodily harm" and the victims of the act of violence are civilians or noncombatants (Scheinin 2005: 6). However, the goal also differs from normal warfare: terrorist attacks normally aim at causing a high number of casualties and at provoking intensive international media coverage; this is linked to the wish of producing a negative psychological effect on an entire population and beyond (Schweitzer 2000). In this chapter it will be argued that the "negative psychological effect" has also influenced the human rights discourse in general in a dramatic manner. The concept of terror is often interpreted for political purposes as something generally "bad," even though one person's terrorist may appear as a freedom fighter, a political activist, or an indigenous peoples' group occupying an area where state authorities have other plans (normally guided by economic interests) to another. However, the ambiguity of what is actually meant by terror or terrorists also explains, at least to some extent, the enormous popularity of the concept of the "War on Terror." It seems to legitimate states to carry out acts in their own territory and beyond to strip away the humanity of persons considered a threat to the state. These actions have been widely used for targeting groups of intellectuals or NGOs representing indigenous populations without allowing much space for the international human rights community to react to it or protest against it.

Self-immolation is a phenomenon known around the globe, but since World War II it has mostly been discussed in connection with desperate individuals' search for political and social change—in most cases without a clear intent of harming others (Bendix and Bendix 2003: 5–10). When self-immolation is used to harm others, it becomes suicide terrorism. Suicide bombings constitute an old form of warfare (Croituru 2003). The Jewish Sicairis and the Islamic Hashishiyun were famous for such attacks (Schweitzer 2000: 1). In general, terrorist attacks have often been used as a method of response to the unequal use of force, foreign occupation, or heavy military action. For example, terrorist suicide attacks have provided one method to pressure the target society to demand its government to change its policies (Crenshaw 2002: 21ff.; Gunaratna 2000). Some researchers have thus defined terrorism as one form of political communication (Waldmann 1998). Terrorism is used more generally as a method to change current power relationships and, ultimately, to change the world order. Although the goal of terrorists is to change power relationships between terror groups and governments, it seems fair to state that little has changed regarding power relationships over the past decades (Schweitzer 2000). Even though terrorists may use religious elements in their rhetoric on killing, the main goal is always secular and political. Some authors, however, stress that the analysis of suicide bombing as an especially difficult form of terrorist action must, under the current situation, be understood within the framework of Islam (Seidensticker 2004). Nevertheless, one must be cautious of uncritically placing "the West" against "Islam," for it is a clear distortion of reality used by certain groupings in the Western hemisphere in order to further their political agenda or to legitimize human rights violations (unlawful military actions, secret detentions, racial profiling, systemic racism). Even though radical Islamists seem to occupy a central role in recent suicide attacks, one should keep in mind that neither suicide bombing nor terrorism in general is typical of Islam (Ignatieff 2003: 58–62).

On Anthropology and Authoritative Knowledge

> There is nothing mysterious or natural about authority. It is formed, irradiated, disseminated; it is instrumental, it is persuasive; it has status, it establishes canons of taste and value; it is virtually indistinguishable from certain ideas it dignifies as true, and from traditions, perceptions, and judgements it forms, transmits, reproduces. Above all, authority can, indeed must, be analysed. (Said 1991: 19–20)

Among legal anthropologists there is a long research tradition within different fields that entail something called "authoritative knowledge." To put it bluntly, authoritative knowledge consists of the knowledge on which basis decisions are made and actions taken (Davis-Floyd and Sargent 1997). Empirical research on authoritative knowledge has traditionally concentrated on medical environments, that is, the production of authoritative knowledge around childbirth or nursing (Browner and Press 1996), or, more recently, on development aid projects (Moore 2001). The research has aimed at understanding what expertise is and how it is gained, modified, contested, taken away, and reformed.

The following section considers how authoritative knowledge itself, such as expertise on the "War on Terror" can be studied as a kind of culture. Anthropology is a discipline that appears to have the methodological and theoretical capabilities for precisely grasping those kinds of research fields that are veiled in authoritative knowledge. First, the concept of authoritative knowledge as it is used in this chapter is explained, and thereafter the role of this authoritative knowledge in reproducing and strengthening processes of "othering" in the "War on Terror"—that is, the discourse used by those holding the power to label others as terrorists—is discussed.

It is a truism that knowledge is power. Power can be described as a multilayered social phenomenon that manifests itself differently in all facets of societal life. Accordingly, power belongs to the basic terms of social science. It is an essential component of each comprehensive analysis of current and historical interrelations (Lukes 2005). In order to understand current power relationships, it is necessary to focus on institutions as bearers of social and cultural values that structure the social interaction around powerful knowledge. Knowledge does not, however, necessarily represent an intentional expression of power or control. Authoritative knowledge rarely appears as knowledge from above, rather we tend to recognize it as just the way people think and are, or as just "self-evidently true." Authoritative knowledge constitutes a research field where it seems exceedingly difficult or even impossible to ask questions.

Expert committees and groups are established and they develop new strategies to tackle difficult issues in economics, politics, and other spheres of societal life. The experts are also permanently present in the media discourse. The media operates with the aid of experts (even though the media are not always in the position to find "real" experts) and use the experts' knowledge to pack up their stories. In printed form many "theories" seem to become the truth. Yet, when

issues are complicated and decisions with dramatic consequences for the lives of many must be made, difficult questions, for example, concerning security are commonly left to be dealt with by the experts. Because they possess knowledge that can be described as authoritative, very few people dare to question its legitimacy, given that the former are the experts and in this role they are expected to possess the capacity to make statements and give policy advice or even make decisions on behalf of the public. As such, the procedure is often highly undemocratic as democratic decision making tends to be too slow and ineffective.

Although there are many largely unexamined "truths" in the world that people accept as correct, these truths are rarely subjected to any serious examination. For anthropologists, these kinds of "facts" are immensely interesting; after all, these issues that appear to be most normal and natural constitute an important basis for an anthropological analysis. This is because those apparent normalities conceal authoritative knowledge: all that people tend to assume and regard as truth can be studied as sources of power. Thus, one of the important tasks of academic research is to deconstruct the hegemonic understandings of societal phenomena and then construct a detailed, hermeneutic analysis of their meanings.

Security and Balancing: Key Concepts of Authoritative Knowledge on the "War on Terror"

One research topic that can be studied as a domain of authoritative knowledge is the "War on Terror." This is because the concept "War on Terror" is in itself already something that we use or at least read about regularly— though its actual content remains vague or even hidden. Here, the ordinary person, the nonexpert, is forced to rely on experts, on persons who are defined as carriers of the wisdom on security and the "War on Terror." The experts advise us as well as the politicians and decision makers on how to conduct the "War on Terror." They also provide knowledge about potential terrorists and potential remedies against terrorism—this information is declared secret (because it otherwise could easily be used by terrorists). In this case, the secrecy renders authoritative knowledge even more powerful: a select group of individuals carry the knowledge and decide who can be trusted with the knowledge. Here, there is a clear distinction between the kinds of authoritative knowledge possessed by, for example, midwives and security experts: anybody can at any time study and

become a qualified midwife, but access to the "knowledge" possessed by security experts is more complicated.

Security experts—lawyers, policy experts, members of the military, police officers, intelligence, and academic researchers—receive specialized training, the contents of which are not secret as such. But much more than eduction is required for becoming an expert on terrorism, because it seems impossible even after the fact to explain just how someone became an expert. The selection, and who is selecting, is not random but most probably impossible to analyze: it depends on time, place, and coincidences (Uruena 2007). This hybrid character of expert bodies was also addressed by the Venice Commission when it stated that "the problem for expert bodies can be summarized in the word "legitimacy." This affects both how the body is established, how members of the body are chosen, and to whom or what the expert body reports (Venice Commission 2007: para. 227). Put simply, one could state that for the selection of experts, the experts need to be considered useful for the purposes they are chosen to give expertise and for the positions of those who chose them as experts.

Recently, the Venice Commission addressed the problem concerning the legitimacy of such expert bodies that cannot be made accountable for their work, stating in paragraph 83 that "experts have special knowledge, and government is largely dependent upon these experts. In ordinary areas of administration, e.g. education, environmental control etc. various mechanisms exist for improving governmental control over the bureaucracy. But the necessary secrecy which surrounds the area of security can make this considerably more difficult." The report discusses at length how the legitimacy-deficit could be overcome, but it makes clear that there are no easy solutions because governments or parliaments are considered untrustworthy as control bodies as there is such a high potential for misuse; yet, it is the view of the Commission that secrecy is necessary in order to allow the expert body to conduct their work (Venice Commission 2007).

It is easy to agree that there is something called gray eminence behind the expertise-issue, something that we may not be able to study and explain. The gray eminence refers to the experts who cannot be made accountable for the consequences of their expertise because they act completely "behind the scenes." At the same time, there is the visible expertise that can be studied as something mediating between the gray eminence and the public. So the experts holding the authoritative knowledge on terror are here understood as the mediators between the governmental interests of suppressing certain

elements of the society that pose a risk to stability. The experts are the persons who master international human rights law, national law, and the political interests of the government. Their role in the process of othering is instrumental: they are called upon to give legitimizing arguments to the antiterror measures and to explain to the government and to the public—not to mention the international community—the actions and directions taken. They are fluent in the various languages in the rhetoric of the "War on Terror." Governments need to be convinced that without a certain measure, the state is at risk of being destabilized; likewise, the public needs an analogous argument stressing the government's responsibility toward its constituencies in protecting their security; and finally, the international community needs to be convinced that the actions undertaken are consistent with international standards and ultimately serve the international community as whole. The argument is not to say that these kinds of experts lack their own agenda, or are not involved in other kinds of activities, and may be even from time to time form part of the so-called gray eminence. But for the sake of the argument, they are here discussed as "tools" for producing the kind of othering that serves the state's hegemonic interest. This is exactly the reason why the counterterrorism measures are so easy to abuse: they appear as fully legitimate—or even natural—methods for stabilizing the state and producing security.

When it comes to security, people react predictably: as much as possible, we want to live without risks, and thus it is easy to make politicians responsible for our insecurity. So when the majority of the European population accepts that security can only be produced at the costs of forfeiting human rights, then security is a highly political theme (Grimm 2006: 16). One can expect this to apply to the populations of other continents, too.

Focusing on the "War on Terror" as a culture of authoritative knowledge allows for assessment of the limits of academic access to the field. First of all, it is very difficult to identify who can actually be considered an expert. Second, it is seldom possible to interview or observe the actions undertaken by security experts; what is more, gaining unbiased knowledge on what constitutes the expertise is challenging. One could call the security experts secret experts on this basis. Even if the researcher attends meetings of experts, as well as meeting and talking to alleged experts, she or he may never be in the position to contextualize their answers correctly. However, the theories of critical legal studies (Supiot 2003) and feminist critical theory (Young 1997, 2000; Fraser 1992, 1995, 2001) provide meaningful

tools for the analysis of the empirical material of the two different but related research fields. First of all, the analysis of legal documents produced in the divergent organizations of the United Nations, in Europe in the Council of Europe,[1] and nationally enacted laws and restrictions of rights provide information on the legal reactions and responses to advice by the security experts. Second, interviewing and observing those who fight against the consequences of the limitation of human rights in the name of security—being basically human rights activists and NGOs—will provide a broad picture of how people experience the "War on Terror" as a threat to their rights—and how they are at the same time appreciative of the improved security situation.

On the basis of current state of research one could say that the vocabulary of the "War on Terror" has taken on a life of its own. Governments and government-like-actors use the vocabulary to legitimize different kinds of acts against individuals and groups of people they dislike. At the same time, the international community has tried to keep up with the developments and created new institutions to control an illegitimate use of antiterror measures as, for example, the position of an independent expert to the UN Human Rights Council, Special Rapporteur on protection of human rights while countering terrorism (UN 2005b: para. 14).

Also, many human rights NGOs try to pursue the rapid developments in the use of antiterror measures and address those violations they know about, knowing that only a limited number of cases comes to their knowledge. They also know the limited scope of their activities in the sphere of anti-antiterror due to the fact that the access to the field is very limited and highly protected.[2] There is some remarkable work conducted by the International Commission of Jurists (ICJ) based in Geneva. ICJ hosts, for example, an Eminent Jurists Panel on Terrorism, Counter-terrorism, and Human Rights that conducts country visits to assess the compatibility of national antiterror laws and policies with international human rights commitments. Similarly, Amnesty International is carefully reviewing national counterterrorism legislations as well as measures taken by the UN, ASEAN, African Union, Inter-American organization, and the European Union (Gilmore 2002; Amnesty International 2005). Human Rights Watch, in a similar manner to Amnesty International, conducts its own research and publishes both media briefings and reports (see, e.g., Human Rights Watch 2004). ICJ and other civil society organizations can and also do set up campaigns to raise awareness that aims at preventing further abuse and misuse of the vocabulary of the "War on Terror."

The Rhetoric of the "War on Terror"

The rhetoric of the "War on Terror" primarily serves those in power. The danger posed by terror is certainly a fact; yet, the danger posed by states using "the War on Terror" against any people suspect to them is also reality. It is easy to agree on the importance of conducting research on the reasons for terrorism and how to diminish these dangers. At the same time, it should be generally acknowledged that the victims of an illegitimate "War on Terror" also deserve scholarly attention. This means that terrorism produces two kinds of victims: victims of terrorist acts and victims of counterterror measures. These are people who have suffered repression, torture, and loss because their political and cultural activities are believed to pose a threat to the states in which they inhabit; or they may be relatives of suspected persons, or have similar names to individuals suspected of terrorism, or they just happen to reside in areas where the state has traditionally had other priorities. In India, for example, the Prevention of Terrorism Act (POTA) has led to much fewer actions in areas such as Kashmir (where one would expect more terrorist significance) than in rural areas where there is high density of indigenous populations (ICJ 2007).

Since the terrorist attacks in New York on September 11 in 2001, the fight against terrorism has quickly developed into a top political priority all over the world. It has been stated over and over again that the attacks against the World Trade Center changed—if not the world—then at least our understanding of the possible dangers in it. For example, the Director of the Finnish police force—remembering here that Finland has no experience of modern international terrorism—stated recently in an interview that when Finland previously held the presidency of the European Union, only one-third of the security costs of the second time had been necessary, because "after the attacks on WTC the world has changed" (*Helsingin Sanomat* 5 September 2006). Finland held the EU presidency the first time in 1999 and the second time in the fall of 2006. The Council of Europe lost no time in reacting to the new increased danger of international terrorism, and neither did its member states. On 28 September 2001, the Council of Europe adopted Parliamentary Assembly Resolution 1258 on Democracies Facing Terrorism in which "the Assembly expresses its conviction that introducing additional restrictions on freedom of movement, including more hurdles for migration and for access to asylum, would be an absolutely inappropriate response to the rise of terrorism, and calls upon all member states to refrain from introducing such restrictive

measures" (Council of Europe 2001). However, all member states have had difficulties keeping this warning in their minds.

The bombings of Madrid in March 2004 and London in July 2005 appeared to further validate the course taken by the European governments. New laws restricting the liberty of individuals and stressing security have become commonplace. For example, Italy passed a decree that gives "security" a clear priority over "human rights" (*Gazzetta Ufficiale* 2005). Profiling, collecting details on potential[3] terrorists in databases (*Der Spiegel* 2006), extending flight security laws, widening permission to bug communications (including e-mail, text messages, and phone conversations), disclosure of bank transactions, video surveillance of public places, biometric IDs, face scanning, and the like represent innovative methods aimed at finding potential terrorists as quickly and effectively as possible, thereby producing security. In Germany, a long governmental debate followed the proposal of the Minister of Interior to create a database on terrorists. The disagreement was not on the necessity of the database but rather on what kind of data could be filed without violating privacy rights. After the discovery of an attempt to bomb the Munich railway station, the disagreement was very quickly solved, and the union partners and social democrats agreed on a two-stage file that gives far-reaching rights for the public authorities. Only the Green Party has insisted on its unconstitutionality (*Der Spiegel* 2006).

In this process, "balancing" has evolved into an apparently neutral term describing the immediate and inevitable restriction of human rights in the name of security. Balancing has thereby gained a new meaning: pondering or weighing up the situations in which human rights can be derogated or even switched off for a period of time called "temporarily." Although human rights organizations have protested against the term as it tends to cover even illegitimate restrictions, interstate organizations such as the United Nations, the Council of Europe, the European Union, and many governments have embraced it in their "War on Terror" vocabulary. The European Union Network of independent experts in fundamental rights (CFR-CDF) stated that a balance between freedom and security is a response by the European Union and its member states to the terrorist threats (EU 2002: 29).

Outside of Europe, the responses and reactions have been very similar. The newly democratic state of Indonesia has repeatedly stated that one of the main key dilemmas it has faced has been to find a balance between production of security (e.g., with better and more effective intelligence) and accountability of decision bodies and respect for

civil liberties (Imparsial 2005: 2; on New Zealand's "balancing problems," see Smith [2003: 26]).

What in 2001 was a warning by some human rights NGOs has now turned into an everyday issue: ordinary citizens around the globe are subjected to surveillance to a degree unthinkable ten years ago. They have been forced to accept the rules of the new game because the security experts say that those who are not terrorists should have nothing to hide—so why not let the state watch over people for their own security and for the well-being of a whole nation? In other words, they are asking citizens to trust their governments. The security experts appear in the media and in the speeches of decision makers as if they are the true guardians of human rights and democratic values. In this discourse "the experts" on security issues appear as a faceless group bearing powerful knowledge that affects the lives of us all—but that is accessible only to a selected group. The experts, the carriers of something that is here called authoritative knowledge about security and the war against terror, constantly warn us about the terrorist others: relying on the expert information, the media describes the young men, and very few women, who have committed their lives to terrorism as poor, uneducated, desperate, and brainwashed. In other stories they are described as crazy, religiously fanatic, and evil.[4] A typical statement characterizing suicide bombers is the following: "Their [terrorists] goal is to destroy liberal, tolerant, secular society in all its forms, and replace it with a rigid theocratic dictatorship that enforces a medieval interpretation of the most barbaric elements of Islamic law" (*Daily Telegraph* [UK], 3 September 2006). The perpetrator profiles used to track potential terrorists follow these lines (Magliocco 2003: 13).

Governments and Security Measures

Some human rights in particular have been during recent years seriously violated by many governments using the antiterror rhetoric: the right to life must certainly be mentioned in the first place, also the freedom of movement, freedom of speech, the right to family life, the presumption of innocence, the right to be protected from inhuman and degrading treatment are all rights that are reported regularly as having been violated. The tendency is that only a negligible number of actual violent acts enters public knowledge. When the general public is confronted with the information that security has been the basis for the violation of human rights, we seem to regret the mistakes and errors generated, but we still do not wholly reject the expertise

behind such decisions.[5] Of the methods utilized by some governments to combat or prevent terrorism, there are few that have attracted the attention of international human rights bodies, institutions, and other actors. Especially the policies regarding the right of security officials to kill in case of emergency or the extensive intrusion of the private sphere (surveillance, taping and recording, data banks, profiling) have been addressed as problematic areas.

Particularly the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions (SR on Executions) has, in several of his communications with governments, drawn attention to the increasing reluctance to acknowledge the right to life as a nonderogable (meaning a right that is not subject to any derogation in times of war or other public emergencies) human right. According to the human rights law, the right to life is clearly one on which no derogations are acceptable (UN 1976, ICCPR: Art. 2, para. 1). The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials in Principle 9 also states noticeably: "In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life" (see also UN 2006h: para. 44–54). Also, the SR on Human Rights while Countering Terrorism has, in his recent report, profoundly criticized the widespread acceptance of shoot-to-kill policies in all parts of the world (UN 2007). The Code of Conduct for Law Enforcement Officials says clearly in Article 2: "In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons" (UN 1979). Article 3 states that "Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty" (UN 1979, Art. 3).

Several governments have, however, created their own interpretation of what the use of utmost force means, whether in the United Kingdom, the United States, Nigeria, Myanmar, and elsewhere. Such invocations as "targeted killing" or "shoot-to-kill" are used in order to demarcate a new—but technically legal—approach to counter terrorism. For example, Myanmar supposedly employs a shoot-on-sight policy in Kayin State against the opposition; Nigeria follows the same policy regarding the supposed armed robbers in Umuhaia in Abia State. After the London metro bombing, the UK police force shot down an innocent person and reported it as a regrettable security measure error.

In his communication with Nigeria, the SR on Executions stressed that the resulting emphasis should be on proportionality, on the use of lethal force as an absolute last resort, and only "when strictly unavoidable

in order to protect life" (UN 2006g). The Government of Myanmar was reminded in the last communication with the SR on Executions and the SR on Human Rights in Myanmar that "shoot-on-sight policies" represent a deep and enduring threat to human rights–based law enforcement approaches (UN 2006f). In their joint letter to the government of Pakistan, the SR on Executions and the SR on Human Rights while Countering Terrorism concluded that law enforcement officials should "as far as possible apply nonviolent means before resorting to the use of force and firearms" (UN 2006e).

In India the new law called the Armed Forces (Special Powers) Act (AFSPA) has prompted concern that it empowers security forces not only to arrest and enter property without warrant, but also entitles them to shoot-to-kill in circumstances where members of the security forces are not necessarily at imminent risk (see especially Section 4 (a), (c), and (d) of the AFSPA; UN 2006b: 76). Pakistan has been excused for using the "War on Terror" in several incidents to oversee or to even legitimate the killings of civilians in certain areas (border to Afghanistan, for example) (UN 2006d). Not to mention Myanmar—where the government is holding military operation against members of the Karen National Union and has been accused of killing several civilians, and individuals have also reported to have been tortured. The government has explained that it carries out "legitimate security measures" against "destructive elements" (UN 2006e). In Sri Lanka the government has introduced new measures to combat terrorism. The government uses the UN obligations against terrorism as an invitation to the new measures. *Current Affairs Sri Lanka* (6 December 2006) had the following headline: "Regulations in keeping with the UN obligations against terrorism," making the point that the new measures have been adopted in order to "keep up with" the demands from the UN (for the law, see the *Gazette of the Democratic Socialist Republic of Sri Lanka*, 2006). However, human rights activists see here again a great danger to all civil society actors to protest or take part actively in political decision making in Sri Lanka, also organizations such as humanitarian aid organizations active in the Tamil areas are in danger of being accused of collaboration and terrorism (ICJ 2006).

The point here is not so much to show how states have embraced the vocabulary of antiterror and used it as a new internationally accepted way of restricting the rights of their citizens and suppressing those people and areas otherwise difficult to control. The point is much more to discuss the roots of such knowledge that can legitimate actions against human rights with a new quality.

The UN Efforts and the Human Rights Concern

United Nations organizations have actively sought to create a set of international measures to prohibit terrorism. In 1994, the General Assembly issued a Declaration on Measures to Eliminate International Terrorism (UN 1994). It urged states to cut the funding of terrorist organizations. This was supplemented three years later with a document in which, interestingly, the importance of state officials' careful consideration of the background of asylum seekers was further stressed as a vital component in combating terrorism (UN 1997a). This is a clear indication of a commonly held perception: terrorists may arrive as seemingly benign asylum seekers. The Convention for the Suppression of Terrorist Bombing from 1997 (UN 1997b: 3) also pays close attention to the possible misuse of asylum law by potential terrorists and urges states to carefully consider the evidence and to "exchange information on facts related to terrorism" (ibid.).

The Convention on the Prevention of Terrorism (Council of Europe 2005a) was motivated by the need to reinforce international cooperation in the fight against terrorism and supporting the efforts of the UN (Council of Europe 2005b). It was also seen as a document for closing gaps and adding value to the existing instruments (ibid.: para. 11). In fact, it was not before the final document of the 2005 World Summit Outcome that all states (with any regional differences) jointly condemned terrorism "in all its forms and manifestations, committed by whomever, wherever and for whatever purposes, as it constitutes one of the most serious threats to international peace and security (UN World Summit Outcome 2005: para. 81). In paragraph 85 of the World Summit Outcome the states recognized the significance of international cooperation to fight terrorism but, even more crucially, the states "must ensure that any measures taken to combat terrorism comply with their obligations under international law, in particular human rights law, refugee law and international humanitarian law" (UN World Summit Outcome 2005: para. 85; see also General Assembly Resolution of the UN 2005d: para. 1 and Security Council Resolution of the UN 2005c). The importance of securing the standards of international human rights law and humanitarian law in the process of countering terrorism has during recent years become a difficult task to maintain—and even more difficult the less civil society actors are able to receive information on what is actually going on.

The Sixty-First Commission on Human Rights in Resolution 2005/34 on "Extrajudicial, summary or arbitrary executions" (OP 4)

stated that all states have "the obligation . . . to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions" (UN 2005a). The commission added that this obligation includes the obligation "to identify and bring to justice those responsible, . . . , to grant adequate compensation within a reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to . . . prevent the recurrence of such executions" (ibid.).

The recent UN Resolution on Global Counter-terrorism Strategy adopted on 8 September 2006 (UN 2006c) makes the following list of conditions conducive to the spread of terrorism: prolonged unresolved conflicts, dehumanization of victims of terrorism in all its forms and manifestations, lack of rule of law and violations of human rights, ethnic, national and religious discrimination, political exclusion, socioeconomic marginalization, and lack of good governance. The resolution calls for action to combat these conditions while it makes clear that none of these conditions can excuse or justify terrorism. The Committee on the Elimination of Racial Discrimination demanded that states and international organizations ensure that measures taken in the struggle against terrorism do not discriminate in purpose or effect on the grounds of race, color, descent, or national, or ethnic origin. In this context, the Committee on the Elimination of Racial Discrimination intends to monitor, in accordance with the International Convention on the Elimination of All Forms of Racial Discrimination, the potentially discriminatory effects of legislation and practices in the framework of the fight against terrorism (UN 2002).

In addition, the SR on Human Rights while Countering Terrorism stressed in his report to the Human Rights Council that terrorist profiling practices that entail distinctions presuming a person's "race" cannot be supported by objective and reasonable grounds, because they are based on the false premise that different human races would exist and, therefore, unavoidably add to a stereotypical use of unfounded categories of "white," "black," or "Asian" (UN 2007: 12).

The Expertise on "Them as Opposed to Us"

In this chapter, I have highlighted the way in which the definition of potential terrorists as definite others first of all endangers the human rights of all those who may for whatever reason fall into that category.

Second, I have shown that the use of such rhetoric on terrorism serves those who have power and are able to use it to subject others to their definitions; these definitions, in turn, serve to disregard the basic human rights of those persons who do not fit into the majoritarian understanding of who "we" are and what "we" want to be and represent.

In 2002, the General Secretary of the Council of Europe wrote "in addition to the sufferings caused and the [terrorist] threats posed to our society for the future, the [terrorist] attacks have been perceived as a direct assault on the fundamental values of human rights, democracy and the rule of law which are our shared heritage" (Schwimmer 2002: 5). This statement very clearly illustrates the conceived divide between "us" and "them." A terrorist is never one of our own. Whereas the European discourse has been concentrating on terrorists as outsiders, foreigners, members of another religion, and having an appearance hinting at a potentially other ethnic background, the leaders of the Asia-Pacific states have known that the "other" resides in their own state: rebels, indigenous activists, political opponents. States in the Asia-Pacific region cannot assume, unlike their counterparts in Europe and North America, that the "other," that is, a potential terrorist, can be stopped at the border. The Asian debate is much more focused on groups inside the country that oppose the state power. In both cases, the typical statement makes a clear distinction between them and us, "them" being the ones who are capable of terrorism and "us" being the carriers of dignity and justice or, in other words, democratic values and respect for human rights. "They" attack "us," they attack our culture, our values, and our power of interpretation. The "othering" of potential terrorists has severe political consequences as it questions the very humanity of the potential or supposed perpetrators of terror. This has inevitable consequences for human rights standards worldwide.

The United Nations and other intergovernmental organizations and human rights organizations have been alerted to seek ways to control the "War on Terror" rhetoric adopted by many governments. The efforts they have made, however, will not suffice as long as the whole security discourse is veiled in a secretive, unaccountable policy that turns citizens into objects of the state. Yet, it must be possible to safeguard human rights even while fighting terrorism. Since the human rights of all human beings deserve protection, it is time to initiate debates on the roots of terrorism, state involvement in the spread of terrorism, and role of intergovernmental organizations in feeding terrorism.

Notes

1. See, for example, the travaux repertoires of the Council of Europe, 2005, Convention on the Prevention of Terrorism CETS No.: 196 adopted in Warsaw 16 May 2005. Interesting enough is the fact that until now (November 2007) only Albania, Bulgaria, Denmark, Romania, Russia, Slovakia, and Ukraine have ratified the treaty (Council of Europe 2005a, 2005b).
2. See http://ejp.icj.org/15 September 2007 (Accessed).
3. The word "potential" in conjunction with the word "terrorist" is a curious mix found in each and every newspaper on a daily basis. Its meanings are open to scrutiny by social scientists.
4. The survey was conducted in October–November 2006 and covered the editorials of several German, Norwegian, English, and American newspapers from during the past five years.
5. However, one wonders whether Guantanamo Bay can be considered "a mistake" just some sixty years after the horrors of the Holocaust and the Gulag.

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