Human Rights and Asian Values

Contesting National Identities and Cultural Representations in Asia

EDITED BY MICHAEL JACOBSEN AND OLE BRUUN

HUMAN RIGHTS AND ASIAN VALUES

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Preface

The chapters of this volume all derive from papers presented at a workshop held in Copenhagen in May 1997 under the title 'Human Rights and Asian Values' and jointly organized by the Nordic Institute of Asian Studies, the Institute of Anthropology, University of Copenhagen, and the Danish Centre for Human Rights. The Danish Ministry of Foreign Affairs provided generous support for the workshop, which gathered over 70 scholars and students from four continents.

The editors also acknowledge the cooperation of all contributors to the volume and appreciate their patience during the editorial process, which for various reasons extended far beyond expectation. Yet we believe that the theme of the book is no less relevant today than it was at the time of the workshop.

Thanks are also due to the staff of the NIAS publication unit, Gerald Jackson, Leena Hoskuldsson and Andrea Straub, whose professional work speaks for itself, as well as to the anonymous referees who provided helpful criticism and suggestions.

Finally, we recognize the support and understanding of our loved ones —Michael Jacobsen's wife Jytte and Ole Bruun's wife Karen and his children Philip and Esther, to whom we dedicate this book.

Introduction

Ole Bruun and Michael Jacobsen

Are there such things as Asian values, understood as a common social morality embraced by that half of humanity living in Asia today? Hardly, we contend, apart from the common humane values that are also shared by the other half of humanity. This anthology intends to show that there is no distinctively 'Asian' perspective, entirely different from Western or other perspectives and unanimously shared by all Asian societies. Accordingly, we are not concerned with identifying a specific Asianness in the approach to human rights, but with investigating the background for what has now established itself as the Asian values argument in international politics as well as with tracing similarities and dissimilarities in the current controversies over human rights and national cultures in Asian societies.

Since Asian values are used to promote cultural relativism as an argument against the universality of human rights, it has created a sense of urgency among critical intellectuals and in human rights circles. First of all, the crude sense of culture that derives from phrasing a common set of values as expressive of a national culture, of which an authoritarian state is the rightful defender, simply invites a response from the modern scholarly world. Second, from a straightforward human rights point of view the real challenge embedded in Asian values is less their ideological content than the prominence they derive from being articulated in government rhetoric and official statements. For instance, in 1993 at a regional meeting prior to the UN Human Rights Conference in Geneva, a wide range of Asian states, representing—or controlling—a third of humanity, signed a declaration, known as the 'Bangkok Declaration', problematizing the universality of human rights. The wording of the declaration itself is ambivalent, containing clauses supporting the universality of human rights and at the same time containing other clauses stressing the imperative significance of national and regional particularities and various historical, cultural and religious backgrounds.[1] Despite inconsistency, from an academic point of view the

Bangkok declaration meant that an old debate on universalism versus cultural relativism had taken a new turn and a political consensus on the Asian values rhetoric had been established among many Asian governments.

Our joint approach in this volume derives mainly from critical social science. We shall look behind the popularized and frequently quite vulgar proclamations by Asian values proponents to raise some critical issues: in the context of Asian social and political realities, who defines values and for whom? Whose culture is represented at the national level? What alternative visions of society exist? And how far is cultural relativism on human rights being shared by the national and cultural groups in question? A very general theme is therefore who has the power to define culture and values and what are the power relations in society when such cultural axioms are applied to the practice of human rights. The universal human rights obviously produce contesting representations of culture, identity and the national heritage in Asian countries. We all share the view that the idea of universal human rights is a fairly modern conception intended to create local or global solidarity in the struggle against injustice—as a mere set of ideas it has no boundaries and tracing its history tends to be non-essential for its application. Yet we are not primarily concerned with human rights and their possible violations in an Asian context, but with the diverse ideologies, traditions, values and cultural orientations that are mobilized when notions of human rights are introduced into Asian societies. As will become clear, the Asian values dispute is not limited to East against West, but is as much a dispute cutting across regional, social and cultural boundaries.

THE ASIAN VALUES DISCOURSE

When looked upon in isolation, Asian values closely resemble commonplace conservative values: strong leadership, respect for authority, law and order, a communitarian orientation placing the good of the collective over the rights of the individual, emphasis on the family, etc.[2] These are known from all continents, in recent history being symptomatic for historic predicaments of rising authoritarianism at the expense of democracy and civil rights.

The so-called Asian view of human rights focuses on the following interrelated themes, which will only be outlined here as they are treated in more detail in the following chapters. First of all there is the straightforward 'cultural' argument, that human rights emanate from particular historical, social, economic, cultural and political conditions—

in short, that they are culturally specific—and less relevant in other cultural settings such as the contemporary Asian societies.

Second, there is the reflexive, 'collective' argument that Asian values differ from Western ones by being communitarian in spirit, with family and community obligations being the core of social life as opposed to Western individualism and an atomistic perception of society, which entails social disintegration, crime and drug abuse. Since the community takes precedence over individuals, individual rights are destructive to the social order and the harmonious function of society.

Third, there is the 'disciplinary' argument, stressing the importance that Asians allegedly attribute to voluntary discipline in all social life, including family relations, labour relations and politics, particularly with a focus on the necessity of this for superior economic performance. A derivation of this claim is that social and economic rights take precedence over civil and political rights, stressing, for instance, the 'right to development'—that is prioritization of second-generation rights. Political rights thus become subordinate to feeding and clothing the populace and the workers' right to form unions is secondary to a system of stability and efficient production.

Finally, there is the 'organic' argument, building on a notion of state and society as a single body, intimately connected with the mandate to rule for the common good of everyone. As a consequence of this notion, the political leadership is ordained to handle the interests of the entire society and criticism against it is deducible to a challenge to state power. In foreign relations the organic argument is expanded into an unyielding policy of state sovereignty and international non-interference, denying foreign governments and NGOs the right to monitor domestic human rights.

This cluster of arguments has been advanced at numerous occasions, either as a whole or fragmentedly, by state representatives and establishment intellectuals primarily from China, Singapore, Malaysia, Vietnam, Burma, Indonesia and Thailand, while it has had resonance among some scholars in Japan, Korea and India.

The rise of the debate might be linked to several international trends and events. The collapse of the Soviet Union and the void it left in international politics must certainly be emphasized. Western governments have frequently been accused of exploiting this void for a crusade against Third World countries, linking democracy and human rights to trade agreements. During the same period of time national and international aid agencies, as well as the IMF and World Bank, have begun more customarily to tie human rights issues to international co-operation and aid. China and several ASEAN members particularly have

expressed their bitterness over this development: there is some correspondence here with those countries, whose leaders and prominent intellectuals have actively promoted Asian values. Equally prominent in the debate has been the question of a hidden agenda, with which the West is supposed to introduce universalist issues into Asian societies in order to cause disturbance and stall the rising political and economic significance of Asian economies with a view to maintaining its own hegemony.[3]

Also country-specific events such as the Tiananmen massacre in China in June 1989, resulting in international condemnation of the Chinese regime, and the extensive house-arrest of Burmese opposition leader Aung San Suu Kyi, which also attracted immense international attention, obviously have animated several Asian governments to promote Asian values in their external relations.

There must be no doubt, however, that the Asian values rhetoric was energized by East and Southeast Asia's economic muscle and the ensuing self-confidence in international politics that the entire region gained up through the 1980s and 1990s until the Asian crisis began in 1997. The self-celebration that follows in the wake of economic success and the search for functionalist-type explanations of one's own superiority is known from nineteenth century Europe—Max Weber's Protestant ethic is a prominent example[4]—and echoed in post-war Japanese and Korean emphasis on the Confucian ethic. Once Japan and Korea were established modern economies, the search for a native values resource base shifted to the up-coming economies in Southeast Asia and later mainland China.

The formulation of Asian values conveyed a wish to match economic success with a societal design distinctly different from the Western model and to counter what was perceived as rampant 'Westernization'. Thus it is a cultural relativist approach, specifying the balance between citizens' rights and the integrity of state power. It is also of cardinal importance that Asian values are rooted in aspirations for contemporary society rather than in unreflected respect for cultural traditions of the past. Asian values are meant to strengthen a given public morality in a changing world. It may even be questioned if they are at all concerned with values or if they only operate in the field of concrete politics.[5]

Although the concept of Asian values is of recent date, perhaps reaching its peak in the mid-1990s, we should not be misled to see it as a novel phenomenon. Asian values have many localized precedents in colonial and post-colonial history; the late nineteenth-century Chinese debate on 'self-strengthening', the post-war Indonesian Pancasila ideology, the Panchayat system in Nepal, the 'Basic Democracy' policy in Pakistan and the more recent Malaysian '2020-vision' under Premier

Mahathir are all examples of struggles to activate a native values resource in the service of nation-building and frequently in the face of foreign domination. On top of these are countless Asian examples of emergency orders, which may rest on similar principles.[6] It is the unit of geographical reference, Asia as a whole, that institutes a new dimension to the struggles with post-colonial identity and mobilizes new actors.

Taken together, however, these motifs have provided a powerful normative framework through which state power has been justified and exercised, and perhaps even more importantly, it has allowed the 'constitution of a sense of legitimate social purpose to be pursued by the exercise of state power'.[7] That is, of course, if it resonates with popular notions of justice or fairness—but by what means can we evaluate if this is really the case or if such framework merely provides a verbal distraction from authoritarian rule, entirely dependent on the exercise of force? In real-life politics the critical matter tends to be whether authoritarian government can deliver the promised goods. Fulfilling the material expectation of elite and middle-class citizens will at least win them a respite—on the contrary, they may also lose political legitimacy overnight, as seen in Indonesia as a result of the economic crisis.

An engaging feature of the Asian values debate is the vigorous defence of Asian values by many members of Asian elites, who in this way convey an implicit message of 'a revolt against the West'.[8] The 'West' becomes subject to demonization as the spooking other, ascribed a range of negative characteristics. Crude dualism appears necessary for constructing the positive image of Asia as morally superior, politically stable, committed to common cause and economically viable. It is perhaps this new self-identity in the form of occidentalism,[9] or self-orientalism one could say, promoted by some Asian leaders and establishment intellectuals that baffles us the most. The authors of this volume feel a joint responsibility to analyse the implicit meanings and underlying assumptions in these abstract formulations of a common Asianness. Given the diversity in political and economic systems, philosophical and cultural traditions, historical and colonial experiences and present government type, Asia is too large and polychrome to allow any deeper consciousness of shared values and a common heritage.

A CRITICAL APPROACH

Thus the general significance of Asian values for human rights is, first of all, that it has opened a debate on the legitimacy of cultural interpretations of human rights, and second, the derived question of what social and political significance these interpretations may have for

Asian societies.[10] Some of the following chapters will attack these issues from a transnational, theoretical angle, while others will scrutinize the rise and significance of the Asian values debate from a regional perspective.

With the Asian values debate cultural relativism has been marketed anew in defence of different human rights practices. This inevitably leads to the critical issues of power and representativeness. Indeed, some East Asian countries seem to exploit the language of cultural relativism to justify gross repression. Evaluating this debate is acutely important in identifying exactly who claim to be the true bearers of cultural traditions and by what means they defend their right to interpret, or 'publish', common values for others to 'subscribe' to.[11] Another, derived, question is of even greater importance to this volume: who do not have the right to speak up in public and what alternative voices are heard underneath the official rhetoric in the countries in question?

Much of the recent literature on Asian values has narrowly equated 'East' with authoritarian Asian governments and 'West' with the USA. After the end of the cold war the United States has gained unprecedented power and recognition as the land of economic opportunity and political freedom,[12] thus for many Asian elites acquiring the double role of model and splinter in the eye. Still, Europeans inevitably will wonder how easily the West is taken for the US in this debate, while Northern European countries with massive state management are hard to fit into the East—West contention. The debate accordingly is constrained by positions of US superpower status and human rights championship against rising Asian self-assuredness and ability to set its own terms, with attempts to find 'common ground'.[13] Others, in dis-agreement with this trend, have attempted a philosophical comparison between Asian and European values.[14] Opposing cultural models, monolithically and incompatibly represented, are really conceptual exercises more than positive realities, aimed at reducing a multiplicity of social and political factors to a single, overriding element, interpreted as 'our culture as opposed to that of others'. Apart from the immense difficulties of defining geographically Asia and the West, the regions themselves are meaningless terms for cultural and historical unities. But the core of our argument is really that culture itself is too dynamic and creative to allow such stereotyped constructions: any 'culture' embraces distinct, historically co-existent traditions and interpretations, competing values and continuous cross-cultural exchange. Variety will unfold once a region, a state, a nation or a local group is broken down into its constituent parts—and in the final analysis these are and will always be individuals. Yet the polarities and stereotypes generated by cultural determinism cannot easily be dismissed

as having no consequence. They are much too convenient instruments in creating some measure of meaning, order and legitimacy in a world of change and challenge. As pointed out by Stephanie Lawson, 'In their simplicity and accessibility to unthinking minds they are indeed the stuff of myths'.[15]

We wish to broaden the perspective, comprehending the human rights and Asian values issue as a global concern: human rights everywhere need to be constantly guarded against political and cultural myth-making and any country can improve its human rights performance by assimilating out-of-culture visions of human dignity. Comprising several disciplines, including Asian studies, political science, sociology, history, law and anthropology, the authors of this volume will demonstrate various approaches to analysing the cultural relativist claims of Asianness, and they come from a wide selection of countries: Australia, Denmark, England, Iceland, Ireland, Hong Kong, Norway, the Philippines, Sweden, Taiwan, USA and Vietnam.

Several of the present chapters follow a straightforward approach of testing the values rhetoric put forward by governments on behalf of nations against what is commonly understood to be the fundamental values contained within a given national culture. Tine Gammeltoft and Rolf Hernø measure the values rhetoric of the Vietnamese government against fieldwork experiences concerning reproductive rights and economic rights; Mab Huang traces the development of liberalism in Chinese culture; and Maria S.Diokno discusses the role of indigenous values and cultural resources in building democracy and respect for human rights. Not unexpectedly, the existence of cultural variation and multiple traditions frequently both contradict official policy and rule out any absolutist interpretation of the national culture. What may have special significance for several Asian nations, however, is the remarkable contextuality of cultural representations, constituting, as it appears, several layers of well-established forms, each with a consistent and seemingly consensus-based set of shared values for social behaviour and inter-human relations. Continued analysis along this route is almost bound to end up with a focus on power-relations in the society in question, as it quickly becomes evident that collectively shared values are linked to a hierarchical positioning of mentors, emissaries and receivers, and quite commonly subjected to reformulation from above.

Another general approach is one of cultural appraisal, building on now-established perceptions of culture as complex, contested and constantly changing and on a dynamic view of interacting cultural precepts.[16] Compared to the other approaches outlined here, this quite consistently points to universalist formulations of human rights and democracy as the

unconditional prerequisites for cultural life to unfold and for free cultural exchange, both within nation states and internationally. Michael Freeman discusses the doubtful position of culture as restricting rights, and David Kelly traces how freedom as a concrete value has developed in China.

The cultural dimension of human rights has been subject to renewed interest outside Asia, too. Several American, Latin American and European theorists have put forward a communitarian critique of liberalism in recent years, including criticism of the universality of human rights.[17] Communitarianism is but one parallel to the Asian values discourse; another, more sinister, version of cultural relativism is the now notorious theory of clashing civilizations put forward by Samuel Huntington, apparently with great thrust around the globe. Both Edward Friedman and Hugo Stokke argue strongly against Huntington's scenario. Out of real cultural appraisal beyond simple essentializing of cultural elements comes a forceful attack on notions of civilizational integrity as even those Asian states that appear the most homogeneous, such as the examples of China and Vietnam covered in this volume, are rife with internal contradiction over their cultural traditions and fundamental social values. Vo Van Ai paints a picture of an alternative Vietnamese mindset, where not Asian, but Buddhist values are the profound resource for building human rights. Even though most will agree that cultural and philosophical traditions must be considered in setting credible standards, empirical research shows that conflicts over the interpretation of human rights cut across cultural boundaries, allowing 'conservative' and 'liberal', or 'traditional' and 'modernist' positions to be discerned.[18]

A third approach could be identified as 'aggregate' as it attempts to paint a complete picture of the debate on human rights and related values in a specific country or region, including the views and arguments of government, establishment intellectuals, dissidents, exiled intellectuals, NGOs, labour unions as well as common citizens.[19] Marina Svensson documents the wide spectrum of thought and debate on rights and values in China. Hearing many voices is a useful tool in refuting common proclamations of the primacy of economic and social rights over civil and political rights; voices from the Asian hinterlands may tell a different tale of so-called economic growth for the benefit of all than that told by government. A real thrust in this approach, however, is a capacity to develop a schematic method for identification of all relevant actors and evaluation of their standpoints in the human rights and cultural values debate in any country in question.

A contemporary historical approach is applied by several writers, who trace the establishment of the human rights instruments in the context of international politics, historical processes and national traditions. Jon

Halldorsson pursues the ideological debate in Indonesia from Pancasila to Islam to democracy. Deborah Milly traces the development of human rights protections for migrant workers in Asia over the past decade.

The approaches outlined above are merely indications of possible routes to contest Asian values and several authors tend to combine them. Even so, all authors share an essentially anthropological position on the origin of human rights in relation to history and culture. Cutting across the ongoing attempts to trace notions of human dignity if not human rights in Confucian, Buddhist, Muslim and a myriad local traditions, this position would not see the existence of certain human rights notions at any point in history as a precondition for their realization in the present. To reconsider local traditions in order to trace in them possible proto-human rights elements mostly appears far-fetched and unnecessary. Abstract notions of natural rights may find stronger representation in European thought than elsewhere, but so do their negations, for instance in feudalism, Marxism, Fascism, post-modernism and other important trends, just as modern history has positively shown how easily political traditions may be reversed and authoritarianism manufactured.[20] The notion of a 'democratic West' is more of a myth often mistaken for a historical truth. Similarly, several modern Asian histories have shown us that the absence of indigenous rights thinking does not preclude the realization of human rights. Thus it is not ideas or 'systems' in themselves that shape history, but human actors who engage them in a social context.[21] Correspondingly, it is not so much the cultural traditions in themselves that present obstacles to human rights as it is their authoritarian apologists. Both 'Asian' and 'Western' values are modern constructions—as are in fact all the international human rights instruments. The distinction between Asia and the West on these matters is false and subject to myth-making; when East and West are properly compared, much of the supposed cultural distinctiveness of one or the other swiftly dis appears.[22] Moreover, in terms of human rights performance, close scrutiny will leave no doubt that all nations can do better.

Values, Asian or otherwise, do change, and particularly in the field of human rights and democracy, remarkable processes of value-change have altered politics in, for instance, the Philippines, South Korea, Taiwan and most recently in Indonesia. Agents of change, whether dissidents, intellectuals, opposition parties or NGOs, call for special attention in any debate on Asian values. Richard P.Claude shows how government-sponsored processes of active value change are set in motion in several countries with human rights education programmes, and this is exactly

what NGOs across the region call for to counter elitist biases in school curricula.[23]

NATIONHOOD IN DISTRESS

The international human rights movement is carried along by globalization—as much as it forms part of and gives intellectual substance to a global 'ecumene'. Despite academic debate as how to define human rights with an adequate cross-cultural perspective, we experience that in real-life politics, universal moral rights are an expansive force that inspire radical change in many societies. What happens when universalist ideas are written into local histories? It has been suggested, by Yash Ghai among others, that in the West human rights merely serve as 'fine tuning' of existing political culture, whereas in Asia they have a real transformative potential,[24] demanding institutional changes and at least some transfer of power. Many Asian writers in particular find this issue extremely relevant for their own societies, as Joseph Chan argues in this volume, because human rights need the construction of a 'thick' account and the development of a public morality in order to fit in.

Human rights are a rising force across Asia, just as they rose in Europe and America in recent history when slavery was terminated, colonialism abandoned, electorates broadened, women liberated, and so forth. The transfer from a privileges-to a rights-type of thinking is not an easy one as it interferes with the state's access to allocating privileges to a narrow elite according to political virtue. In fact, it is difficult to imagine this transfer without a full transformation of the structure of society. Especially in strongly authoritarian states a human rights movement inevitably forms a prototypical revolutionary force, the full impact of which may compare to historical markers such as anticolonial movements or Communist revolutions. Human rights strike at the core of traditional elite values just as they provide the tools to overturn prevailing power structures. In the span of a very short historical period they were institutionalized at the international level and subsequently entered nearly all modern constitutions, whether by intent, pressure or force. That they are constantly expanded, beyond recognition some would argue, and in some ways redefined, does not alter their process of advance.

A question felt to be of great importance, but also of great abstraction, is how human rights relate to globalization. It is a reasonable hypothesis that the 1948 Universal Declaration of Human Rights, an internationally accepted document which claims universal validity and applicability, represents a unique intersection in world history. Its appearance

coincides with the globalization of the market economy, which has, particularly in the latter part of the 20th century, penetrated and connected all nations and peoples on Earth into an interdependent network. Roland Robertson uses the notion of a 'time-space compression' to describe this development.[25] As human rights continue to capture centre stage attention in international conflicts of the post-cold war period, the question of how to establish a moral foundation for the international community necessarily poses itself.[26]

A focus on globalization will inevitably confront the cultural relativist reservation towards the transcultural applicability of human rights. Instead of using the dissimilarities of historically determined value systems as a point of departure for defining the normative content of contemporary human rights, we should concentrate on how globalization, understood as global economic integration, global environmental issues, rising prominence of international organizations, revolutionizing development in military and communications technology, etc., affects human beings, regardless of differences in terms of culture, values or religion. As argued by Hugo Stokke in the present volume, the international human rights regime is but a rational response to the demands of efficient government faced by every single nation in a world of rising complexity.

Globalization provides the arena for cross-cultural conversation, for instance by submitting human rights to a continued scrutiny of 'public reason' around the world. An idea that has thus survived the test of rigorous scrutiny will be reasonable or valid not just within the boundaries of particular cultures.[27] We are perhaps approaching the establishment of a moral foundation for a global community—a moral community—in which democracy and human rights are leading principles,[28] but many philosophical and religious traditions compete and entwine on the global arena, with a great many Asian traditions involved, including Buddhism, Confucianism and Islam. The emergence of supra-national moral constructs such as universal human rights creates new platforms for NGOs and ethnic groups to forward issues at the international level, with a real potential of initiating qualitative shifts in people's lives and living conditions. But globalization runs unevenly, increasing both risks and opportunities for social groups and individuals who become both objects of and participants in global processes. Ethnic groups through their individual members are increasingly confronted with standardizing processes influencing consumption, life styles and perceptions of values.[29]

Does somebody feel threatened by these trends? Yes, of course, but not only Asian governments sense the danger. In fact, every modern state

with significant, but hidden, unrepresented or underrepresented minorities is faced with the mobilizing potential provided by direct links between local groups and the international community, frequently in defiance or even mockery of local state authority. One may ask whether the Asian states, or any assembly of states, can turn the tide of globalization and obstruct the construction of universal moral rights?[30] We think that the answer is self-evident: these globalizing trends have turned human rights into a species-wide concern, supported by international organizations and forcefully monitored by entirely new entities such as independent television networks and the international printed media.

Human rights are both a crucial concern for and a rising challenge to national identities. Asian values are clearly expressive of a growing need to explicitize own culture in the face of rapidly modernizing and globalizing forces outside the control of national elites. At a very general level, too, we can sense a crisis of values in many Asian societies as conventional institutions such as kinship organization cease to play a dominant part in maintaining social morality. Some Asian nations are perhaps rediscovering their cultural traditions—or rediscovering a sense of self—to meet the challenges that their unique transformation to industrial societies in recent decades has posed.[31]

An important reading of Asian values holds that despite Asian societies having adapted well to modernization and industrialization, their political morality and national identity are still quite underdeveloped. In this thinking a major problem faced by any modern society is the balancing of interests between individuals and between individuals and the common good as defined by the state. More fundamentally this involves making conscious decisions concerning which interests are relevant enough to count. Thus the concept of Asian values, as defined by the state, does not necessarily reflect a common vision, but a commonly felt need to develop and articulate one's own independent national identity, setting own standards for the balancing of interests mentioned above. This is a kind of national soul-searching exercise for entire Asian nations, necessary for handling the question of violations, not least in terms of public morality. Balancing of interests between public and private has a fundamental—or universal—requirement, however, namely the freedom of expression and association, since no person or entity in society can be the authorized arbitrator of culture.

A MOST SOPHISTICATED CHALLENGE

Among the peculiarities of Asian values is the fact that they are not only made for internal consumption in the Asian world, but as much designed for export, so to speak. They are not least formulated by Asian leaders of state and elite intellectuals as an explicit criticism of Western universalist conceptions and intentionally put forward in international fora and before the international public with specific address to a Western audience. They are even promoted by the most westernized sections of Asian societies today; in fact most of the Asian values formulators were trained in the 'West'. Asian values is a reflexive concept of the highest order; it implicitly contrasts Asian with Western values and morality and draws its meaning from the its political impact on the international scene. Cultural exchange is on the rise in a world with rapidly dwindling borders, exposing local people everywhere to foreign concepts, ideas, religions and life styles. In particular, proponents of Asian values have attracted remarkably large audiences among Western students and academics.

For centuries, Western academics have been gigantic producers of sweeping universalisms in all fields, while Western political and economic dominance have facilitated their march ahead in. Considerable arrogance arose from the implicit appropriation, through terminology and language, of shared intellectual creations of the world.[32] Their practical implications are strongly felt, even more so in the Asian world than in Europe and the US, where they may just be taken for granted. Modern standards for time, space, science, industry, finance, money, internet, lifestyle, and so forth, all carry explicit references to Western experience, while frequently being at odds with non-Western norms. Paradoxically, however, this massive Western influence is paired with many Westerners' hyper-sensitivity to their own cultural and political influence on the outside world, carried along by historical regret and innate guilt over colonialism, imperialism, Christian intolerance, Marxism, consumer culture and the greenhouse effect. Asian values thrive exactly in the tense field between standard-setting and the quest for diversity, between norm and deviation, between mission and remorse.

As several contributors to the present volume deliberate, Asian values pervade long-standing controversies in the Western intellectual history. The most important ones are cultural relativism versus universalism, Orientalism versus localized perspectives, nationalism versus internationalism, communitarianism versus individualism, and group rights versus individual rights. Another controversy which may deserve mentioning is that between state authority and people's right to revolt.[33]

Also, several of the present authors argue that when the universal human rights focus on individuals and the Western person is consequently accused of individualism, this requires considerable deliberation.[34] It is after all in Western countries that the most fine-masked social-security safety nets are found. According to this argument, the Western individual carries a religious and moral heritage, where the morally informed self is the true essence of the person. This is obviously misunderstood in the outside world, where Western individualism is taken for egotism. The most profound consequence of this argument, however, is that both persons and governments of the 'West' are not sufficiently aware of their own cultural presuppositions to explain themselves clearly to the outside world when discussing interpersonal morality.

The fact that the Asian criticism of universal human rights has been put forward by a number of state leaders has added to our sense of urgency. Today, states and systems are the prime enemies of human rights and by far their most serious violators. When the state is both the spokesman on human rights and the prime violator, its credibility in human rights debates must be scrutinized. Asian values were envisioned as a counter-discourse to a perceived threat from the outside in the form of Western human rights diplomacy as well as to counterbalance a massive internal push for greater freedoms and protections. We should not underestimate the internal motivation for constructing a consistent ideological justification for status quo, since this is the timeless condition of power. What is played out with increasing intensity in the entire complex of Asian values is the constant need for authoritarian governments to strike a balance. Squeezed between internal political challenges to power and external demands for justification of domestic policies in the field of democracy and human rights, Asian regimes are urged to explicate their guiding ideologies, and if conspicuously out of line with international standards, to justify their ways in a consistent, explicit cultural tradition. As opposed to other regions of the world, Asia-Pacific has no human rights mechanism, even though joint NGO initiatives have attempted to make up for this.[35] Safety by numbers could be the slogan of Asian authoritarian governments as they met this challenge with the Bangkok Declaration and the joint discourse of Asian values. But high on the research agenda should be meticulous comparison of authoritarian regimes' external justification of human rights deficiencies and the internal ideological debates and policies. It may well turn out that the positive notion of Asian values carries little significance in domestic politics, whereas its logical counterpart, negative

generalizations about the West, are far more important for political elites to explain themselves.

Intolerant regimes are most often confronted with equally hard-headed opposition. This opposition may take the form of a glorification of the 'West', uncritically depicted as the rich and liberal alternative to the democratically backward and politically stagnant situation at home. Several versions of such 'Occidentalism' may compete on the domestic political scene, however, albeit similar in their popularized and simplified depiction of the Western 'Other'; one erecting positive models to follow, another painting gloomy pictures of decadence, crime and social disintegration.[36] Unsophisticated generalizations about the outer world as seen from the West were in fact also the major component of the Orientalism so severely criticized in recent years. Overtly simplified messages about Asia's democratic deficiencies are contained in everyday language and common prejudices and reflected in popular literature and journalism. Previously, sweeping generalizations about Asia's economic miracle sought its driving forces in Confucianism, communitarianism, the Japanese business management style or Asian corporate state models. Today, the grounds for the economic backlash suffered by several Asian economies are forced into similarly convenient categories, using cultural explanations for economic processes. It seems plausible that the foundation for the Asian values discourse was laid down long ago in our own ignorant and arrogant perception of the outer world and now it is thrown right back in our faces.

The authors of this volume see a profound responsibility to confront the narrow categorizations of Orientalism, Occidentalism and popularized cultural essentialist theories about future civilizational clashes. Just recently Clive Kessler made a strong case for taking Asian values serious as the return of a monster: the crude structural-functionalist social theory of the 1950s to 1960s, which offered simplistic explanations of social situations by attributing causal power to idealized value-complexes.[37] He simultaneously upbraided critical intellectuals for not taking heed of the warning when a bastardized concept of culture was introduced. We hope for a better understanding on rights and values to come about between Asia and the West. However, universal human rights and democracy, being mutually interdependent both conceptually and practically, are the combined necessities for cultural diversity to flourish and for fruitful cultural exchange to take place, both within nation states and between them. In the same vein, a democratic and complex conception of culture is a prerequisite for a genuine dialogue on human rights in order for it not to be monopolized by powerful elites. We

are speaking for people's right to define, interpret and live their own culture.

BEYOND ASIAN VALUES?

All of a sudden, in the fall of 1997, the Asian miracle economies began to crack up, sending shock waves out in all directions irrespective of the East-West divide. Several writers began to speculated if the economic recession would serve to silence the Asian values argument.[38] Was it not originally conceived as a defence for strict government in the service of rapid economic growth?

Authoritarian political leaders are faced with a serious challenge to the legitimacy of their regimes, which, paradoxically, originates from the internationalization of capital. As Gerald Segal notes, the un-controlled movement of capital releases capitalism's secret weapon, the development of a more or less unpolitical middle class who is not prepared to cede any privileges in exchange for an extreme political ideology, be it Asian values or any other authoritative ideological construct. With the development of multiple centres of power in terms of free trade, exchange of culture and political ideas, disseminated through the new information technology, democratically inclined forces have acquired new 'weapons' and strategies when fighting authoritarian regimes. According to Segal, the time has come to let loose the new weapons: Microsoft and Mickey Mouse.[39] One may speculate what these other global actors may accomplish in impeding the political conditions for cultural myth making, or whether they may just encourage new myths about the untameable West.

The Asian crises quickly produced an uneven social and political development and perhaps hammered in a wedge between some Asian countries, as some sank deeper into recession while others recovered at their own pace. The economic downturn effected the toning down of the Asian values debate in some places and reinforced it in others. Indonesia has embarked on a daring project of restructuring the country towards democracy and improving the national human rights record. The Indonesian version of Asian values, Pancasila democracy, might soon belong merely to the Suharto era. The Singapore govern ment has toned down the political rhetoric of the supremacy of Confucian virtues versus Western values and has engaged on a debate on the role of the public in the official way of governing Singapore. The leading questions are how involved average people should be in political affairs, and what the proper role of groups outside government is in assessing the island-state's appropriate development. Still, as the young opposition leader

Chee Soon Juan made a showdown on the constitutional right of free speech by making an unannounced public speech on openness in government, it resulted in a five-year ban from parliament. Addressing the Asian values debate in a CNN interview, he provokingly asked, 'is government transparency and accountability against Asian values?' In Malaysia Dr Mahathir is among the few politicians in the region to maintain the Western conspiracy and Asian values jargon to explain the economic crisis, accusing Western capitalists of having caused the recession of the Malaysian economy. Quite interestingly, he perceives globalization as an ideology that has to be re-examined: 'We should not do away with it, but eliminate what is harmful and promote what is good'.[40] One answer is the promotion of ideological Pan-Asianism, based on closer Asian economic co-operation and serving to keeping shaky regimes, authoritarian leaders and establishment ideologues in place.

At the opening of the new millennium, Asian states as a united front of Asian values proponents is an unlikely scenario. As Indonesia took the world by surprise and toppled its petrified political leadership, further democratization in East and Southeast Asia is not only a possibility, but an ongoing process of considerable impetus; both the models and the political motivation are at hand. In any of these countries, policy-making along the lines of Asian values will hardly be sustained in the absence of authoritarian government.

Today Asian values are perhaps better understood as a consideration for Asian forms of modernity. The central issue was really the social and intellectual development trajectory of Asian societies in setting the conditions for the emergence of Asian forms of modernity as distinct from Western forms, within a slowly emerging and convergent global modernity.[41] As C.J.Wee puts it, only the creation of an Asian rather than an Asianized modernity would mark the arrival of truly post-colonial countries. A pluralistic and more sophisticated Asian approach to modernity, built on actual cultural diversity, would ensure a successor to previous crude anti-imperialistic and nationalistic constructs as presented in the Asian values discourse.[42]

We suspect, however, that the Asian values discourse will gradually be replaced by more localized debates on culture, self and modernity— such as what national, regional or local responses towards a continuously entrenching process of globalization, identity-wise, might look like.

Is there a lesson to be learned from Asian values? Perhaps it is that the world has entered an era of intense cultural exchange, where Westerners participate in the creation of Asian social models as much as Asian leaders and intellectuals begin to take part in imminent Western ideological conflicts and long-standing intellectual debates derived from

a European past. But the more so, the better. The final goal should be a state of freedom, where the acceptability of ideas and constructions depends on what they can do for us as humans now and in the future, rather than on where they came from in the past. We believe that ongoing globalization in the form of uninhibited intellectual exchange will provide the impetus for a genuine empowerment of local groups and ultimately of individuals, where universal human rights constitute a necessary, albeit not a sufficient, condition for its realization.

NOTES

1 The papers by the following authors analyse the wording of the Bangkok Declaration: Hugo Stokke, Joseph Chan, David Kelly, Michael Freeman and Marina Svensson.

2 Yash Ghai, 'Human Rights and Governance: The Asia Debate'. *Occasional Paper,* No. 4. The Asia Foundation's Center for Asian Pacific Affairs, 1994, p. 7; Bilahari Kausikan, 'Asia's Different Standard'. *Foreign Policy,* 72, 1993, pp. 24–41; Fareed Zakaria, 'Culture is Destiny: A Conversation with Lee Kuan Yew'. *Foreign Affairs,* 73, 2, March/April 1994, pp. 109–26. For a general discussion of Asian values, see European Institute for Asian Studies, *Understanding Asian Values*. Brussels 1996.

3 For a survey of factors involved in the rise of the Asian values debate, see Diane K.Mauzy, 'The Human rights and "Asian values" debate in Southeast Asia: trying to clarify the key issues'. *The Pacific Review,* 10, 2, 1997, pp. 210–236. See also *Sojourn,* 14, 2, 1999, Special Issue on Asian Values.

4 While contemporary Asia for Weber represented a rejection of modernity, the new Asian identities reversed the argument: Raul Pertierra, 'Introduction'. *Sojourn,* 14, 2, 1999, pp. 275–294.

5 Joseph Chan, 'Hong Kong, Singapore, and "Asian Values": An Alternative View'. *Journal of Democracy,* 8, 2, April 1997, pp. 35–48; Yash Ghai, 'The Need for an Asian Human Rights Charter'. *Human Rights Solidarity* (AHRC Newsletter), 10, June 1996, pp. 12–19.

6 See Colm Campbell and Avril McDonald, Chapter 12, this volume.

7 Kanishka Jayasuriya, 'Asian Values as Reactionary Modernization', *NIASnytt,* 4, December 1997, p. 19.

8 See Hedley Bull, cited in Michael Freeman, Chapter 2, this volume.

9 Stephanie Lawson and Miyume Tanji, '"Democratic Peace" and "Asian Democracy": A Universalist-Particularist Tension'. *Alternatives,* 22, 1997, pp. 135–155, at pp. 146–147. For a general discussion of orientalism and occidentalism see James G.Carrier, 'Occidentalism: The World Turned Upside-Down'. *American Ethnologist,* 1993, pp. 5–9; Edward Said, *Orientalism*. London: Routledge & Kegan Paul, 1978.

10 This is the explicit approach of Joseph Chan, Chapter 3, this volume.

11 See David Kelly, Chapter 9, this volume.

12 The role of the US in the Asian values debate is discussed in Peter Van Ness (ed.), *Debating Human Rights. Critical Essays from the United States and Asia.* London: Routledge 1998, p. 5.

13 Peter Van Ness, *Debating Human Rights*.

14 Josiane Cauquelin, Paul Lim and Birgit Mayer-König (eds), *Asian Values: An Encounter with Diversity.* London: Curzon 1998.

15 Stephanie Lawson, 'Cultural relativism and democracy: Political myths about "Asia" and the "West"'. In Richard Robison (ed.), *Pathways to Asia: The Politics of Engagement*. London: Allen & Unwin, 1996.

16 See a discussion of the concept of culture in Michael Freeman and Tine Gammeltoft & Rolf Hernø, Chapters 3 and 8, this volume.

17 See Hugo Stokke, Chapter 7, this volume.

18 Raymond Wacks, 'The End of Human Rights?' An Inaugural Lecture for the Chair of Law. *The university of Hong Kong*, XLI, 1, Nov. 7, 1994, pp. 45–63.

19 See Mab Huang, Chapter 11, this volume.

20 Mulya T.Lubis, 'Human Rights Standard Setting in Asia: Problems and Prospects'. *The Indonesian Quarterly*, XXI/I, 1993, pp. 25–37, at pp. 27–29; Jack Donnelly, 'The Concept of Human Rights', in Jack Donnelly, *Universal Human Rights in Theory and Practice*. Ithaca: Cornell University Press, 1989, pp. 12–19; Michael Freeman, 'The Philosophical Foundations of Human Rights'. *Human Rights Quarterly*, 16, 3, August 1994, pp. 491–514, at pp. 501–504.

21 Anthony Giddens, *Central Problems in Social Theory*. Berkeley: University of California Press, (1979) 1994, p. 73.

22 See Edward Friedman, Chapter 1, this volume.

23 See Maria S.Diokno and Richard P.Claude, Chapters 4 and 13, this volume.

24 Yash Ghai, 'Human Rights and Governance: The Asia Debate'.

25 Roland Robertson, 'The Universalism-Particularism Issue', in Roland Robertson, *Globalisation: Social Theory and Global Culture*. London: SAGE Publications, 1992, pp. 97–114.

26 Peter Van Ness, *Debating Human Rights*, p. 13.

27 Li Xiaorong, '"Asian Values" and the Universality of Human Rights'. *Report from the Institute of Philosophy and Public Policy*, 16, 2, Spring 1996.

28 Peter Van Ness, *Debating Human Rights*, p. 13.

29 Hans-Henrik Holm and Georg Sørensen, *Whose World Order? Uneven Globalization and the End of the Cold War*. Oxford: Westview Press, 1995.

30 See reference to Cranston in Mab Huang, Chapter 11, this volume.

31 C.J.W.-L.Wee, 'The "Clash" of Civilizations or an Emerging East Asian Modernity?' *Sojourn*, 11, 2, 1996, pp. 211–230; Akio Kawato, 'Beyond the Myth of 'Asian Values': Is a Clash of Cultures Inevitable?' *Chuokoron*, December, 1995, pp. 1–9; Richard Robison and David, S.G.Godman, 'Economic development, social status and political consciousness', in Richard Robison and David S.G.Godman (eds), *New Rich in Asia: Mobile Phones, McDonalds and Middle-Class Revolution*. London: Routledge 1996, pp. 1–16.

32 Argued by Amartya Sen in 'Choosing Freedom', *Far Eastern Economic Review*, 27 Januar 2000, pp. 37–42.

33 Derived from Locke; see reference in Mab Huang, Chapter 11, this volume.

34 See, for instance, Hugo Stokke and Edward Friedman, Chapters 7 and 1, this volume.

35 The Bangkok NGO Declaration. Published in *Law and Society Trust Review,* III, 57, 1993.

36 Stephanie Lawson, 'Cultural Relativism and Democracy: Political Myths About "Asia" and the "West"', in Richard Robison (ed.), *Pathways to Asia: The Politics of Engagement*. St. Leonard's: Allen & Unwin, 1996, pp. 108–128, at pp. 116–117.

37 Clive S.Kessler, 'The Abdication of the Intellectuals: Sociology, Anthropology, and the Asian Values Debate'. *Sojourn,* 14, 2, 1999, pp. 295–312.

38 Frank Ching, 'Are Asian Values Finished?' *Far Eastern Economic Review,* January 22, 1998, p. 32; Mark R.Thompson, 'The Survival of "Asian Values" and the Spread of "Zivilisationskritik"', Mimeographed paper presented at the Second EUROSEAS Conference in Hamburg, September 3–6, 1998; *The Economist,* July 25, 1998, pp. 23–25.

39 Gerald Segal, *Newsweek,* 9 March 1998.

40 Expressed at a conference on Governance and Smart Partnership at the Southern African International Dialogue (SAID '98).

41 Clive S.Kessler, 'The Abdication of the Intellectuals', p. 300.

42 C.J.W.-L.Wee, 'The "Clash" of Civilizations', p. 211.

1
Since There Is No East and There Is No West, How Could Either Be the Best?

Edward Friedman

Between 1964 and 1966, when I was a finishing graduate student living in a dormitory at Taiwan University in the city of Taipei, I learned a lesson about democracy. Chatting in the dorm room one day about nothing in particular with one of my three roommates, the sound of a hand on the outside doorknob reached us. My roommate froze into rigid silence. Realizing I had seen his fright, he was embarrassed. In the pervasive police atmosphere of Taiwan under martial law, people learned not to speak in the presence of third parties. Behaviour premised on internalized fear was a matter of survival.

Democracy does not totally destroy this fear. It persists in some form in all systems of unequal power—including an ordinary work place or classroom where the less powerful can still rationally fear reprisal from the more powerful.

Such fear accompanied me to college. On my first day, at the end of the long series of tables set up for freshman registration, a student sat with a petition and invited me—as all other students—to read the petition and sign it. I made up a lame excuse and stumbled on, scared even to glance at the document. Then, realizing what I had done, I snuck around behind the person with the petition to peek at its actual contents. It was about the fall schedule of the football team. I felt like a fool. I mulled over the sources of the fears that had paralyzed me—McCarthyism, personnel files, the FBI, job hires where employers keep out so-called troublemakers, etc. I was not proud of myself.

Yet it became clear to me in non-democratic Taiwan that democracy greatly reduces internalized fear. Democracy enhances life. It removes a humiliating burden of anxiety and terror. Achieving normality can seem a miracle. There was a world of difference between my embarrassment as a college freshman and my graduate roommate's terror in Taiwan in 1964.

Yet my college freshman experience exemplifies a point that critics of human rights absolutism have correctly made. The difference between a democracy and a non-democracy need not be a difference between

absolute good and absolute evil. In fact, all really existing democracies are replete with flaws and injustice. The attainment of the goals of human rights and the fulfilment of the promise of democracy are far from realized in actually existing democracies. In fact, much of the progress in approaching those goals is only quite recent. The civil rights revolution that ended the system of apartheid terror in the south of the USA is but a second half of the twentieth century development.

The recent nature of democratic progress suggests that there may be far less of a distinction between some Asian countries with flawed electoral systems at the end of the twentieth century and so-called democracies in Europe or North America only a generation or two ago. Indeed, much of the supposedly distinct value structure of so-called Asian development states also looks much like the value structure of European societies only a generation or two ago, a fact which helps explain how the Victorian leader of Singapore, Lee Kuan Yew, could turn into a Confucian. The values actually are similar. It is startling to me that truly intelligent and insightful individuals still give credence to the parochial and politicized proposition that there really are vital Asian values which are different from and superior to Western values, as when the brilliant Frank Ching promotes as Asian values 'thrift, hard work and respect for one's parents',[1] as if the Protestant ethic embrace of frugality and diligence and the Hebrew Bible's Ten Commandments admonition to respect thy father and thy mother could only be penned by Confucius. When East and West are properly compared, much of the supposed cultural distinctiveness of one or the other swiftly disappears.[2] Imagining human rights in ways that privilege the so-called West produces misreadings of both the potential of the East and the reality of the West.

DEMOCRACY YES, WEST NO

Few people who embrace the West as the home of democracy and human rights have even an inkling of how recent and politically charged that notion, the 'West', is. 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. Oswald Spengler, in his famous 1917 tome, *The Decline of the West,* expressed this Western anti-democratic perspective.

'Democracy exists where money equals political power'. In 1990 many German intellectuals still insisted that the East of Germany was a humane anti-capitalism and rejected German re-unification.

Even the United Kingdom is only recently 'the West'. Anglo-American culture long treated Irish Catholics not as part of the West but as savagery beyond the pale of civilization. Into the twentieth century, Harvard University discriminated against Irish Catholics. The notion of a Western civilization, of all of Europe and North America sharing common values is a recent invention. In fact, for most of their history, citizens of the United States thought of themselves as part of the New World in contrast to the Old World, not partners with Europe in a common Western project. Americans saw themselves as a society of merit while Europe was seen as an alien world of frozen statuses based on blood inheritance. Europeans tended to return the negative favour, marginalizing Americans as a people without culture.

'The West', imagined as a sharing of democratic values is a late-twentieth-century product dynamized by Woodrow Wilson's intervention in the Great War (which Asians mocked as a barbarous European Civil War) to save democracy. But Wilson's agenda was not welcome by conservative rulers in France and Great Britain. The notion of a democratic West is largely a creation infused by Cold War propaganda, a trope to stigmatize invidiously a 'totalitarian' East. Ironically, the secret services in the Soviet Communist bloc tried to turn the notion of the West as a uniquely 'free world' to its own anti-democratic purposes, treating democracy as an alien element out to subvert an authentic socialism. As outrage grew at Soviet bloc despotism, people began to long to join the camp of democracies, now imagined as 'the West'. The myth of a democratic West became popular and is conventionally mistaken for a deep historical truth, something embodying ancient verities and long continuities.

The notion of 'the West', however, is so ideologically informed that it blinds people who identify with the category even from understanding themselves. 'Westerners' happily embrace the idea that their purportedly unique blessedness is rooted in a culture that values the individual. But no serious history of democracy focused on matters such as expanding aristocratic rights to ennoble ever more groups, or church-state conflicts, or the need to end religious wars with institutionalized toleration of the other community does so by highlighting individual values. Democracy ended intolerance. It pacified the war of group against group. It achieved some religious freedoms so that stigmatized groups became, more or less—often less—equal citizens. It was entire categories of people that were first excluded and then included. People in

Europe and North America misconstrue themselves and mislead others in presenting themselves as uniquely individualistic.

Actually, if one focuses on campaigns to protect the environment or ban smoking, one would see how much 'the West' actually still puts the collective good first The taxes democratically imposed in 'the West' for the common weal can make 'the East', in contrast seem selfish and individualistic. After all, Asia has 13 of the 15 most polluted cities in the world. If one compares existing democracies in Asia with those in Europe or North America on the issue of state intervention in the sexual activities of citizens, on matters such as abortion, there is far more interference by the government in the West than in the East. It would be easy to argue that the West, not the East, puts the common good first. Whichever way one's politics leads one to oppose categories of East and West, the result is almost pure ideology.

While there is no West opposed to an East, there are struggles everywhere for democracy and human rights. Nations which are democratizing are morally better for it. There are other large benefits of democracy besides the reduction of fear of the authorities. These boons include a likelihood of a peaceful transfer of power rather than an endless series of succession crises, any of which could threaten to explode into civil disorder and monstrous blood-letting. A pacified power struggle is a great gain. In addition, the proceduralism of democracy makes it more possible for people to live on stable expectations rather than the threat that all can suddenly disappear because of the whim or fiat of unaccountable political power which can threaten groups whose ultimate purposes of life conflict with the mobilizational underpinnings of the ruling bloc. By labelling a group as bourgeois or backward or counter-revolutionary in Communist China or Cambodia or Korea or Vietnam, they are turned into non-people and victims, as shown by the fate of people of Chinese ancestry in Vietnam or Muslims in Cambodia. Finally, democracies make falliblism less likely. That is, in a non-democracy where criticism and alternative programmes are not part of the daily political routine, ruling groups that err are regularly told only that their errors are actually successes. Consequently, political mistakes are often compounded and intensified. Non-democracies are hence prone to intensifying their mistakes, leading on to horrors such as famines, which democracies far more readily avoid.[3] Reducing fear, providing domestic peace and secure expectations and avoiding the horrors of falliblism are among the great benefits of democracy.

THE EAST PROMOTES HUMAN RIGHTS

Democracy, however, is not the good or just society. Utopia is a dream, perhaps a nightmare. Real democracies are replete with problems and evils. Democracy is but a political mechanism for trying to grapple with a nation's problem. To be sure, democracy is a blessing in helping people avoid palpable horrors. But the political institutions of democracy are in no way a guarantee that problems will, in fact, be solved. Consequently, real democracies can and do institutionalize human rights abuses. Critics of human rights absolutism are correct that much unfairness and inequity can and does persist in democracies. Actually there can easily even be instances for a particular period of time of more basic violations of human rights in a democracy than a non-democracy. There is no necessary linkage between democracy and human rights. No form of polity is absolute insurance against social injustice or economic failure.

This in no way negates the political superiority of democracy. Authoritarianism is certainly not a guarantee against social injustice or economic failure either. Daily, pervasive and persistent traumas of non-democracies, however, do not wound the body politic in democracies. The Chinese writer Ding Ling told me about her internal exile in China's frigid northeast during the era of the despot Mao Zedong. Sometimes her beloved managed to visit her. They longed to share intimate thoughts. Alone in a room, in bed together, about to whisper so no one could overhear them, the shameful internalized fear of life in Mao's China still led them to a final act exposing their mutual loss of dignity. They pulled the blanket over their heads before starting to whisper. Her tale reminded me of my rigid, terrified roommate at Taiwan University.

And yet, because democracy is but a means for dealing with political issues, it does not assure a people that a democratic government will even promote their human rights. This is why human rights movements grow inside of democracies. They invariably have lots of work to do protecting stigmatized groups—women, aliens, particular religions or ethnicities, prisoners, poor, etc. The political mechanisms of democracy should not be confused with basic human rights. It should not be forgotten that in the discussions on creating a League of Nations at the Versailles Conference, Japan sought to ban racism and democratic America, Britain and France helped to defeat the anti-racist effort. In addition, at 'the preparatory conference on the UN charter at Dumbarton Oaks in 1944…the US and Great Britain…opposed… inclusion of provisions for non-discrimination and equal rights in the declaration, [while] the Chinese were positive to such an inclusion'.[4]

The conventional wisdom that the modern human rights movement begins with the victory of Western democracy over fascism in World War II, leading to the crafting of the 1948 United Nations Universal Declaration on Human Rights is not persuasive. This is not because the Universal Declaration is not a great achievement. It most certainly is a glory worth celebrating. But the Universal Declaration was not the victory of Western democracy. Democracy, in fact, was not yet victorious in Europe in Spain, Portugal or Greece. In addition, Stalin's side also won over Nazism and expanded Moscow's tyranny far to the west in Europe into Germany, Czechoslovakia, Hungary, Poland, etc. The conventional 'Western' wisdom which is parochially self-congratulatory also ignores persistent struggles for human rights of 'non-Western' nations. At the United Nations, at its origin, only 13 of the 51 member nations considered themselves 'Western'. Only 6 of the 18 on the Human Rights Commission were 'Western'. The Universal Declaration was more global than 'Western'.

Actually, human rights was experienced in most nations of the world as part of the struggle for 'self-determination'. This made sense since rule by alien others who wield absolute and arbitrary power over a people to whom they felt no deep commonality meant that the subordinated people had no guaranteed human rights. Consequently, human rights abuses were ubiquitous. The anti-colonial struggle is understood by its members, most of the human race, as fundamental to the human rights movement. If that interpretation can be absorbed, it then also becomes easier to understand why a right of development can become part of a human rights dialogue. Stronger powers can treat weaker nations most inhumanely. They treat the structures of power they create to privilege themselves as natural givens. Therefore, people who raise issues of debt relief, market access or governing international finance because the lack thereof helps enchain a people within the trammels of stagnant misery where life is savage and short should also, if one is serious in seeking a human life for all in the human species, be taken seriously.[5] The a-priori dismissal of so-called group rights by certain 'Western' individualists seems culturally parochial and blind to the actual history of rights expansion. Such 'Western' parochials do not comprehend how matters such as religious freedom, free association, labour rights and cultural survival are very much group rights. Historically, rights have been denied to groups, to genders, races, religions, etc. The 'Western' discourse which makes 'individualism' the base of democracy misunderstands the history of political freedom and impedes progress in human rights.

Since human rights are matters for inclusiveness, aiming at all human beings, it seems strange that 'Westerners' hear human rights as individual rights. The point is to reach all, not one. Perhaps the peculiar discourse of individualism reflects aspects of European cultural history. It may be that people in 'the West' hear rights as individual because 'soul-speak' seems presuppositional. That is, in the Greek-Christian cultural world, people learn that they have souls. This morally informed self feels like one's true essence. That soul is to be morally restrained and ethically informed. That religiously informed notion of the individual is, however, usually misunderstood outside of 'the West' where individualism sounds like pure egoism, absolute materialism and hedonistic selfishness, rather than a moral essence.

'The West' is not sufficiently aware of its cultural presuppositions to explain itself clearly. The Western discourse on rights often detours serious discussions on human rights. It is full of arrogant and ignorant claims about the individual. Historically, after all, it is groups that have been excluded.

This is in no way to suggest that there is something wrong with the notion of protecting individual human rights. In order to protect all groups, one must protect each member. Even when it is a community that is discriminated against, it is particular people who are jailed, tortured and murdered. Human rights universalism implies guaranteeing the rights of each and all. Nonetheless, in the crucial work of protecting each and every individual, it is important not to be smitten by a metaphysics of individualism that obscures the reality of historical struggles to end the exclusion of and the discrimination against groups and communities.

Rights were for millennia privileges of narrow elite groups, powers of office, status or blood. Only in recent centuries, as narrow privilege was expanded to include more and more groups, did rights come to apply to all humanity. The European tradition, as virtually all others, is historically predominantly exclusionist, authoritarian and hierarchical. But since soul-speak goes back to ancient times, Europeans misleadingly seem to be saying that individual freedom is an ancient heritage. This makes the West seem most peculiar and inimitable. Actually, germs of values which can eventually serve a project of human rights and democracy abound in all cultures and can travel.[6] Those who imagine human rights as a product of the Christian West might recall that Christianity was born in Asia.

Of course, in the 'West', despite a language of rights and individualism, national pride obscures deep histories of rights denial. Hypocrisy and inhumanity are rife in the real world of politics. The United States

Constitution that went into effect in 1789, thus establishing institutions of political democracy, also legalized slavery. Surely no one would disagree that there are few things more inhuman than the enslavement of one person by another, a cruel power inequality that allows for the buying and selling of people at a master's will. Yet in the American south, slave owners in the first half of the nineteenth century insisted that American liberty, the leisure of the free to learn, reason and participate in the politics of the republic, was premised on the existence of slavery. Slave owners defended slavery as morally superior. Slavery was embraced as ethically excellent. Within 'Western' culture, even in the age after the Enlightenment, many could still experience slavery as moral.

The effort of some Europeans to persuade other Europeans that slavery was immoral only began to gain momentum at the end of the eighteenth century. In fact, when Haiti's slaves rebelled in 1791 against France, Britain, although at war with revolutionary France in Europe, dispatched troops to Haiti to help the French maintain slavery, and did so in the name of 'humanity'. Critics of human rights absolutism therefore have some solid historical data to refer to when they inquire whether some particular cause promoted in the name of humanity should, without further investigation, be accepted as within the purview of human rights. I in no way mean to diminish the achievement of 1776 in America or 1789 in France. But it is important also to recognize the ambiquity, one-sidedness and huge omissions in the achievement. 'The West', as people elsewhere, readily magnifies its moral high points, such as the anti-slavery campaign, and slights its savage embarrassments, such as the cruel war to keep slavery going.

It strikes me as arbitrary, self-congratulatory and blinding when 'Westerners' find the human rights movement as beginning either with the glorious late-eighteenth-century British movement against slavery or with the extraordinarily important 1948 UN Declaration, with both taken as a purely Western effort. The conventional 'Western' wisdom stresses the British movement to end the slave trade and slights the Haitian people's revolution to end slavery. Not only do Haitian martyrs deserve more credit than conventional 'Western' memory permits, but representatives of Haiti were still active at Versailles at the end of the First World War trying to make the League of Nations oppose racism. It was 'the West' which defeated that human rights effort led by Japan already in the twentieth century. In seeking equal treatment from European powers in the late nineteenth century, Japan embraced human rights aspects of international law, learning from the rise of the international Red Cross in response to the mistreatment of prisoners of war during the Crimean War. European notions of human rights were

readily adapted to Buddhist humanism. In fact, in 1900 when Japan joined the United States and the European powers in defeating the Boxer Rebellion, whereas the Japanese troops gained fame for their humanity, the Europeans acted with brutal savagery toward Chinese. It is important to understand how far 'the West' has come from not so long ago when it defended slavery or racism or imperial domination as moral excellence. The historical West is in-distinguishable from those in late twentieth-century Asia who tout their flaws as moral excellence.

Ethical standards change. They can and have been raised. Oppressed groups previously excluded from human rights and full political participation could later be included even in the West. Institutions once replete with inhumanity could at last be found inhuman and then discontinued. Culture, a people's way of life, is not static. People who essentialize culture, who treat societal evil or supposed good as an ethical essence (as did American slaveholders) are regularly revealed as defending and masking an inhuman system. If purblind Westerners can eventually embrace human rights, then any people can do it.

Cultural prejudices can even seem universal for long periods of time. So it was with systems of patriarchy that gave a senior male the lawful and legitimate power of life and death, buying and selling, over women and youngsters. That inhuman system, just as slavery, can—all over the planet earth—for centuries seem the moral basis of a good society. Whether it is slavery or patriarchy, defenders of the inhuman system will insist that aliens who are outside of the culture cannot comprehend or appreciate the ethical worth of the cultural practice in question. The critique may be delivered with heartfelt sincerity. The practice in question may be highly valued. Inhumanity, legitimated as cultural good, is not easy to deal with in a human rights perspective. The violators honestly feel morally superior. The human rights project is not an easy one.

As economic globalization and the information revolution speed the rate of societal change, ethically oriented communities are frightened. Rapid progress can seem immoral rupture. Patriarchal men can sincerely and pervasively imagine women alone as vulnerable to sexual exploitation. In good faith, they oppose the liberation of young females as a false liberation. The human rights struggle is opposed by passionate commitments. It is not helpful when the West romanticizes its past in ways that misleadingly foster arrogance toward others.

The posture of cultural superiority is not confined to the so-called East. Patriarchal religious revivalism is a global phenomenon. Human rights issues touching matters of gender and/or power can be sensitive and explosive in any region of the planet. Whether the issue is sati, foot-binding, purdah, female excision or the equivalent elsewhere, cultural

practices that injure women are defended as 'our way of life', ethical superiority. It is quite normal that what is different at first seem immoral, including human rights.

European visitors to Japan in the sixteenth century were shocked by the freedom women enjoyed, bathing with men, learning literacy, going out unchaperoned. If Japan had conquered a repressively patriarchal Europe in the sixteenth century and justified it, in part, as liberating European women from the barbaric practice of burning witches, my hunch is that European men and women would have defended witch burning as ethically excellent The Japanese would have been denounced as cultural imperialists. The Europeans would have insisted that parochial outsiders claiming to want to improve Europe actually meant to destroy Europe. East and West are not permanent, opposing binaries in which the West is morally superior.

What is worthy of consideration is how ethical critiques of cultural presuppositions can succeed. Europeans no longer practice witch-burning or enslavement. The criticism of even strangers can help make the heirs of inhuman practices eventually uneasy and some day aware that they can and should do better. This is not a matter that favours East or West. It occurred in the 1960s with the United States, forcing the federal government to heed challenges to the racist apartheid system known as segregation.

CHINA AS PROMOTER AND VIOLATOR OF HUMAN RIGHTS

Outside pressures can advance the cause of human rights. Cold War imperatives helped impel the administrations of John Kennedy and Lyndon Johnson in the 1960s to act against the inhuman system of segregation in the United States. African nations began to win their independence from colonialism in the late 1950s. Cold War adversaries in Moscow and Washington competed to woo the newly independent African governments who tended to treat the apartheid system of injustice of South Africa as the world's number one violation of human rights. To have any credibility with these nations, the United States' national government had to act on the side of America's anti-apartheid forces. All those in Africa and elsewhere, which includes China, who raised their voices against racist inhumanity in both South Africa and the United States should be seen as benefactors of the human rights of oppressed people, whatever the ulterior political motives their governments may also have had in mind.

To be sure, many American patriots resented the outside interference. They denounced it in the standard way that violators of human rights all over the planet invoke when their actions are accurately described and ethically contested. We see similar responses today in many parts of the world. People everywhere tend to imagine their cherished yet challenged social practices in order to give themselves good conscience for standard behaviour. A rising region, such as nineteenth century Europe, tends to be proud of its successes so as to make its inhumanities invisible.

There consequently is nothing peculiar in a rising Asia seeking ways to comprehend itself as ethically superior and being suspicious of values proposed by outsiders. Rising groups—surely Germans, British and Americans in their turn—explained their successes as rooted in the unique worth of their particular way of life. It is a way of saying that we deserve what we have obtained.

Thus it is to be expected that rising chauvinistic Asians, as others before them, including earlier generations of Chinese and Japanese, will look at practices of the previously advanced, now seen as stagnating or declining, with jaundiced eyes. But the identity of rising regions is contested. The presumed content of West or East can change. New imaginings of a shared past to ease the project of a common and better future need not always be infused with inhumanity. While 'the West' once used social Darwinist racism to rationalize colonial domination, it later reimagined 'the West' as essentially democratic. Likewise, 'the East' is capable of diverse interpretations of itself, some far more compatible with a human rights regime than others. Taisho democrats in Japan resisted European racism. This is a historical fact, a statement about events that actually have occurred, a germ that can serve as the basis for a larger, humane project. Asians can readily find the West as a civilization replete with human rights violations, including racial and religious intolerance, right up to the present.

Mesmerized by the championing of authoritarian values by Beijing and Singapore in the 1980s or 1990s, outsiders do not notice how much 'Asianness' is a contested concept in Asia. Many in Asia conceive of Asia as great, tolerant civilizations long connected by littoral commerce, prospering communities which lived in a world of peace that dynamized wealth expansion before a momentary interruption by a disruptive 'West'. That Asia, too, is seen as returning, as the world of colonialism and Western domination disappears. That Asia, or the 'East', contrasting itself to a 'West', can be very friendly to the project of human rights.[7] 'Authoritarian Asia' is not the preferred self-vision of democratic Asians. How could it be? Asia, after all, is home both to the most populous and the third most populous democracies in the world.

Thus, as 'the West' could be diversely marked, so can 'the East'. It is worth distinguishing 'the East' which is open and tolerant from 'the East' which tends toward the invidious stigmatization of others as morally benighted as did nineteenth century European colonialists.

When I was a graduate student, I was misleadingly taught that Asian backwardness was caused by bad Asian values. In retrospect, I see this stigmatization as a standard ploy of the successful. A rising Asia will likewise include many people who insist that hedonistic individualism, rights extremism and economic populist pandering are responsible for various economic or social flaws in Europe or America. Authoritarian apologists in Asia focus on a momentary evil in Europe or America and insist it is the essence of the other. The reasoning is circular, whether invoked yesterday from Americans toward Asians or today from Asians toward the West. This all-too-ordinary and very nasty chauvinism helps obscure one's own inhuman practices and readily segues into apologetics for massive human rights violations, something which should be condemned. It is striking how formulaic the responses of human rights violators everywhere are. This certainly is not a matter which divides East and West, whatever those categories refer to.

These days some people criticize the government of China for opposing human rights in a new way, for manufacturing human rights groups to respond to and deflect criticisms of China's human rights record.[8] But this is not a Chinese invention. It is standard operating procedure. It is wrong to pick on China. In fact, Taiwan had a human rights organization in the era of the Chiang dictatorship that insisted that Taiwan's policies were misunderstood by malicious outsiders, that, actually, there were no political prisoners in Taiwan, that there were only criminals in the prisons. Supporters of the regime on Taiwan, fearful of the democratic opposition, sincerely lent their support to the line put out by official human rights commentators and apologists.

An official cover-up, because of patriotism and fear of change, can be made or believed in absolute good faith. Most Indian intellectuals at first apologized for Prime Minister Indira Gandhi's suspension of democracy in the mid 1970s. I have found many reformers in China whose patriotism leads them to treat human rights activists as slanderers of China. Nationalism can feel more important than democracy. Even Chinese living in democracies abroad often hate the exposer of China's Gulag, Harry Wu, and ridicule Wei Jingsheng who suffered long and brutal imprisonment for promoting peaceful evolution toward democracy.

Some accuse Beijing also of innovating the tactic of accusing the accuser of yet more egregious human rights violations. But this too is quite standard. The East, actually, is not unique. In the early 1980s, when

I was on the staff of US House of Representatives Committee on Foreign Affairs and visited nations in the Western Hemisphere in Central America, governments which were massive violators of basic human rights, even leaders of death squads would denounce America as having no right to question the human rights record of, say, El Salvador when, in fact, the United States was, defenders of the El Salvador record insisted, the worst human rights violator in history, as proved by America's killing of so many innocents in the cities of Hiroshima and Nagasaki with atomic bombs. While Chinese are not likely to be upset by America's war against the cruel Showa era regime in Japan whose military acted barbarously in China, they will damn the United States for hypocrisy, asserting, for example, that cigarette exports make America the number one mass murderer on the planet. That Asian governments actually manufacture, sell and live off the taxes earned from tobacco users is ignored. What is sought is political rhetoric about foreigners to call attention away from horrible violations of basic human rights at home.

These Central American human rights violators sincerely believed that the alternative to their rule would be yet worse violations of human rights. American slave owners believed the same. So did the Chiang dictatorship. Thus the 1990s' Chinese practice of denouncing alleged American human rights violations as worse than any possible Chinese flaw is standard and can be sincere. The Government of China especially enjoys trying to silence Japan by claiming that Japan's savage behaviour in its wars in Asia in the first half of the twentieth century still disqualifies Japanese from having any right to a voice on behalf of victims of human rights violations in China today. I miss the logic in the claim that Japanese overlooking inhumanity in China today compensates for Japanese inhumanity in China in the past. Sadly, with classified publications in China acknowledging more than 30 million famine deaths in the Mao era, Japanese chauvinists can even feel that China would have been better off under Japanese rule and that continuing Government of China attacks on Japanese deeds in the first half of the twentieth century is posturing by a despotic Beijing rulership on behalf of nasty, contemporary Chinese political purposes.[9] With such passionate angers fuelling the human rights debate within Asia, promoting human rights in China is no easy matter.

While some critics of China's human rights performance dismiss China's attacks on others as pure politics and rank hypocrisy, Beijing insists that it is the nations seeking an investigation of the behaviour of the PRC Government who are hypocritical and playing politics. Ruling groups in Beijing are enormously proud of what the Chinese have achieved in the post-Mao era. Their goal is for China to rise. To question

Chinese behaviour is to be experienced as opposing China's rise. That will not be tolerated. That emotion swells the pride and rage even of people of Chinese ancestry who live outside the People's Republic of China.

With a risen Beijing using its newly gained economic clout to sanction governments that question the human rights performance of China's Communist Party, the human rights actions of other governments toward China, which carry a price inflicted by China, can hardly be described as hypocritically self-serving. Human rights activism toward China actually can carry a very heavy price. China certainly tries to penalize its detractors and interlocutors.

Human rights activism often carries a price. In the 1950s, China had a flourishing trade with South Africa prior to the international anti-apartheid campaign. In the 1990s, in contrast, Beijing opposed those trying to end human rights abuses in Myanmar and sold arms to the brutal rulers in Yangoon (Rangoon). For Beijing it now seems that human rights activism is interference in the internal affairs of other nations, a continuation of imperialist aggression.

Actually Chinese ruling groups are not all of one mind on human rights activism. While some deem it as interference in sovereign matters, others boast that China's human rights performance is superior to Europe's or America's. In the post-Mao era, Beijing has been adding its signature to international human rights accords and vigorously entering the human rights debate. Surely human rights proponents should treat Beijing's boast of human rights superiority as a challenge worth accepting.

Why fear a Beijing that criticizes the United States or some other democracy on human rights grounds? All nations, including the USA, could do better. I would hope the American government would respond positively to Chinese criticisms and invite China to send people to America in order to investigate, expose and meliorate human rights violations in the United States. I would hope that these Chinese would then work within the democratic system peacefully to end human rights abuses. It would be wonderful if China would reciprocate. Of course, it is probably utopic to expect international relations less concerned with destructive matters such as arms races and more concerned with a competition in human rights enhancement.

Democracies will inevitably be found replete with human rights abuses. Critics of human rights absolutism who point out that fairness requires flexibility are right. Ethical standards change as cultural blinders are removed. What once seemed fair—slavery, patriarchy—is exposed as unfair. This happens in democracies, too, even in the twentieth century.

Only at the end of World War II did some 'Western' democracies begin to include women in the electorate, something that democratic India and Japan, the first and third most populous democracies in the world, began with from the start. The human rights agenda is likely to keep expanding. The dictators in China are not alone in feeling challenged by this expanding agenda.

Much is hidden when one considers the good polity to be a democracy, with democracy understood in the Schumpeterian manner, merely as competitive elections.[10] Democracy, rather, is a public way regularly to choose and hold publicly accountable governing officials in a way that is experientially fair. And notions of what is fair change. Hence democracies must change. If they do not adapt to the challenge of rising notions of fairness, a democracy could even split or die. That's what almost happened in the era of the Civil War in the United States. That's what Chinese patriots fear in the 1990s.

Why then does Beijing not walk away from human rights altogether? My guess is that Chinese Communist rulers still believe that 'capitalist' countries just have to be more inhuman than is 'socialist' China. By the 1970s, notions of human rights universalism gained great legitimacy when even the Soviet bloc agreed with the causes of ending apartheid in South Africa, ending exclusion of Palestinians from some significant self-determination and ending right-wing military tyrannies in Latin America. Human rights seemed a project against 'Western' hypocrisy and inhumanity. It is perhaps this crystallization of political attitudes during the 1960s and 1970s which legitimated the 1977 Helsinki accords signed by Moscow and which still helps to inspire some in China to challenge democracies in Europe and North America and insist that China's human rights record is superior. There still is a basis, albeit, a fragile one, for a human rights dialogue.

While each sees the mote in the eye of the other, advancing human rights is a species-wide concern. In our globalized world, ecological consciousness has risen suddenly, globally, not just in one region of the world in contrast to another. Visions of a small, beautiful planet earth as seen from space intensify this new world-wide consciousness of the earth as a fragile and shared space. Human rights is not a matter of East versus West. When we discuss human rights, we try to contribute to a vital and on-going dialogue that affects the survival and quality of the life of all of us. Chinese can feel this imperative as deeply as any people.

PROUD SOVEREIGNTY

At the end of the twentieth century, as cultural consciousness continues to open up to new human rights vistas, ethical concern has also grown with regard to indigenous peoples and migrants. A heightened awareness of what fairness requires, as with slavery, gender and racism in prior eras, suddenly advances the human rights agenda. A global campaign of indigenous people has formed, with its leadership including Tibetans from China and Hawaiians from the United States. From Mayans in Mexico and Guatemala to Austronesians in Taiwan and elsewhere in Asia, indigenous peoples, often hating the category 'indigenous people' as marginalizing and demeaning, are demanding an end to abuses of their human rights. There is no East/West divide where human rights abuses against indigenous people are concerned, either. No dominant group controlling a national capitol has clean hands. Japan only in 1997 at last backed off from official oppression of the indigenous people of Japan, the Ainu.[11]

Almost a global odd nation out, rulers in China invoke nineteenth-century notions of sovereignty, premised on a culture of one pure people. Consequently, the claims of Beijing that Tibetans, in contrast to indigenous peoples everywhere else on the planet, are living in a paradise are not persuasive. Beijing does not allow outsiders in to Tibetan regions to find out for themselves what the facts are; Beijing crushes Tibetans who proclaim that life under the rule of Beijing is not paradise. Yet the revived, old-fashioned nationalism of the PRC is popular. Most Chinese seem to see themselves as beneficiaries of Tibetans, generously raising Tibetans out of a savage existence, precisely as Beijing regularly proclaims. European settlers of the Americas long held a similar view of their relation to indigenous peoples. In fact, pre-twentieth-century Europeans strike me as far, far more savage in their attitudes and actions than the twentieth-century Chinese. But what standards should apply to China?

The Communist Party rulers of China, entering the twenty-first century, invoke the old logic of cultural imperialism for their power over indigenous peoples, claiming that Beijing has saved the Tibetans from feudal oppression, much as Europeans used to claim that they were saving indigenous peoples in the Americas from cannibalism. Europeans then, as Chinese now, tend to believe that what in fact is an apologia for virtual cultural genocide is but an enlightened programme of progress. The apologia may well be sincere. As with the historical marginalization of indigenous peoples everywhere, including democracies, the dominant community in China is not easily persuaded that what it is doing is

anything but in the best interest of the local indigenese. Indeed, most Chinese experience themselves as overly generous in contributing to the rise of Tibetans from miserable backwardness. This is more than a defence of authoritarian rule. The experience is not the result of government propaganda. It touches deep, but changeable, cultural presuppositions. Human rights progress with regard to Tibet requires change among Chinese in their understanding of the inherent worth of Tibetan peoples with their great Buddhist heritage. Human rights progress is a painful topic, one to which no nation comes in pure innocence. Yet the Chinese government is moving from making tigers extinct to saving the tigers. All cultures over time can recognize the injustice of earlier notions of social justice.

To those in the indigenous peoples' movement, however, it is obvious that, as Europe plundered the raw material wealth of the indigenous peoples of the Americas, so China is doing the same in Buddhist Tibet and in Muslim Xinjiang. The historical record of the so-called West vis-à-vis indigenous peoples is surely not superior to the recent record of Beijing. But Beijing, as if time had stood still, continually brags about its record in ways that echo monstrous American government statements not long ago. In fact, even in Europe today, there are significant political parties and movements that insist that their nation is homogenous and that opposition to terrorism requires emergency powers, a combination not so different from what Beijing promotes in its policy toward unhappy minorities in China.

WHITHER CHINA? WHITHER ASIA?

What is in question therefore is not a matter of different values East and West. No such difference will stand up to scrutiny. What is at issue is the policies of ruling groups at particular moments of history. Policies from Beijing are moving away from an early post-Mao project that allowed a lot of devolved power in a context of enhanced human rights for China's minorities. Intensified repression seems again to be the hard-line agenda.

In China, entering the twenty-first century, there are political forces which impose the view that there is a united Chinese race that has persisted through 5,000 years of history. This race includes Buddhist Tibetans and Muslim Uighurs. The Beijing Government suppresses archaeological data of a great Eurasian interchange. It insists on a pure Chinese race. It is not interested in genetic data which give the lie to this racist imagining of a Chinese nation. Those in Beijing who take this perspective imagine an Asian past where China was once great and

central. They imagine an Asian future where China will again be great and central.

Such a world view is not particular to China. It spread out of Europe in a social Darwinist guise in the late nineteenth century. Sadly, legitimations of inherent superiority travelled well. Might was right. People everywhere embraced categories of racism to rationalize their various national projects of repression, domination, incorporation and expansion. Here too, there is no East/West divide.

As with the nasty forces that rose in late nineteenth-century Europe, so today, chauvinists in China comprehend the survival of the Chinese race as a prime imperative, in this instance a matter of rolling back supposedly alien forces, including democracy and human rights, defined as subversively 'Western'. The ruling group in Beijing thereby may become the world's major enemy of the progress of human rights. It is the potential impact of the policy direction of powerholders in Beijing that compels people who care about human rights to focus on China.

As in Europe, there are also healthier forces in China. All the great issues of democracy and human rights become matters of political contestation within a nation, any nation, every nation.[12] There is no East-West divide. But with the return of a rising China to a world of wealth and power, it is not just indigenous peoples in China who have much to lose or gain from the outcome of the struggle in China. The Chinese nation is a great nation, one with ever more influence in the world. Rulers in Beijing are, ever since the international human rights conferences of 1993, using that power to roll back the progress of human rights. Yet they need not succeed. Their opponents are not limited to China.

As China rises as part of Asia's rise, so do national rivalries intensify in Asia. The Asian debate over Asianness is therefore a matter of some significance. If pride in Beijing turns into chauvinism and obdurateness on righting so-called historical wrongs done to China, Asians may suffer from the slings and arrows of Chinese pride presented as true Asianness. Here too the history of Europe offers a slew of destructive wars emerging from a proud and rising set of nations in Europe. The history of French-German relations, a broken record of war and revenge, is precisely what China-Japan relations need to avoid.

That European record makes me hope that Asians who insist on Asia's moral superiority to Europeans turn out to be right. My belief in the basic sameness of the human species leads me, however, to doubt the likelihood that one group is smarter and better. Fortunately, the chauvinist project of nativists in China is not widely shared in Asia. By the late 1990s, Singapore touted a blending of the best of East and West and

Japan and ASEAN promoted an open, pluralist Asia. The discourse of Chinese chauvinism has not triumphed in Asia. The East is not a homogenous monolith. There is no united East acting as an enemy of human rights progress. Democracy has spread in Asia to Mongolia, South Korea, Taiwan and the Philippines. Democratic forces are strengthening elsewhere in Asia. This is obvious in Beijing to China's rulers even if it is not seen in Cambridge, Massachusetts by a Harvard scholar who invents homogeneous civilizations.[13]

These diverse and dynamic Asian societies, whose leaders brag of uniquely wonderful Asian values, actually are quite human, that is, a mixture of good and bad. Their world is nothing like the romantically beautiful vistas painted by those who tout the special superiority of Asian values. Outsiders increasingly see in Asia corruption spreading and citizens losing faith in the capacity of their governments to end criminality and gangs. Nintendo mesmerizes children. Asian style focuses on the luxury end of life, accentuating the gap between the rich and all others. Stories abound about cruel sexual exploitation. Asian men seem away from families, out at karaokes, preferring prostitutes to family. Asian societies seem rife with individualistic hedonism, selfishness and nastiness.[14] Asian governments which change the rules of political competition, not to include the previously excluded, but to enhance the prospects of ruling groups will not be judged fair or flexible. They will seem most unfair. Unfairness will not be attractive. The bursting of financial bubbles may expose corrupt links between rulers and criminals. The value legitimacy proclaimed by many ruling groups in Asia seems pure hypocrisy in the eyes of many of their people. A reality seldom noted in 'the West' is the crisis of values in 'the East' attendant to rapid growth, a crisis which, ironically, can legitimate purist, anti-Western revivalism, which will hurt prospects for prosperity and threaten progress in human rights. Beneath propagandistic claims of superior Asian values, rich and powerful Asians actually mock the so-called West for being too moralistic. A popular cry, however, is rising in Asia against uncaring, corrupt and hedonistic elites.

People outside Asia certainly should not feel superior to the value crisis in Asia. The description of Asia just offered, of course, is one-sided. It omits much of Asian reality. The sources of Asian dynamism are real and deep. One-sided caricatures never capture the complex reality of a society. In addition, rapid change and evolving notions of fairness, justice and human rights challenge all humanity, not just Asians. We are all in this together. The misleading notion of a clash of Eastern and Western values obscures the reality of global dilemmas.

It is a central fact of our time that Asia is rising. Its fundamentals are so sound that should Asia evince the political will to contain the 1997– 1998 financial turmoil, Asia then will continue to rise. Consequently, it really matters what shape Asian leadership takes, what common values Asians will embrace, how Asians imagine Asianness. Asians will continue to try to comprehend their rise as reflective of something uniquely Asian. Historically, all rising peoples have imagined their achievement in terms of inherent cultural uniqueness. It may be true, and yet irrelevant, that there actually are no uniquely Western values or Eastern values, that all is pervaded by flux and infused with contestation. Nonetheless, people in Asia, as elsewhere, seek to find a moral project to give meaning to long-term visions of the future. This is a most typical happening.

But imagined identities have real world impacts. It helps the project of human rights advance when people in Europe and North America imagine their cultural identity as deeply infused by abiding concern over human rights, even though this fable about the West omits the actual history of the region on slavery, racism, colonialism, gender, indigenous peoples and much more. Ideas of historical identity have practical future consequences.

When I recollect my shameful first day at college, when I remember my Taiwan roommate's fear and loss of dignity, when I contemplate the importance of the struggle of indigenous peoples today for survival and human rights, I understand how much it matters to all humanity where China goes with democracy and human rights. It very much matters whether a Sinocentric and authoritarian Chinese notion of Asianness succeeds or whether Chinese who identify with Mencian roots of democratic possibilities can win power and turn China into a champion of human rights and democracy. After all, many Chinese find that the Beijing ruling group's notion of Chineseness omits the best of Chinese civilization. Most educated Chinese whom I have met who understand the debates among various Confucian schools tend to identify with the Ming dynasty pioneer of constitutionalism Huang Zongxi[15] and the Confucian constitutionalists of the 1898 reforms. These Confucian people stand 'against autocratic despotism'.[16]

The fate of the human rights project in the twenty-first century will be heavily impacted by who and what wins in the political struggle in China. There will be a global impact if the Chinese who win in China believe that human rights efforts should be opposed as interference in internal sovereign affairs. The global cause of democracy and human rights will be much advanced if, instead, Chinese win who, as is already the case in a Democratic Republic of Korea, the most Confucian culture on the planet, imagine their history as uniquely democratic.[17] Should the

embracers of Huang Zongxi in China win, then, proud of their Confucian humanist past, they could even challenge the human rights performance of the so-called West. After all, there is much to challenge in 'the West'. Confucian constitutionalists could even promote an agenda of global competition in human rights performance.

KEEPING FAITH

As struggles over human rights violations and human rights progress have long characterized diverse communities of humanity on matters of slavery, patriarchy, minorities, racism and colonialism, so peoples tend to be split on human rights issues at any particular time. Chinese today are also divided. Human rights progress has never been simply a matter of the East versus the West. As soon as some Spaniards in the Americas began abusing indigenous peoples, other Spaniards exposed those evils and tried to end the violations of the human rights of the indigenous peoples. The supporters of human rights did not readily win. They seldom have.

Hope for human rights in the twenty-first century may rest on the prospect that ethical progress has occurred over the centuries and that there will be more, and more politically successful, supporters of human rights in twenty-first-century China than there were in Spain in the sixteenth, seventeenth and eighteenth centuries. Yet many in Beijing's ruling elite insist that human rights is a plot to keep China down. The rulers of the Spanish Empire likewise dismissed Spanish human rights activism on behalf of indigenous peoples. My fear for our species in the twenty-first century reflects a worry that, now as then, in the twenty-first century as in the sixteenth, the project of national glory can all too easily vanquish the project of human rights. This preference too does not seem to distinguish the East from the West.

Much rides on what happens inside Chinese politics. That will be decided by the Chinese in China. Keeping an international human rights dialogue going can, however, be of global significance even while an external impact can only matter, at best, at the margin. It can, nonetheless, encourage a bit better certain domestic forces and discourage others. It may not be much, yet it could mean everything.

NOTES

1 Frank Ching, 'Are Asian Values Finished?' *Far Eastern Economic Review*, 22 January 1998, p. 32.

2   Edward Friedman, 'What Asia Will or Won't Stand For: Globalizing Human Rights and Democracy'. *Asian Thought and Society*, 65, 2, May-August 1997, pp. 85–113.

3   Dan Banik, *Freedom From Famine: The Role of Political Freedom in Famine Prevention*. University of Oslo, Department of Political Science, 1997, thesis.

4   Marina Svensson, *The Chinese Conception of Human Rights*. Lund, Sweden: Lund University Department of East Asian Languages, 1996.

5   This is not to support the New International Economic Order agenda of anti-imperialists who demanded redistribution by richer nations but did nothing to reform their economies so their own governments would stop being obstacles to wealth expansion, stop blocking openness to global best practices and factor mobility.

6   Edward Friedman, 'Asia as a Fount of Human Rights Universalism', in Peter Van Ness (ed.), *Debating Human Rights*. New York: Routledge, 1998.

7   Edward Friedman, 'What Asia Will or Won't Stand For'.

8   Richard Bernstein and Ross Munro, *The Coming Conflict With China*. New York: Knopf, 1997.

9   Hidenori Ijori, 'Sino-Japanese Controversy since the 1972 Diplomatic Normalization', in Christopher Howe (ed.), *China and Japan*, Oxford, Clarendon Press, 1996, pp. 60–82.

10   Ian Shapiro, *Democracy's Place*. Ithaca: Cornell University Press, 1996.

11   Donald Denoon *et al.* (eds), *Multicultural Japan*. Cambridge: Cambridge University Press, 1996.

12   Edward Friedman, *National Identity and Democratic Prospects in Socialist China*. New York: Sharpe, 1995.

13   Samuel Huntington, *The Clash of Civilizations and the Remaking of World Order*. New York: Simon and Schuster, 1996.

14   'An increasing number of Singapore parents are now actually suing their children for refusing to look after them in their old age. Also in Singapore, one non-Muslim marriage in seven ends in divorce, which is about three times as many as 30 years ago. Drugs are a huge problem in Malaysia. AIDS is a catastrophe in Thailand. The murder rate is higher in Bangkok than most European capitals. Corruption is rife everywhere in Asia. China is largely lawless. And anyone who thinks Hollywood movies are too violent should take a look at Indonesian films'. (Ian Buruma, 'God Bless America'. *Index on Censorship*, 20, 3, May/June 1997, pp. 157– 166, at p. 158.)

15   Wm. Theodore deBary, *Waiting for the Dawn*. New York: Columbia University Press, 1993.

16   He Zhaowu *et al.* (eds), *An Intellectual History of China*. Beijing: Foreign Languages Press, 1991, pp. 376, 377.

17   As expressed by Professor Kim Kwang-woong, quoted in Geir Helgesen, *Democracy in South Korea: A political culture perspective*. Copenhagen: NIAS Reports, No. 18, 1995, p. 50.

Edward Friedman, 'Asia as a Fount of Human Rights Universalism'.

2
Universal Rights and Particular Cultures
Michael Freeman

The idea of universal human rights is rooted in the Stoic, natural-law philosophy which held that all human beings belonged to two cities: the local community in which they carried on their everyday lives, and the human community of which they were members by virtue of their humanity. Both these cities gave rise to ethical relations. This philosophy was transferred into the mainstream of Western civilization by Christianity, which has taught that the status of all human beings as children of God is ethically more fundamental than their status as members of particular nations. In the seventeenth and eighteenth centuries this idea was combined, in Western thought, with notions of property rights, derived from Roman law, and secularized to become the doctrine that all human beings have certain 'natural rights'. The new doctrine was launched dramatically onto the stage of world history by the American and French revolutions.

The violence of the French Revolution, and various social, economic and intellectual developments of the late eighteenth and early nineteenth centuries led to the discrediting of the concept of natural rights. Science-based philosophies, knowledge of diverse cultures, a new emphasis on historical evolution and the rise of nationalism were among the cultural forces that called the very idea of a universal morality into question. The doctrines of natural law and natural rights were, nevertheless, maintained throughout the nineteenth and early twentieth centuries by international lawyers and some liberal philosophers. After the Second World War, when the victorious powers sought to establish a new world order on the moral basis of the condemnation of Nazism and Fascism, the fashionable philosophies of the time—positivism, utilitarianism and existentialism—were ill-suited to the task. The principles of universal human rights—loosely derived from the moral and political philosophies of Locke and Kant—were the best available ethical resources to express the values that Nazism and Fascism had violated. The victors of the war perceived themselves to have been engaged in a global struggle, and it

seemed natural, therefore, that their post-war declarations of principles—in particular, the United Nations Charter and the Universal Declaration of Human Rights—should claim to have universal validity. Thus, the global character of the United Nations as a political organization was underpinned by a universalist ethic that derived from the French Revolution, Christian universalism and natural-law philosophy. The idea of universal human rights, therefore, had a definite, particular and historically contingent political and philosophical basis.

More or less contemporaneous with these globalizing and universalist developments were certain tendencies in world politics that would turn out to call the idea of universal human rights into question. The anti-colonial revolution struck out against the weakened European imperial powers, and was successful almost everywhere in the three decades after the war. At first, this revolution seemed consistent with UN universalism, for the anti-colonial movement was based on the principle of national self-determination, which had been enshrined in the UN Charter; the new, post-colonial states wished to join the UN club; and they appeared to accept its principles, including those of universal human rights. Tensions then began to develop between the post-colonial states, which were generally poor, and the major Western powers, which were relatively rich. This North-South divide was, however, dominated by the East-West divide of the Cold War. When Eastern-European Communism collapsed in the period 1989–91, it was widely expected that the North-South divide would become more salient in world politics, and pervade debates about human rights. Unexpectedly, certain leaders of the economically successful societies of South-East Asia seized the initiative, and took the opportunity presented by the UN World Conference on Human Rights that was held in Vienna in June 1993 to assert the propriety of culturally diverse interpretations of human rights principles. Western liberals, having won their ideological struggle with Marxism, were faced with a new challenge to the idea of universal human rights. At the end of 1997 the 'Asian tigers' experienced an economic crisis. It is not possible to fore-see the long-term economic or political consequences of this crisis. What ever these may be, the Asian challenge to the idea of universal human rights merits careful reflection on the relation between universal ethical claims and the requirements of particular cultures.

The Stoic conception of the two cities—the local and the universal—has to be reconsidered in late twentieth-century circumstances. Is the idea of 'universal human rights' a manifestation of Western hegemony and/or of cultural imperialism? Is the idea of culturally particular interpretations of human rights a thin veil, behind which gross abuses of state power will take place? The problem is both political and philosophical. Human

rights constitutes a terrain both of struggles between states, and of struggles within states between governments and oppositions. Philosophically, the ethical claims of local and national communities, on the one hand, and of humanity as such, on the other hand, have been the subject of intense debate. As Humanity has disputed with Culture, the question has arisen as to who are the legitimate representatives of these parties. Is the UN the authoritative resspresentative of humanity? Are governments the authoritative representatives of their peoples? Has the debate about human rights been a dispute between 'Asia' and 'the West', or has the assertion of 'Asian values' against the claims of human rights universalism been a new affirmation of *conservative* objections to 'rights-talk' that could be found in both Asia and the West?

The concepts of 'Asian values' and 'human rights' are culturally embedded, but this proposition begs important questions about the internal structure and dynamics of cultures. 'Cultures' are not 'things' to pick up and inspect. They are complex, contested and mutable. The boundaries of cultures are neither fixed nor clear, and do not necessarily coincide with those of states. Cultures interpret human experience, and experiences can be shared by peoples in different societies and different cultures. Cultural systems, such as that of the human rights doctrine, can, therefore, make sense and have ethical force across state borders and traditional cultural boundaries. The adoption of such cosmopolitan cultural elements into local situations is itself always likely to be contested. These contests will not only be between those 'inside' the culture and those 'outside'. They will also be among those who are 'inside'. The modern institution of the nation-state and the processes of global capitalism have set similar problems to peoples in different societies with different cultural traditions. The claim that the human rights concept has universal validity proposes a common set of minimum conditions, not for a world of cultural uniformity, as is often charged and feared, but for the world's peoples to meet these chal lenges and achieve a life of dignity. The aim of this chapter is to assess the ethical force of this claim.

CULTURE AND INTERPRETATION

The Vienna Declaration re-affirmed the principle that all human rights are universal, but qualified this by stating that 'the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind'. Thus, this authoritative UN text left unresolved the relation between the universality of human rights and the legitimacy of culturally particular conceptions of human

rights. The debate about human rights and Asian values is only one manifestation of this more general problem. The vigorous defence of Asian values by certain Asian elites in contemporary international affairs is an example of what has been called 'the revolt against the West',[1] a term that expresses not only the resistance of colonial and post-colonial societies to colonial and 'neo-colonial' domination, but also the political re-assertion of the value of non-Western cultures that have been subjected to centuries of Western economic, political and cultural hegemony.

The principle of the universality of human rights and the affirmation of the value of Asian cultural difference might be reconciled, and a distinctively Asian conception of human rights might also be defended, by pointing out that the principles of human rights are quite general, and must be both *interpreted* and *applied* in particular situations.[2] The principles of human rights, so this argument goes, are 'thin', highly indeterminate and unclear, unless and until they are interpreted in terms of the different cultures that are the sources of 'thick' social meaning for the diverse peoples of the world.[3] There is, therefore, necessarily a diversity of interpretations of human rights. The principles of human rights will seem plausible, also, only if their interpretation takes into account the diverse *circumstances,* such as the level of economic development, in which the peoples of the world struggle for survival and a life of dignity. To apply abstract, putatively universal principles to particular situations, it may plausibly be argued, without taking into account the specificities—cultural, economic, political and military—of those situations is morally and politically irresponsible.

However, to affirm that the interpretation and application of human rights principles require us to take account of different cultures and circumstances begs the question of *how* these cultures and circumstances are themselves to be interpreted, and *by whom*. Cultural values are logically similar to human rights standards in that they are often formulated as general principles. Michael Carrithers has argued that popular cultures are often 'narrative' rather than 'paradigmatic' (systems of general principles).[4] This is an important consideration, especially since the pervasive Western predilection for expressing the principles of human rights in a juridical discourse leads to strongly paradigmatic forms of representation. Both Yash Ghai and Joseph Chan have suggested that this form of representation can produce resistance in Asian cultural settings.[5] However, it should be pointed out that Asian values are often represented paradigmatically and, as Amnesty International has discovered, the narrative representation of human rights violations can be effective transculturally. The problem of how general principles should be interpreted and applied in particular situations, therefore, is

raised by appeals to cultural values as it is by appeals to human rights. We should, therefore, ask who is morally and epistemologically competent to interpret the diverse cultures of the world.

A common answer that is given to this question in international politics is that *governments* represent their *peoples*, or, put differently, *states* represent *nations* (the concept of the 'nation-state' and the United Nations Charter both make this assumption) and that 'outsiders', i.e. those not citizens of the nation-state in question, should presume that governments speak for their peoples, unless this is obviously not the case, for example, in situations of persistent civil war or massive human rights violations, such as genocide.[6] One of the most frequent defences against charges of human rights violations in international politics is *not* to deny the universality of human rights in principle, but to affirm that the interpretation and application of universal human rights principles are exclusively internal concerns of nation-states and that governments are protected from interference from outsiders concerned about alleged human-rights violations by the doctrine of state sovereignty. The principle of state sovereignty is, of course, a key element of the conception of the international order that is enshrined in the United Nations Charter. This conception is derived from the 'Westphalian' system (named after the Peace of Westphalia, 1648), according to which states recognize each other's sovereign authority over their own territories and their populations, and the equal legal status of each vis-à-vis each other internationally. The principle of state sovereignty is important because its primary *raison d'être* is to maintain peace and co-operative relations among states, and, insofar as it contributes to those ends, it has considerable moral and political weight. However, it is not appropriately applied to the interpretation of cultures. It is true that, according to Thomas Hobbes' classic theory of sovereignty, the state, which has the overriding obligation to maintain social peace, may determine the interpretation of culture where this is necessary to avoid social conflict. However, Hobbes' theory was a *universalist* proposal for the establishment of social peace, and was not motivated by a concern to respect cultural diversity. Whatever the merits of this theory may be, it cannot be used to support the idea of a distinctively Asian conception of human rights.

CULTURE, DEMOCRACY AND HUMAN RIGHTS

Some governments may claim that the cultural traditions of their societies legitimate the role of governments as interpreters of culture, but acceptance of such claims without further investigation begs the question at issue: who is competent to interpret the tradition? The requirement

that we respect cultural differences, therefore, obliges us to reject the claim that governments are necessarily the most reliable interpreters of the cultural values of the people whom they govern. Traditionally, the primary functions of government have been the maintenance of internal order and external defence. In some cases, and in some political theories, the government has a role in promoting the 'virtue' of the people. In modern times, states have taken on the functions of economic management and social welfare. The interpretation of cultures, however, has not commonly been thought to be the business of government. Even in authoritarian, conservative societies, this task has been allocated to specialized elites, such as priests, officials and intellectuals. Governmental elites in modern, socially differentiated nation-states are not only often culturally distinct from many of the people whom they govern (for example, Chinese Communists and Tibetans; anglophone and francophone elites in Canada and 'first nations'), but they also commonly adopt policies (for example, of rapid economic development) that undermine in various ways the cultural values of their peoples (for example, by putting economic pressure on family bonds and/or opening the society to outside cultural influences). Therefore, although cultural outsiders should be cautious in attempting to 'second-guess' governments in their interpretations of the cultures of their peoples, they are obliged to attend to the voice of the people as it expresses its real culture.

No account of the relation between the universality of human rights and the particularity of cultures can be plausible without an analysis of precisely what 'cultures' are and why they have value. For this purpose, I shall take the term 'culture' to refer to the beliefs, values, norms, sentiments and practices that support, give meaning and (at least in favourable cases) value to human lives. This definition is wholly neutral between Asian and Western cultures. It is also neutral between 'individualist' and 'collectivist' cultures. The contend of beliefs, values, norms, sentiments and practices varies from one culture to another. But beliefs, values, norms, sentiments and practices are universal features of culture. Let us now ask who is most competent, morally and epistemologically, to *interpret* the beliefs, values, norms, sentiments and practices of a particular culture. The question nearly answers itself. Those are most competent to interpret a culture who believe the beliefs, value the values, endorse the norms, feel the sentiments, and engage in the practices, and who must live the consequences of their interpretations. In other words, the most competent interpreters of a culture are those whose culture it actually is.

It follows from this that respect for cultural diversity, which is often represented as a problem for the principle of the universality of human rights, may, quite to the contrary, require the robust implementation of that principle. For, if we should respect the diversity of cultures, and if the most reliable interpreters of the diverse cultures of the world are those whose cultures they really are, we are obliged to adopt a *democratic* conception of cultural interpretation. We cannot respect cultures unless we have reliable knowledge of what those cultures are, and we cannot have reliable knowledge of cultures unless the voice of the people is clearly heard. Many individuals and groups throughout history have claimed to speak for 'the people', but we have theoretical and empirical grounds for being quite sceptical of such claims. Theoretically, elites may well lack the capacity to understand the culture of the people and may also lack the incentive to understand it. Empirically, we know that elites have commonly been unconcerned with, or hostile to the culture of the people. The voice of the people is the expression of culture, and the voice of the people cannot be heard unless all the people have a secure set of rights. If some of the people, for example, are not free from the fear of arbitrary arrest, or if women are excluded from public life, then it is not the voice of the people that will be heard, and we cannot reliably know whether the culture of the people is being truly represented.

Just as discussion of the relation between universal human rights and cultural diversity is distorted by the assumption that governments necessarily speak for the cultures of their peoples, so it is also confused by an oversimplified conception of the relations between 'peoples' and 'cultures'. For, if 'cultures' consist of general beliefs and rules that have to be interpreted and applied in particular circumstances, it is clear that actual cultures must be complex, contested and constantly changing.[7] Even if an individual holds an apparently fixed belief (for example, in the duty of the individual to promote the good of the community) the precise meaning of this belief necessarily varies for that individual from one situation to another. Individuals can also experience doubts about even their most cherished beliefs. If this is true for *individuals,* it is true *a fortiori* for groups. A group may appear to hold a fixed belief—for example, in the value of 'economic development'—but different individuals within that group may interpret that belief differently. Under contemporary conditions, in which most human individuals and groups are subject to dynamic forces that are, to a considerable extent, beyond their control (for example, market prices for the goods that they produce, or the dissemination of alien cultures), the instability of beliefs held by individuals and by groups is likely to be great. As a consequence, even groups that appear to outsiders to be culturally homogeneous, and that

may be presented to outsiders by their own leaders as culturally homogeneous, are likely to contain *internal* diversity. In other words, the concept of 'cultural diversity' does not refer us to a definite number of externally diverse, but internally homogeneous cultural groups. Still less does it refer us to the *nation-states* or *regions* of the world, but it leads us to a complex web of relatively unstable beliefs, values, norms, sentiments and practices.[8] This is not to deny that some human groups may have *relatively* well-defined and distinctive cultures that sustain the lives of their members. It may well be, for example, that there are certain socially and ethically important, distinctively Chinese cultural characteristics that are shared by ethnic Chinese living in different nation-states. But we should guard against the assumption that what are commonly called 'cultures', as if they were a well-defined and distinctive kind of 'thing', are homogeneous and uncontentious to those people whose cultures they undoubtedly are.[9]

All cultural groups face the problem of how to adapt to the rapid technological, cultural, economic and political changes that pervade the contemporary world. Most of them experience tensions between those who favour relatively 'traditionalist' and those who favour relatively 'modernizing' solutions. The distinction between 'traditionalists' and 'modernizers' cuts right across the categories of 'Asian' and 'Western' cultures, and those who seek some optimal combination of the traditional and the modern are to be found in both Asia and the West. All governments are committed to economic modernization, and this has, historically, been associated with increasingly strong and active states and/or dynamic markets. The idea of human rights was developed to protect certain putatively universal human interests against the most threatening features of modernization.[10] Yet, although modernization commonly (though not necessarily) entails the emergence of the human-rights idea, that idea can protect many (though not all) traditional practices where such protection is necessary for human well-being.

EXCHANGE AND DOMINATION

The problem of Asian values and human rights may be further clarified by use of the concepts of 'exchange' and 'domination'. Let us begin with two simple examples. If I give you a gift, and you give me a gift, and we are both pleased with our gifts, we are both winners, and a satisfying exchange has taken place. If, however, you *impose* something on me against my will, the relation between us will be oppressive to me, *however well-intentioned your action was*. If, for example, you force me to participate in a cultural practice which is extremely valuable to you, but meaningless

and even perhaps unpleasant to me, this is *unjust domination* not *free exchange*.

These examples employ abstract agents and assume that exchange takes place between equal parties to their mutual advantage. Empirically, anthropologists have shown that exchanges are governed by cultural norms.[11] These norms may make exchanges into forms of domination: superior parties may manipulate the norms to their advantage.[12] This raises persistent philosophical questions about whether altruism is reducible to self-interest. These are important empirical and conceptual issues. They do not, however, undermine the value of distinguishing between equal and mutual advantageous exchange, on the one hand, and domination, on the other hand, *as idealtypical relations* in order to analyse the xenophobic claim that cultural imports are *necessarily* harmful to the importing society.

Throughout history peoples have engaged in cultural exchanges. They have traded useful and beautiful goods and learned useful and inspiring ideas from each other. Such exchanges enrich both sides. Throughout history also, however, some peoples have *dominated* others—through imperialistic expansion, for example—often from self-interested and therefore exploitative motives, but sometimes from benevolent intentions. Benevolent domination may be quite as oppressive as self-interested exploitation. If one people dominates another in order to 'civilize' them, they do not necessarily treat them with more justice than if they dominate the other in order to make money out of them.

In modern history Western peoples have dominated others, often for the purpose of self-interested exploitation, and, even when from benevolent motives, often unjustly and oppressively. Asian peoples have often been the victims of this oppressive and unjust Western domination. It is understandable that Asian people should resent this domination, and right that they should seek to liberate themselves from its harmful consequences. The resistance of some Asians to the concept of human rights, or the desire of some Asians to have *their own conception* of human rights, appears to be part of this process of self-emancipation from Western domination. Asian-state elites and peoples have generally, and in various ways, adopted strategies of selective imitation of the West. Western technology is generally adopted enthusiastically, but attitudes to Western culture are commonly ambivalent. The concept of human rights is caught to some extent in this ambivalence. The humanity of human rights is consonant to a considerable extent with widely held Asian religious, moral and political values,[13] but, nevertheless, the concept of 'human rights' itself appears to 'come out of the West', as the 'black ships' of imperialism once did, bringing alien and overbearing demands to

Asian lands yet again.[14] In this perspective, the concept of 'universality' appears to be a thin disguise for Western cultural (and perhaps political and economic) domination. This perception of the concept of human rights is not without irony, because the political role of the concept in Western history has been precisely to articulate *opposition to unjust domination*. Although Western imperialism has been justified historically in the name of certain supposed rights (the right to civilize, the rights of free trade, for example) the struggle against imperialism has also appealed to human rights, especially the right to self-determination.

A GLOBAL COMMUNITY

However, in order to defend themselves against Western domination, the non-Western peoples have adopted certain Western institutions and projects. They have, for example, constituted themselves politically in neo-Westphalian nation-states, since this form of political community is a necessary condition of effective membership of the global political and economic systems. They have also committed themselves to the project of national economic development, which is universally seen as the precondition both of general well-being and of external influence. The specific forms of the nation-state and the specific strategies of economic development are, of course, highly varied, shaped by historical experiences, especially those of colonialism, and by the dynamics of global socio-economic forces. However, notwithstanding the great political and economic, structural and strategic diversity that characterizes social relations in the contemporary global arena,[15] the institution of the nation-state and the project of economic development have become universalized.[16] But, as weapons of defence against unjust domination, nation-states and economic development are double-edged swords. They were achieved in the West by the oppression (and sometimes the extermination) of some cultural groups by aggressive modernizers. Similarly, in the non-Western world, they can be at the same time means to construct defences against Western hegemony and instruments for the oppression or destruction of cultures.

All human beings now live in a world that consists of many different kinds of cultural group: small, relatively isolated tribes; modern or modernizing nations; religious communities that transcend the borders of nation-states; professional, political or humanitarian networks in which individuals communicate with each other in cyberspace. The diverse individuals, cultural groups and states that interact in complex ways on this technologically shrunken planet have an unprecedented capacity to affect each other's well-being, for good or ill. The people of

the globe constitute a moral community, *not* in the sense that they share a common moral culture, for they clearly do not, but in the sense that they *need a minimal* (though rather robust) common code, *so that all can flourish in their own, diverse ways*. The concept of the universality of human rights recognizes the vulnerability of *every human being* to disabling and degrading suffering and the capacity of each to contribute to the continuing maintenance, negotiation and reconstruction of local and national cultures, and thereby to the common global good.

Such rights as those to freedom from arbitrary arrest and freedom from torture, and those to freedom of religion, speech, association and participation in the culture of one's community are designed to empower persons and collectivities to engage in social relations—locally, nationally, globally—so that the cultural interactions of individuals, groups and nations should have, as far as possible, the character of mutually enriching, free exchange, and, as little as possible, that of unjust domination. Individual human rights (such as freedom of association and freedom of religion, for example) can, therefore, *protect* cultural communities,[17] and vibrant cultural communities can *enrich* our conceptions of human rights.[18] The principle of universal human rights can, of course, conflict with the requirements of local cultures, but conflicts of principles are commonly found *within* cultural, moral and political systems, whether they aspire to be universal or are narrowly particularistic.

DIALOGUE AND BEYOND

Those who argue for a distinctively 'Asian' conception of human rights sometimes, to show the reasonableness of their position, call for a 'dialogue' on human rights. The call for dialogue appears unobjectionable. It is important to inquire, however, who is to participate in this dialogue. If the issue is posed as one between 'Asian values' and 'Western values', the dialogue proposed is likely to be one among *governments* that supposedly represent those values. Governments may, of course, properly conduct dialogues about human rights. But a dialogue of governments about Asian and Western values assumes both the validity of these categories and the competence of governments to represent those values. I have argued that both assumptions are dangerously misleading. The democratic and complex conception of culture that I have defended requires a continuing dialogue on human rights that is not monopolized by governments. There is a paradox that, unless certain human rights are secure, *no effective dialogue about human rights can take place*. People who are starving, illiterate, persecuted or

excluded from public life cannot take part effectively in dialogues about their rights. There are, of course, difficult questions about how everyone can achieve the material and psychological level necessary for effective participation in dialogue, including questions of economic development strategies and of international justice. But, if it is common ground that everyone is entitled, so far as possible, to a life of at least minimal material and spiritual well-being, it would be more fruitful to tackle the obstacles to this goal than to continue distracting debates about regional interpretations of human rights. Advocates of universal human rights can contribute to eliminating such distractions by developing a sensitivity to the particular cultural style in which they speak to representatives of other cultures about human rights, and to the difficult histories that all societies have passed through in their search for greater justice. They should also be careful not to present the doctrine of human rights as a sort of fundamentalist religion. The idea of human rights is more accurately and plausibly presented as a set of necessary, minimum standards for everyone to lead a life of dignity.

Joseph Chan has suggested that the human rights which are preconditions for dialogue might be few, such as freedom of speech and association.[19] I would counter that more human rights may be necessary for genuine dialogue, including, for example, freedom from arbitrary arrest and from significant forms of social discrimination. It is important, however, to distinguish *the grounds of human rights from the preconditions of dialogue*. The ethical force of human rights depends on a plausible conception of human dignity or human flourishing. Consequently, human rights are designed to protect a wide range of human interests. All human beings have an interest in participating in dialogues about their rights, and therefore have an interest in securing recognition of those rights that are preconditions to such participation, but this particular interest, important though it is, is far from being the only interest to be protected by human rights. The need to interpret human-rights principles requires dialogue. Genuine dialogue requires the protection of certain human rights. Thus, paradoxically, rights and dialogue seem to be preconditions for each other. There is no simple way to resolve this paradox. It is plausible to suggest, however, that the stronger the rights of the participants, the more genuine is the dialogue, but recognition of the controversial character of some rights interpretations is also a necessary condition of genuine dialogue.

CONCLUSION: RIGHTS WITHOUT FRONTIERS

This is not a programme for Western domination of Asia. Oppression and resistance to oppression are our common human heritage. Insofar as Asian state elites have strategies to maintain internal stability and emancipate their peoples from extreme need, Western human rights liberals can both understand and support these general goals, while pressing the case for seeking to reconcile 'development' (in the sense of improving the quality of life on the basis of a reasonable conception of social justice) with democracy and human rights.[20] The idea of universal human rights is a modern, conceptual invention, the purpose of which is to create global solidarity in the struggle against injustice. It was inspired to a large extent by revulsion against the evils of Nazism. It produced an extensive consensus in the campaign against apartheid. Its future is uncertain, but it will certainly be controversial. Chan has stated one of the central problems of claims to the universality of human rights with admirable succinctness. The formulas contained in the human rights charters are merely shorthands for arguments; it is not the formulas that make sense of human rights, but the arguments behind them'.[21] This is a cogent point from a philosophical point of view. It ignores, however, the *legal* status of human rights principles, and the *ethical* status of international law. There is a clear and urgent need for further philosophical reflection on the relations among the international law of human rights, the human rights policies of governments and the 'real' cultures of peoples.[22]

Controversies about human rights will, therefore, almost certainly persist, but they will persist *within* all societies, and differences *within* societies about the interpretation and application of human rights may remain quite as important as differences *among* societies. In the continuing debate about the interpretation and application of human rights it is not likely that such sweeping, general concepts as 'Asian values' or 'Western values' will give us much help. They are more likely to be smokescreens behind which those with power indulge their traditional appetite for exploitation and oppression.

Because the doctrine of human rights sets only minimum standards, it should not be used to solve all the complex moral, political and economic problems of contemporary societies. To overstretch the concept of human rights is to weaken it. Because the concept seeks to empower human individuals in complex and highly diverse situations, it is not helpful to retain in our dialogue on human rights what have aptly been called the 'tired dichotomies' of East and West, community and individual, rights and duties. *All* societies have to balance the interests of individuals and

of communities, and rights with duties.[23] *All* societies are likely to find complex solutions to these problems, and, in *all* societies, these balances will shift over time in the face of changing circumstances. The rigid dichotomization of 'Asian' and 'Western' approaches to these problems is not likely to clarify what is actually going on in these societies nor which solutions will best serve the needs of their peoples.

Confucius said: 'If you do not know a person's speech, you cannot understand him'. We cannot afford to ignore this piece of universal wisdom. And, if you do not understand a person, you cannot treat that person justly. The conversation of mankind must continue, and no-one should be excluded from it. If we formulate our problems in terms of a 'clash of civilizations', as Samuel Huntington has notoriously suggested,[24] we shall find ourselves, in the vivid phrase of Claus Offe, in the tunnel at the end of the light.[25]

NOTES

1 Hedley Bull, 'The revolt against the West', in Hedley Bull and Adam Watson (eds), *The Expansion of International Society.* Oxford: Clarendon Press, 1984, Chapter 14.

2 Joseph Chan, 'The Asian challenge to universal human rights: a philosophical appraisal', in J.T.H.Tang (ed.) *Human Rights and International Relations in the Asia-Pacific Region,* London: Pinter, 1995, pp. 25–38.

3 Michael Walzer, *Thick and Thin: Moral Argument at Home and Abroad*. Notre Dame, IN: University of Notre Dame Press, 1994.

4 Michael Carrithers, *Why Humans Have Cultures: Explaining Anthropology and Social Diversity*. Oxford: Oxford University Press, 1992.

5 Yash Ghai, 'Human Rights and Governance: The Asia Debate', The Asia Foundation's Center for Asian Pacific Affairs, *Occasional Paper,* No. 4, November 1994. Joseph Chan, 'A Confucian Perspective of Human Rights', paper presented at the second workshop of the Carnegie Council's project on 'The Growth of East Asia and its Impact on Human Rights', Bangkok, 24–27 March, in J.Bauer and D.Bell (eds) *The East Asian Challenge to Human Rights* (forthcoming).

6 Michael Walzer, 'The Moral Standing of States: A Response to Four Critics'. *Philosophy and Public Affairs,* 9, 3, 1980, pp. 209–229.

7 Michael Carrithers, *Why Humans Have Cultures*.

8 Joseph Chan, 'A Confucian Perspective of Human Rights' presents a sensitive, thoughtful and thought-provoking defence of a culturally particular, distinctively Asian approach to human rights. There is much in this paper from which a Western human-rights thinker can learn. It would, however, have been even more cogent if it had clearly distinguished between a *Confucian* perspective of human rights, which is not *conceptually* linked to any particular nation-state, and a *Chinese* conception, which raises

the question of the rights of non-Confucian citizens of China (e.g. Tibetans, Moslems, Christians and other minorities).

9 Michael Carrithers, *Why Humans Have Cultures*.

10 Hugo Stokke, Chapter 7, this volume.

11 Marcel Mauss, *The Gift: Forms and Functions of Exchange in Archaic Societies*. London: Routledge and Kegan Paul, 1970.

12 I am grateful to Ole Bruun for suggesting this argument.

13 Some Asians claim that Asian values provide a *better* foundation for human rights than Western values do, because Asian values either have a deeper reverence for life (e.g. Buddhism) or show more toleration for cultural diversity (e.g. Hinduism, Confucianism). Such views are salutary insofar as they undermine both Western complacency and anti-Western stereo-typing, but the issues raised are obviously extremely complex.

14 D.I.Hitchcock, *Asian Values and the United States: How Much Conflict?*, Washington, D.C.: The Center for Strategic & International Studies, 1994, p. xii.

15 Roland Robertson, *Globalization: Social Theory and Global Culture*, London: Sage, 1992.

16 Hugo Stokke, Chapter 7, this volume.

17 Alan Gewirth, *The Community of Rights*. Chicago: The University of Chicago Press, 1996.

18 Joseph Chan, 'A Confucian Perspective of Human Rights'.

19 Joseph Chan's suggestion was made in a comment on an earlier version of this paper that was presented to the workshop on 'Human Rights and Asian values' on 15–16 May 1997 in Copenhagen.

20 Martha C.Nussbaum and Amartya Sen (eds), *The Quality of Life*. Oxford: Clarendon Press, 1993; Alan Gewirth, *The Community of Rights;* Joseph Chan, 'Hong Kong, Singapore and "Asian Values": An Alternative View'. *The Journal of Democracy*, 8, 2, 1997, pp. 35–48; David Kelly, Chapter 9, this volume.

21 Joseph Chan, 'Hong Kong, Singapore and "Asian Values": An Alternative View', p. 38.

22 Katarina Tomasevski, 'Human Rights Law-making in Retrospect: from globalism to ideological protectionism'. Paper presented to the workshop on 'Human Rights and Asian Values', Copenhagen, 15–16 May 1997.

23 Alan Gewirth, *The Community of Rights*.

24 Samuel Huntington, *The Clash of Civilizations and the Remaking of World Order*. New York: Simon & Schuster, 1996.

25 The attribution to Claus Offe was made by Yael Tamir at the annual meeting of the American Political Science Association, San Francisco, 1996.

3
Thick and Thin Accounts of Human Rights: Lessons from the Asian Values Debate

Joseph Chart

The debate on Asian values and human rights has been going on for a few years. Perhaps it is now time to raise these questions: What are the important issues in the debate? What have we learnt? Let me first mention some issues of debate in order to set them aside—these issues are politically important but philosophically uncontroversial. Some Western governments have accused a few Asian governments of gross violation of human rights. In response, these Asian governments challenged their counterparts as guilty of double standards, hypocrisy, and even imperialistic domination. Unfortunately, both kinds of accusation seem to have justifiable grounds, and none of them can silence the other. So Western governments can go on denouncing Asian governments' appalling human rights records *and* their excuses until they have shown significant improvements, and similarly Asian governments can continue to challenge the hypocrisy and covert political agenda behind the human rights diplomacy of some Western governments. Political controversies of this kind would probably persist in the international scene, but they, in themselves, cannot give rise to much philosophical dispute and debate.

Neither is the universality of human rights under serious dispute. Today there seem to be few governments who would explicitly deny the idea of universal human rights—even authoritarian governments pay lip-service to it. In the Bangkok Declaration, many Asian governments explicitly affirm universal human rights. They rather argue that, 'while human rights are universal, they must be considered in the con text 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 background'.[1]

Of course, it is only a thin line between a very strong emphasis on the particularities of human rights and a denial of their universality. It may not be unreasonable to suspect that those governments who put a lot of weight on particularities are implicitly denying universal human rights.

For instance, the Chinese representative to the Vienna Declaration of the United Nations World Conference on Human Rights put the point in the following way:

> The concept of human rights is a product of historical development. It is closely associated with specific social, political and economic conditions and the specific history, culture and values of a particular country. Different historical development stages have different human rights requirements. Countries at different development stages or with different historical traditions and cultural backgrounds also have different understanding and practice of human rights. Thus one should not and cannot think the human rights standards and model of certain countries as the only proper ones and demand all other countries to comply with them.[2]

The argument in this passage might give the impression that human rights are so bound up with a country's historical circumstances that there cannot be any commonly shared human rights standards or models among different countries with different circumstances. What different countries share may just be a vague label of human rights under which any conception of human rights is permissible. Now universalists would surely find this message worrying. In what seems to be an explicit response to this problem arising from the Bangkok Declaration, the Vienna Declaration affirms that while national particularities matter, 'it is the duty of States, regardless of their political, economic, and cultural systems, to promote and protect all human rights and fundamental freedoms'. Although the Vienna Declaration is clear in its insistence on the universality of human rights, it is vague on the question of the particularity of human rights. It agrees that national particularities matter in understanding human rights. But how? Do they matter in a significant way, or only trivially so? Both the Bangkok and Vienna Declarations have left the exact relationship between the universality and particularity undefined. The difficulty is precisely to see how these two elements are related and to determine their relative weights. The crux of the issue lies exactly here: How would the particularities of a society affect the understanding and content of universal human rights? In my view, the Asian human rights debate is probably best understood as an argument about (1) the extent and legitimacy of systematic ideological or cultural interpretations of human rights, and (2) the significance this has for Asian societies. These, I think, *are* the important questions in the debate, and they will be discussed in the present chapter.

THICK AND THIN ACCOUNTS

To what extent do universal human rights allow for substantive ideological or cultural interpretations of their ground, scope and priority? There are two views which I shall discuss here. The first view says that universal human rights represent only 'a set of necessary, minimum standards for everyone to lead a life of dignity'.[3] At the same time, they are also 'minimum moral standards required of political institutions', which should be ideologically 'neutral with respect to the main political and economic divisions in the world'. This 'minimum character of human rights' is essential to the moral justification of international interventions into countries' internal human rights situation.[4]

On this view, human rights, when properly understood, should not allow for much substantive, systematic ideological interpretations.[5] Rather, they are only minimum standards universally applicable in the world. On the second view, however, while human rights are universal, they are only generally and vaguely defined in the international charters. The grounding of rights, the determination of their scope and limits, and the prioritization of conflicting rights are not technical issues of no significance, but are substantive issues of political morality (I shall explain this term in the next section). Although there are universal basic principles of human rights, there are no full-blown universal principles of political morality to interpret human rights. The significance of this point for Asian societies is that most of them do not have, and therefore need to develop, their own political moralities. Since there is no full-blown universal political morality, Asian societies need to search for political moralities suitable for themselves. Whether a particular political morality suits a particular society depends on the complex set of factors: whether that political morality meets the minimum requirements of human rights, whether it does justice to the historical situation of that society, and whether it rightly captures the contemporary values and aspirations of people there.

I have argued in more detail for the second view elsewhere, and shall only summarize the arguments later in this chapter.[6] Instead I want to suggest that basically the two views need not be mutually exclusive, but represent different dimensions of a complex picture. The issue here can best be understood as an instance of what Michael Walzer has called the 'thin' and 'thick' accounts of morality[7]—in this present case, the first view of human rights is a thin account, the second, thick. For Walzer, the thin account of morality is a minimalist one, which attempts to capture those elements in a morality that have the greatest and broadest appeal to people at home *and* abroad. Usually these elements are put in the negative form

—'don't kill', 'don't torture', 'don't abuse power', 'don't suppress the dissidents', 'don't exploit the weak', etc. These moral injunctions prohibit this or that type of action that everybody would immediately recognize as immoral or worthy of condemnation. There is never much controversy over the paradigm cases of torture, abuse of power, or suppression of dissidents. These moral minimums are the focal points abstracted from a thick morality embedded in a society, and they can be found in all thickly developed moralities.[8] It is important to note that to call an account of morality 'thin' does not imply that it only captures what is minor or shallow in a morality. As Walzer stresses, the opposite is more likely true. 'The minimal demands that we make on one another are, when denied, repeated with passionate insistence. In moral discourse, thinness and intensity go together, whereas with thickness comes qualification, compromise, complexity, and disagreement'.[9]

However, moralities, or human rights in particular, are also thickly constituted. Human rights principles are embedded and elaborated in a society with a particular set of circumstances (its culture, economy, politics, etc.). Human rights are not merely abstract moral principles standing on their own. In many modern liberal societies they are entrenched in a constitution, or built into a set of laws, and play the role of regulating complex public institutions, and, in some societies, even private institutions as well. These laws require sophisticated jurisprudential analysis and reasoning, attending to the concrete circumstances of the society in question as well as general principles of human rights. The determination of the scope, limits, and prioritization of human rights requires a detailed analysis and evaluation of the thick political morality of the particular society. As the circumstances of the society change, the determination and interpretation of rights itself may change.

Now the thin and thick accounts of human rights are not incompatible. Rather, they are 'appropriate to different contexts, serve different purposes'.[10] When outsiders condemn a government's violations of human rights in a particular society, and when the insiders of that society march and demonstrate in order to gain the widest political support at home and abroad to fight against that government, they often appeal to human rights thinly conceived. These people bring to public attention the paradigm cases of human-rights violations that have occurred in that society, and condemn the government in minimal, universalistic human rights terms. In contrast, considerations about the national particularities of a society given by the government are often excuses for their violations. In this context, a thin account of human rights, and hence its simple and strong language, is most appropriate. But sometimes we need

a thick account of human rights to make sense of some issues arising from a different context. For example, when the dictators and oppressors of a society are brought down, when its citizens begin to develop laws of human rights and build detailed mechanisms protecting them, they would begin to differ and argue among themselves on what is the best account of human rights. In arguing for their views, they would use substantive arguments related to the political morality and concrete circumstances of their own society. In this context, the human rights in dispute are, as Walzer called them, 'rights-in-detail, rights thickly conceived'.[11]

   Throughout the debate on Asian values and human rights, liberal critics repeatedly defend the thin account of human rights, and refute the specific arguments put forward by some Asian governments. These critics' views are both important and ably defended, and this is partly why I have not written much along these lines.[12] What I have tried to argue for, instead, is the thick account of human rights, because I think that its legitimacy and significance for Asian societies is often unnoticed or denied. In the next section I shall briefly argue for the possibility of a thick account, or the second view that I characterized at the start of this chapter, namely, that human rights allow and require substantive arguments about political morality connected to a particular society. Then I shall discuss some arguments which explicitly or implicitly deny the importance of the second view. In replying to these arguments, I hope to further refine and develop this view.

SUBSTANTIATING RIGHTS

We might be deceived by the simple formulae in human rights charters into believing that it is easy to justify human rights, substantiate their meaning, and determine their scope.[13] But this is an illusion. To justify a right we need to show that the interests of the right-holder are weighty enough to hold some other person(s) to be under a duty.[14] This justification requires the balancing of the interests of the right-holder and the duty-bearer(s). Consider a more complicated example. To judge whether a person has a right to freedom of expression, we need to consider and balance the relevant interests of three parties: (a) participant (or speaker's) interests, (b) audience interests, and (c) bystander (third party) interests (e.g. the interests in avoiding traffic jams, the noise of crowds, and defamation of character).[15] In short, if a person has a right, it means that his or her interests (to be protected by that right) are judged to be of such an importance that, in normal circumstances, no conflicting interests of others can defeat the right-holder's interests.

Nothing thus far counts against universal human rights. There are universal human rights because there are key interests of human beings in autonomy and well-being that 'should not be sacrificed for the sake of greater efficiency or prosperity or for any aggregate of lesser interests under the heading of the public good'.[16] However, most human rights require justifications of a complex sort described above. Our belief in human rights as listed in the Universal Declaration is grounded on the assumption that (a) numerous people (including the drafters) have gone through the justification processes and found that the rights are warranted, and (b) if we go through the process ourselves we shall reach the same conclusion.

Thus said, it is important to stress, as Jeremy Waldron reminds us, that we should not confuse the idea that there are human rights with the view that certain simple formulae in the standard human rights charters can adequately express the depth and complexity of our moral considerations about human rights.[17] The formulae are just shorthands for arguments; what make sense of human rights are not the formulae but the arguments behind them. Unfortunately there has been a tendency for some writers to adopt an over-legalistic approach to human rights issues. They think that the abstract human rights formulae can somehow be 'decodified' or 'interpreted' so as to provide a solid basis for resolving disputes on human rights. Take the example of the right to freedom of expression. People dispute whether government has the right to regulate cigarette advertising or pornography. Some try to resolve these disputes by first affirming the doctrine that people have the right to freedom of speech or expression. They then discuss whether the material in question are forms of speech (Is commercial advertising speech? Is pornography speech?), and finally defending the right to cigarette advertisement, etc., on the ground that they are forms of speech and thus should be protected by the general right to free speech or expression.

This strategy of defence is a mistake. Motivated by the legalistic habit of interpreting and drawing conclusions from legal codes or formulae, it mistakenly assumes that there is a core, general right to freedom of expression which is justified by some single or unified set of interests and from which more specific rights to cigarette advertis ing can be derived. The truth is rather that the interests and justifying reasons which ground the rights to commercial speech, political speech, artistic expression, etc. are different from one another, and that the general right to freedom of expression as such is a *generalization* from these independently justified specific rights.[18] Thus to decide whether cigarette advertising should be regulated, it requires substantive reasoning from square one—we need to discuss what sorts of interests and what parties are relevant and how

those interests should be balanced. In considering the issue, many competing reasons are at work: paternalistic concern for people's health, commercial interests of tobacco firms, smokers' preferences, government's ability and impartiality in regulating cigarette advertising, and so forth.[19]

The upshot of the above discussion is to show that the activity of interpreting, and drawing limits for, human rights are essentially the kind of theorizing and substantive argumentation one expects in political theory. As Ronald Dworkin writes, 'the process of making an abstract right successively more concrete is not simply a process of deduction or interpretation of the abstract statement but a fresh step in political theory'.[20] Recognition of this fact is essential to unravelling the important concerns in the debate on 'Asian' human rights—even if Asian countries fully accept the human rights stated in the Universal Declarations, they will face the tremendous task of substantiating these rights and their limits, a point which I shall explain later. My present point is the theoretical one that systematic substantiation of human rights involves nothing less than the development of a coherent political morality. By 'political morality' I mean a theory that contains (a) basic political principles (e.g. principles of human rights), (b) fundamental values and moral principles as the ground or justification for the basic political principles (e.g. such basic human interests as physical security and freedom), (c) mid-level principles to help determine the scope and limits of rights and duties (e.g. the harm principle, paternalism or anti-paternalism, moralism or anti-moralism, perfectionism or neutrality[21]), and (d) policy recommendations.

For example, consider the right to freedom of expression in the case of pornography. Pornography has been more heavily censored in some Asian countries (e.g. Singapore and Malaysia) than in most Western ones. Does prohibition of pornography unjustifiably violate freedom of expression? Adopting the three-party analysis of interests mentioned above, some may judge that what is required is a balancing of interests of the publishers (commercial and ideological interests), audience/consumers' interests (in erotic excitement) and third-party, or community, interests. Now important disagreements may centre on the third-party interests. Some may regard that the community as a whole has an interest in maintaining its morals, and that society's morals should enter into our calculations. But this view offends many liberals who uphold a particular mid-level principle, namely, that it is not the business of the state to enforce society's morals. On this view, the maintenance of morals is never a legitimate interest to enter into the balancing calculus.

The point of this example is that substantiating human rights and determining their scope often involves not only the balancing of interests but, more fundamentally, the making of decisions regarding *which* interests are relevant and thus may enter into the balancing calculus. Those accepting the legitimacy of, for example, the principle of legal moralism would allow society's morals to be put on the scale; those liberals who are against legal moralism would not allow it. Here principles of political morality guide us to make this kind of fundamental decision. Consider another example. In Hong Kong, filial piety is regarded as a virtue; this is reflected in the law that gives tax breaks to people who support their parents, grandparents, and siblings. This law might go against the liberal view of state neutrality, namely, that the state should never make decisions on the basis of any particular conception of the good life. In other words, this law might be seen by some Western liberals as violating the principle of neutrality by favouring some virtues or ways of life over others. But in Hong Kong, this law has been widely accepted. In this particular case, perfectionism leads to an extension rather than a restriction of right or privilege.

MARGINS OF APPRECIATION

My argument thus far is that the general nature of human rights allows and requires systematic, substantive arguments about political morality connected to a particular society. I shall now respond to several replies to this view. Michael Freeman, in commenting on this view, argues that while this is a cogent *philosophical* point, it 'ignores the *legal* status of human-rights principles, and the *ethical* status of international law'.[22] His point seems to be that human rights charters are not philosophical treatises but binding legal documents with well-defined principles and cases to understand and interpret human rights. I do not completely deny this. In fact, I argued earlier that human rights are not merely idealistic moral principles, but are often entrenched in national constitutions and international laws. This is what partly makes human rights 'thick'. One can further point out that these legal documents—their jurisprudence developed in the past few decades—clearly give some guidelines in interpreting the rights. For example, the principles of necessity and proportionality are often invoked in human rights jurisprudence. To justify a restriction of a right, it has to be shown, first, that the right to be restricted is in conflict with a legitimate aim, and second, that the restriction is absolutely necessary and proportional to the protection of that legitimate aim. Nevertheless, these constraints on interpretation do not make consensus inevitable. On the contrary, systematic ideological

differences in human rights jurisprudence can still arise, and in fact have arisen in liberal societies. It is a well-known fact that the Supreme Court judges of the United States are often regarded as belonging to the two competing ideological camps with regard to their jurisprudential positions towards the bill of rights, namely conservatism and liberalism. And it is a great political and legal issue in the United States as to who, and of which ideological camp, should be appointed to the Supreme Court. Similar ideological differences can be found in the European Court of Human Rights. J.G. Merrills observed that the conservative and liberal schools of court's jurisprudence have had much influence of the Court's decisions on human rights cases.[23] These two ideologies imply systematic, competing views on the relative importance of the values of individual freedom on the one hand and order, communities, and traditions on the other. The conservative ideology often emphasizes the importance of the family, conventional morality, and social order, whereas the liberal one values highly individual rights and equality, and stresses the role of the state in reforming institutions which violate individual rights.

National differences in understanding the scope and limits of human rights are also recognized in human rights jurisprudence. The European Court has applied the principle of 'margin of appreciation' to the contracting states in Europe, because it recognizes that it is impossible to find 'a uniform European conception of morals' to guide interpretation of those rights which are closely associated with the political, cultural, economic, and moral issues of a society. This principle grants individual states the discretion to make judgements on the balancing of rights and public morals, public order, etc.[24] As J.A. Andrews puts it:

> Whatever the extent of like-mindedness and the common heritage of the Member States of the Council of Europe, the fact remains that the extent of their common traditions, shared values and cultural alikeness is relative. Looked at from an African or Islamic perspective, there may appear to be a coherence of values in Western Europe. Within the States themselves, despite extensive Europeanisation since 1945, there remain significant social and cultural differences.[25]

If even a relatively well-developed regional framework of human rights like the European one has to make room for a good degree of margin of appreciation, it is only natural to expect that the ideological differences in the interpretation of human rights at the international level are even greater and more permanent. To conclude thus far, the point that human

rights allow for, and require, active and substantive ideological interpretations is supported not only by philosophical reasoning, but also by empirical, legal facts.

THE ASIAN FACTOR

Now what does all this mean for Asian societies and for the debate on Asian human rights? This means, among other things, that even if human rights are universal, Asian societies' interpretations of the scope and limits of human rights may legitimately differ from those of some Western societies. But notice that this point does not imply, nor do I wish for a moment to argue, that there is, or should be, a distinctively 'Asian' perspective shared unanimously by all Asian societies and entirely different from Western societies. Some critics point out that the ideological differences in interpretations of human rights cut across East and West: the competition is not between the conservative East and the liberal West. Rather, these competing ideologies can be found within both Asian and Western societies themselves. Garry Rodan argues that 'false monoliths are being depicted in the notion of "Asian values" versus "Western liberalism" which conceal major and unresolved political and ideological disputes within Asia and the West'. He further argues that conservative ideology of some Asian governments have its resonance in the West: 'There are conservative and neo-liberal forces seeking, in the West, to reverse a range of social and political reforms of the post-Second World War period that resulted from certain social democratic and liberal pressures'.[26] Freeman also writes:

> All societies have to balance the interests of individuals and of communities, and rights with duties. All societies are likely to find complex solutions to these problems, and, in all societies, these balances will shift over time in the face of changing circumstances. The rigid dichotomisation of 'Asian' and 'Western' approaches to these problems is not likely to clarify what is actually going on in these societies nor which solutions will best serve the needs of their peoples.[27]

No doubt ideological conflicts exist within societies as well as between them. Any sensible view about Asian human rights should avoid the talk of a common 'Asian' approach. So what is so special about Asia, if there is no uniquely Asian perspective? If the same set of ideological interpretations of human rights can be found within each society, Asian or Western, what is the importance of the so-called 'Asian'

perspectives? My answer is twofold. First, while it is true that many values prevalent in Asia can also be found in the West, it may not be totally misguided to speak of general differences between Asian and Western cultural tendencies and dispositions. A recent survey by David Hitchcock shows that more people in Asia than in the United States rank 'close family relationship', 'orderly society', 'respect for learning', and 'preserving harmony for the group' as vital values. Asians and Americans may assign varying levels of importance to specific values within a common set.[28] In other words, while both liberal and conservative ideologies can be found in Asian and Western countries, it may be true that Western countries on the whole adhere much more strongly than Asian ones to the liberal ideology.

Second, what is special about Asian societies, as opposed to the West, may lie not only in the strength of adherence of these societies to a particular ideological interpretation (or interpretations) of human rights, but also in the special difficulties they face in constructing a suitable thick account, and in what these difficulties ultimately mean for them. The important question that each Asian society faces is not simply the protection of human rights thinly conceived, but the elaboration of concrete human rights norms, which implies a search for a substantive political morality. As Yash Ghai writes, human rights in the West more or less 'serve the function of "fine tuning" the system of government and administration; in Asia they have a huge transformative potential'.[29] Human rights and liberalism have emerged and developed in Western societies for a long time, and their institutions and mechanisms protecting these values are generally stable and effective. Moreover, Western liberal societies have also developed their own detailed and sophisticated political moralities, reflected in their political ideologies and jurisprudence, and connected to their own political and economic developments. But for many Asian societies, the development of human rights mechanisms, norms and appropriate political moralities is a tall order. Many Asian societies have not yet developed a strong sense of rule of law or a strong legal tradition, and some governments are authoritarian. The struggle for human rights would thus involve fundamental institutional changes and power reshuffles. Furthermore, violations of social and economic rights in some Asian societies are caused as much by private industries and multinational firms as by national governments, and the latter are often relatively unable or unwilling to counteract those influences. The strategies to protect human rights, therefore, have to be a bit different from those in Western liberal democracies. Without a strong legal system and tradition or a bill of rights that functions well individualistic and legalistic strategies may be

either inapplicable or futile; collective, political actions (such as demonstrations and protests) seem more useful.[30] Also, in addition to human rights groups adopting a confrontational, anti-government stance, in Asia there should be groups that can work with their national governments so as to demand them to take positive steps to protect workers' rights from violations by the industries and multinational firms.

These are, of course, pressing problems that require immediate actions and remedies. But the development of a thick view of human rights in Asian societies has a longer-term, deeper significance: it concerns the issue of national identity. Although some Asian societies have adapted quite well to modernization and industrialization, their political values and identities are still in a relatively underdeveloped stage. One the one hand, they have been reluctant to borrow the entire political 'super-structure', to use the Marxian term, from the West, for if they did they would not be able to develop distinct identities of their own. On the other hand, they have failed to articulate a coherent modern political vocabulary and morality that can mesh modern, Western values of human rights and democracy with their own cultural values and norms. The Asian values debate reflects not so much a settled vision of Asian values opposing Western ones—for there is no such vision, but rather a commonly felt need on the part of Asian societies to develop and articulate new identities for themselves. From a long-term perspective, the development of a thick account of human rights, and the search for human rights norms, is an important part of a search for national identity. This task, let me reiterate, is the business of each individual Asian country. Asia is an extremely diverse region, and there are, within and across individual societies, different religions, ethnicities, languages, and cultures. It is impossible to find a common set of 'Asian' values, and the search for identity should never be taken as a concerted action of Asian societies to oppose the West. Rather it is a soul-searching exercise for Asian peoples *themselves*. The search for human rights *thickly conceived*, and therefore substantive political morality, is one important part of such a task.

CULTURE AND RIGHTS

Lastly, I want to clarify the role of culture in a thick account of human rights. This account does not subscribe to a purely cultural approach to rights, which takes culture as the main factor that grounds and shapes rights. Rights are historically determined by economic and political as well as cultural factors. Even culture itself should not be understood as an ahistorical, unchanging reality. Moreover, the ideological conflicts about

interpretation of human rights mentioned above cut across different cultures—there are conservative and liberal ideological positions across and within cultures. In other words, conflicting interpretations can sometimes be expressed in ideological rather than cultural terms. Nevertheless, culture still plays one important role. No doubt there are violations of rights that are a direct result of the selfishness of government officials or capitalist bosses. No cultural argument needs to be invoked to explain such phenomena or to justify the condemnation. But there are 'violations' which may not be real violations but reflections of alternative interpretations of rights—homosexuality, abortion, pornography, freedom of expression in the non-political sphere, the death penalty, cultural minority rights, marriage rights and so forth, are issues of this kind. The dispute about these matters cannot be explained or settled by a purely political or economic approach. These are questions of values, and should be settled by a careful examination and balancing of the competing values in question.

Of course one can still frame these questions of values in ideological rather than cultural terms, as I have just pointed out. Ideological disputes often involve the balancing of different values—for example, between the value of personal autonomy and social morality or public order. A liberal position would give more weight to personal autonomy than to others, and a conservative position would of course hold a different view. But philosophical analysis probably cannot settle the dispute and come down to a universally applicable full-blown ideological stance. What particular stance ought to be adopted in a society depends on the complex situation of that society, in which its culture, or interpretive arguments of that culture, plays one important role alongside with other factors. Consider the case of a competition between personal autonomy or privacy and public order or health. Different societies may strike different balances of these values, and cultural perceptions of the relative weights of these competing values may play an important role in determining the outcome of the balancing. For example, in Hong Kong, residents are required by law to carry their identification cards in public area, and the police have the right to check the identity of any person under suspicion. Many people in Hong Kong accept this loss of privacy for the public interests in keeping a low rate of crime and illegal immigration. In Singapore, the police are empowered by law to test a person's urine for drugs if he or she behaves in a suspicious manner. If the result is positive, rehabilitative treatment is compulsory. This restriction of privacy for the sake of public order and health seems not unjustifiable to the public in Singapore. But these kinds of restrictions of individual freedom may be condemned if they occur in a society in which people

generally attach a very high priority to individual freedom. From a purely philosophical point of view, it is difficult to say that there must be one and only one acceptable balancing of these values. Personal autonomy may be a universal value nowadays, but different cultures may, legitimately, attach different weights to this ideal. I should stress, however, that any valid cultural argument needs to presuppose that people in a society have basic rights to freedom of expression and association. Culture is complex and changing, and no single individual or social group can be an authoritative spokesperson for the culture of a society, nor can the government. Without freedom of expression, it is difficult to know what people think or whether they really find a certain trade-off between values acceptable.

CONCLUSION

In this chapter I have argued that thick and thin accounts of human rights need not be mutually exclusive. A thin account captures the core, moral minima of human rights, which have wide appeal to people at home and abroad. A thick account, by contrast, captures the concrete shapes and details of rights—their norms, justifications, scope, priority, and enforcement mechanisms, which are developed in response to the local circumstances of a society. What we have learnt from the debate on Asian values and human rights is that both accounts are important, and they serve different purposes. Liberal critics often appeal to a thin account of human rights in their condemnation of gross violations of human rights in their own countries or abroad. And it is most appropriate for them to do so in such a context. The certain, universalistic language of a thin account conveys powerfully the stringency and intensity of the demands of human rights with which all governments in the world ought to comply. No particularistic arguments made by officials of Asian governments can legitimate their violations. But when we shift our attention from condemnation of violations to long-term thinking of the development of human rights mechanisms, norms, and jurisprudence in a particular society, the thickness of human rights will become salient. Each society should develop a thick account of human rights suitable to its own circumstances. I have argued for the legitimacy and significance of a thick account of human rights for Asian societies, an issue often unnoticed or played down in the debate on Asian human rights. The search for human rights norms implies the search for a coherent political morality, which ultimately implies a search for national identity. For many Asian societies this soul-searching task is a tall order. But it is unavoidable, and of utmost importance.

NOTES

1 For further reference to the Bangkok Declaration, see Hugo Stokke, Chapter 7, this volume.
2 Liu Huaqiu, 'Proposals for human rights protection and promotion', speech in Vienna, 1993, published in *Beijing Review,* 28 June–4 July 1993, p. 9.
3 Michael Freeman, Chapter 2, this volume.
4 Thomas Scanlon, 'Human rights as a neutral concern', in Peter Brown and Douglas MacLean (eds), *Human Rights and U.S. Foreign Policy*. Lexington Books, D.C.Heath & Company, 1979, p.83.
5 Or if they should, then this a not a significant matter.
6 See my 'The Asian challenge to universal human rights: a philosophical appraisal', in James T.H.Tang (ed.), *Human Rights and International Relations in the Asia-Pacific Region*. London: Pinter, 1995, pp. 25–38, and 'Hong Kong, Singapore, and "Asian values": an alternative view'. *The Journal ofDemocracy,* 8, 1997, pp. 35–48.
7 Michael Walzer, *Thick and Thin: Moral Argument at Home and Abroad*. Notre Dame: University of Notre Dame Press, 1994.
8 Even the Singaporean government, which has been an outspoken critic of the Western human rights diplomacy, does not deny universal human rights thinly conceived, in minimum terms: 'Diversity cannot justify gross violations of human rights. Murder is murder whether perpetrated in America, Asia or Africa. No one claims torture as part of their cultural heritage. Everyone has a right to be recognized as a person before the law. There are other such rights that must be enjoyed by all human beings everywhere in a civilized world'. Wong Kan Seng, 'The real world of human rights', speech by the Singapore Foreign Minister, Second World Conference on Human Rights, Vienna, 1993.
9 Michael Walzer, *Thick and Thin,* p. 6.
10 Ibid., p. 2.
11 Ibid., p. 60.
12 For arguments along these lines, see Michael Freeman, 'Human rights: Asia and the West', and Yash Ghai, 'Asian perspectives on human rights', both in James T.H.Tang (ed.), *Human Rights and International Relations in the Asia-Pacific Region*. London: Pinter, 1995.
13 The argument in this section draws partly from my 'Hong Kong, Singapore, and "Asian values": an alternative view', pp. 37–41.
14 This view is indebted to Joseph Raz's interest theory of rights. See Joseph Raz, *The Morality of Freedom*. Oxford: Clarendon Press, 1986, p. 166.
15 See T.M.Scanlon, 'Freedom of Expression and Categories of Expression'. *University of Pittsburgh Law Review,* 40, 1979, pp. 521–528; Joseph Raz, *The Morality of Freedom,* p. 179.

16 Jeremy Waldron, 'A Right-Based Critique of Constitutional Rights'. *Oxford Journal of Legal Studies,* 13, 1993, p. 30.

17 Jeremy Waldron, *Nonsense Upon Stilts*. London: Methuen, 1987, pp. 177–183.

18 See Joseph Raz, *The Morality of Freedom,* pp. 169–170.

19 For a good discussion of the complexity of these issues of freedom of expression, see T.M.Scanlon, 'Freedom of Expression and Categories of Expression'.

20 Ronald Dworkin, *A Matter of Principle*. Cambridge: Harvard University Press, 1985, p. 357.

21 Paternalism says that it is a good reason (though not necessarily a sufficient reason) for the state to prevent one from causing harm to oneself. Moralism says that it is a good reason (though not necessarily a sufficient reason) for the state to prevent people from committing moral evils or to help maintain morally worthy practices. Perfectionism says that the state should promote valuable practices and ways of life. Non-coercive perfectionism says that the state should use only non-coercive means to pursue the goal, e.g. education, subsidy, tax exemption, etc. Neutrality opposes perfectionism, in that it requires the state not to make decisions on the basis of any particular conception of the good life.

22 Michael Freeman, Chapter 2: Conclusion, this volume.

23 J.G.Merrils, *The Development of International Law by the European Court of Human Rights*. Manchester: Manchester University Press, 1988.

24 For more detailed arguments, see J.A.Andrews, 'Human rights: a common or a divisive heritage?'. *Thesaurus Acroasium,* Vol. XXI. Institute of International Public Law and International Relations of Thessaloniki, 1994, pp. 72–90; and Joseph Chan, 'The Asian challenge to universal human rights', pp. 33–34.

25 J.A.Andrews, 'Human rights: a common or a divisive heritage?', p. 78.

26 Garry Roden, The inlet-nationalization of ideological conflict: Asia's new significance'. *The Pacific Review,* 9, 1996, pp. 328–351.

27 Michael Freeman, Chapter 2: Conclusion, this volume.

28 David Hitchcock, *Asian Values and the United States: How Much Conflict?* Washington, D.C.: Center for Strategic and International Studies, 1994.

29 Yash Ghai, 'Are human rights cultural specific?', manuscript, 1997, p. 9.

30 The point is forcefully argued in Michael Freeman's contribution to the present book.

4
Once Again, the Asian Values Debate: The Case of the Philippines

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Part of the resistance to the Universal Declaration of Human Rights and other international rights instruments springs from the current 'Asian versus Western values' debate. Whether contrived by self-serving governments, or genuinely believed in by proponents of Asian values, or spurred by universalistic claims based on narrow Western interpretations, the arguments against the current international human rights regime merit serious—and sober—discussion. The basic premise of these arguments is that international agreements and standards on human rights are not acceptable to Asia for a number of reasons.

GROUNDS FOR REJECTING INTERNATIONAL STANDARDS

First, the international human rights regime is largely the product of Western thought and tradition that do not apply to Asian peoples and cultures, which have different, home-grown values of their own. Among these Asian values are the greater importance given to the community than the individual and the desire for harmony and order, in contrast to the West's individualism and 'exuberant' freedom that threatens to rip Western social fabric apart.

Second, the universal standards overemphasize civil and political rights at the expense of economic, social and cultural rights and thus do not sufficiently cover the expanse of human rights as derived from the needs of developing states and the cultural contexts in which they operate. One Asian view is that economic development takes precedence over all other rights, especially political rights and freedoms. A variant recognizes the value of civil rights but argues nonetheless that these can wait until a certain level of economic development is achieved.

A third reason arises not so much from international human rights instruments as from their use as yardsticks by Western governments which insist on the observance of human rights as a condition of aid or

trade. In this connection, some Asian governments assert that the jurisdiction over human rights is wholly theirs as an exercise of national sovereignty.

Except for the third, the first two reasons were put forward by the Marcos dictatorship in defence of its brazen disregard of the rights of the people. I say except for the third because despite numerous documented cases of human rights violations, the government of the United States remained the dictatorship's most ardent political, military and economic ally, until the US government realized that the martial law regime was on its way out.

In this chapter I shall examine these arguments from the point of view of the Philippine experience, partly in response to the belief that the debate over Asian values and internationally accepted norms of human rights is one between East and West. That may be so, but it is also one between Asians: Asian governments and the people, as in the case of the Philippines during the dictatorial regime; or, as in the solidarity movement of Filipino human rights groups and the people of East Timor, two neighbouring Asian peoples opposed to foreign domination by another close by. I call attention to this point because most proponents of Asian values prefer to gloss over grave differences in perspective among Asian peoples or between Asian peoples and their governments.

EXAMINING THE PHILIPPINE CASE

One could of course argue, as some superficial analysts of the Philippines have, that the Philippines would make a poor case study in this debate because it is so Westernized that it has lost its Asian soul. This view is bolstered not only by the Christian legacy of more than three centuries of Spanish rule (a stark contrast to Asia's Hindu, Buddhist and Islamic traditions), but intensive Americanization since the turn of the century. How then can the Philippines reflect the Asian mind or character, let alone speak on its behalf?

But this precisely is my second reason for examining the arguments from a Filipino standpoint. The Philippines is proof that there is no one Asian set of values but many; that diverse as they are, Asians do have certain things in common. But Asia is not and has never been a cultural monochrome (for that matter, neither is the West); and decisions as to what are or are not Asian values are as much dictated by tradition as by power relations within Asian societies.

Moreover, among the countries in Asia, the Philippines is often cited as the late twentieth-century showcase of democracy, having evicted the Marcos dictatorship through the power of popular protest. While the rest

of the countries in the region prefer to describe their modes of governance in other ways, the Philippines unabashedly calls its own system democratic. So secure is this democratic foundation that very recently the Philippine government welcomed the state visit of Burma's leader, Gen. Than Shwe, hoping to 'teach' him a lesson or two on democratic governance. Some Filipinos, of course, doubt whether such 'constructive engagement' will work. Why, in the first place, should the Philippines welcome him? Besides, what can the present government show by example when certain progressive measures adopted in the aftermath of the 1986 revolution (such as agrarian reform and even some guarantees on civil rights) have gradually been whittled away?

For these same reasons, however, it makes sense to use the Philippines as a case study. Life had been experienced under authoritarian rule and the Filipinos now live in an imperfect democracy—one still in transition—whose direction the people can steer through organized, collective action.

WESTERN STANDARDS AND ASIAN VALUES

Let me then examine the arguments in favour of Asian values, one by one. First, that notions of human rights as spelled out in international covenants do not apply to Asia because they are Western in origin and orientation; and corollarily, that Asia has its own values which are poles apart from those of the West. As Lee Kuan Yew explained, values are learned differently in Asia and the West, and in Asia, material necessities come first and foremost.[1] More recently, Singapore Prime Minister Goh Chok Tong declared that by voting for the People's Action Party in the 1997 general elections, the electorate rejected 'Western-style liberal democracy and freedoms [and] putting individual rights over that of society'.[2] Mr Goh was not actually being very original. Mr Marcos used to argue in the same way. Western-style democracy, he said, was not appropriate to the Philippines; hence the need for 'constitutional authoritarianism' (his pet name for martial rule).

In fact, or at least on paper, most Asian governments, even the authoritarian ones, accept international human rights standards. In the Bangkok meeting in 1993, for example, the ministers and representatives of Asian states 'reaffirm [ed] their commitment to the principles contained in the Charter of the United Nations and the Universal Declaration on Human Rights…'[3] In this sense, again on paper, there is no debate about whether or not to accept international standards. Asian governments officially have.

But the concern lies in part with the particulars: how these rights fit in with local traditions and religious and other practices. Here the Asian

ministers 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]

From this concern emerges the hypothesis that because rights concepts are more naturally grounded in culture than in international documents (which tend to be arrived at artificially), the resulting concepts may not be all that complementary to one another. Given the cultural specificity of rights, Asian peoples cannot therefore be expected to uphold all the rights provided by international standards. Culture thus provides the reason (or the excuse).

It is here the danger lies, for culture is a powerful tool of social control and can be politically manipulated. Singapore's National Ideology, for example, places a premium on '[p]utting the interests of society ahead of individual interest… If we had insisted on our individual rights and prerogatives, and refused to compromise these for the greater interests of the nation, we would have restricted the options available for solving these problems…'[5] The assumption is that culturally, individualism is more Western than Asian, while community and society are more Asian than Western. A related implication is that government and society (or community) are one and the same thing. That this notion conveniently lends itself to authoritarian rule is obvious.

ASIAN FAMILISM AS THE ANSWER TO WESTERN INDIVIDUALISM

Consider the argument that because the community in Asian societies has prior claim over the individual, the larger good is more important than individual rights. In the Philippines, as anthropologist Fernando Zialcita points out, 'community' tends to mean one's small circle of family and friends rather than the larger community consisting of others not known or related to one's family.[6] The family, rather than the individual, defines notions of public good, as the 1994 Survey on Contemporary Philippine Values suggests. Nearly 80 per cent of the respondents in that survey agreed that '[t]he needs of the family and not the larger majority are the most important consideration in our decisions in life'.[7]

Hence, rather than individualism as identified with the West, the Philippines has what one educational anthropologist calls a 'familistic-individualistic' orientation marked by a seeming 'inability to transcend family and self interest in favour of the local and national community'.[8]

In effect, the societal actors are not the individual and the community but the family and the community. If Asian governments claim that in the West the individual precedes the community, it appears that in Asia, or at least in the Philippines, family interests do come before the community's. Even among urban middle-class families where kin-based alliances have weakened, community solidarity, according to a recent study, is generally low.[9] In this sense, therefore, the communitarian argument falls flat on its face or takes on an entirely new—and different—meaning.

Family dynasties are in fact commonplace in the Philippines—as in the rest of Southeast Asia. A study of the 9th House of Representatives (the lower chamber of the Philippine legislature) finds 'a web of interlocking family, business and professional connections' among the members of the House and between them and the country's elite. For example, at least two out of three House members have at least one relative in public office, and at least one in three descends from a long-time political clan.[10] Families (the Marcoses, the Suhartos) easily identify the Southeast Asian political elite as well as key business interests (the Philippine Ayalas, Lopezes and Concepcions, the Kwoks of Malaysia), and even trade unions (in the Philippines the leadership tends to pass on from father to son). Thus when Asian governments justify their rejection of universal (individual) rights on the grounds that Asian values accord more importance to the community than the individual, one wonders which community (or family) they actually mean.

Yet even this family-centredness is subject to manipulation by the state. Applying the metaphor of the nation as a large family with the chief executive as the patriarch, Mr and Mrs Marcos used the title of *Ama* (father) and *Ina* (mother) *ng bayan* (of the nation/people) to project national cohesion and closeness with the people.

CULTURAL SOURCES OF HUMAN RIGHTS

Furthermore, the cultural basis or sources of human rights must be identified. Which culture or religion is being referred to? Certainly one cannot proceed from the assumption of a single national culture—there is no such thing in Asia—or even a single Asian culture, or one that is static. To speak of Asian values in such a sweeping manner denies the reality of multi-ethnic, multi-linguistic communities all over Asia, each with its own tradition, and most having experienced some form of marginalization under both colonial and domestic rulers.

In the Philippines today, for example, there are still 'whole' communities with very strong oral traditions, where most aspects of life

are integrated rather than compartmentalized. There are, too, communities that are 'mixed' (still influenced by tradition but exposed to formal structures such as schools, media and elections); large multi-ethnic urban poor communities; and landless agricultural workers in the countryside.[11] Each type of community has its own culture, as derived from the community's ethno-linguistic affiliation, principal livelihood activity and social relations. The tragedy is that when these communities are dislocated owing to official development (or modernization) programmes, Asian governments rarely apply their communitarian rhetoric of rights.

Even when the cultural or religious source of human rights can be identified, which interpretation is to be adopted? Esposito, for example, points out that like believers in other faiths, Muslims vary in their understanding of Islam.[12] Moreover, religious perspectives, too, change over time and do not apply to all of the population, a lesson that Catholic-dominated Filipino society has had to learn in dealing with Muslim Filipinos. The interpretation of cultural sources of human rights is not simply a question of reading the texts. In practice it boils down to a question of power. Who interprets these texts? And who decides whether the interpretations are right or wrong, acceptable or unacceptable, legitimate or deviant? Whose views are reflected or represented and how much (or how little) room is there for individual or popular (collective) opinions?

The answers to these questions decide practical outcomes which directly affect the lives of human beings, such as the case of women in Islamic societies, the freedom of social-political action by ordinary citizens, the arrest and detention of activists, and so on. The point is, as Abudullahi explains, 'while culture can and should…be a source of human rights, it can also be used as a source justifying violations of rights, and indeed of challenging the principle of the universality of human rights itself'.[13]

Should this happen, culture becomes a weapon of the state, a more powerful, certainly more lasting tool, than the force of arms. In such a situation proponents of human rights find themselves derisively labelled as creatures of the West, a not unsubtle term for betrayal of one's culture. Asian women who struggle for gender equality are often victims of this label.

It is one thing, then, to tout Asian values as a defence of some Asian governments' practice of human rights. It is quite another to give substance to the rhetoric. And perhaps this is the problem. Rather than a serious look into indigenous cultures as a means of enhancing the legitimacy of

human rights, as Abdullahi suggests,[14] the Asian-values-human-rights debate is primarily a power play between states.

INDIGENOUS CONCEPTS OF RIGHTS AND JUSTICE

Suppose we veer away from this arena of power, what would we find? First, we would find that that culture is indeed a more 'natural' source of values than government-approved accords. We would also agree that certain rights, such as the right of indigenous communities to their ancestral domain, are more specific to some cultures than to others. But we would also find that tradition and culture, as products of imperfect beings, are themselves incomplete and imperfect. Certainly we would not conclude that all Asian values and universal human rights doctrine are inherently incompatible on the one hand, or that cultural practices are always just or conducive to human rights, on the other.

Sometimes local cultures are compatible with international standards or, as an analysis of the Filipino concept of justice shows,[15] local cultures can even enhance the Western notion of rights. This analysis, which was done sixteen years ago when the Asian values debate was not yet in vogue, examined the idea of justice from the standpoint of language, in particular, the Filipino words for right, justice, law and privilege. Several Philippine languages use the same root for the word 'justice' (*katarungan* from *tarong*), meaning 'upright, appropriate, correct'. The reference to appropriateness also includes the notion of equity for which there is no Filipino word. The word for 'right' *(karapatan)* comes from *dapat*, which also means 'fitting or appropriate'. Thus the Filipino words for 'right' and 'justice' are similar in meaning.

In contrast, the word for 'law' *(batas)* means 'order, command', which is entirely different from the word for 'justice'. The distinction implies that the language recognizes that the law may not always be just. Also, the Filipino word for 'power and authority' is the same *(kapangyarihan)*, although 'strength or naked power' are more aptly described by the word *lakas*, and 'authority' by the word *kapangyarihan*. But there is no Philippine word for 'privilege'; hence the word *pribilehiyo* borrowed from Spanish. The study concludes:

> …our language establishes that there is a Filipino concept of justice; that it is a highly moral concept, intimately related to the concept of right; that it is similar to, but broader than, western concepts of justice, for it embraces the concept of equity; that it is a discriminating concept, distinguishing between justice and right, on the one hand, and law and argument, on the other; that its

fundamental element is fairness; and that it eschews privilege and naked power.[16]

This type of internal cultural discourse, to borrow Abudllahi's term,[17] is a necessary step in appropriating the concept of human rights. It may not always point to a congruence between indigenous ideas and internationally accepted norms but it may well stimulate further discussion that probes into those aspects of culture that nurture human rights, for example, and those which do not.

DUTIES INSEPARABLE FROM RIGHTS

The Asian values debate also poses a dichotomy between rights and duties, the assumption being that one is self-centered and the other, community oriented; that one leads to a fractious, contentious, atomistic society of individuals, while the other creates harmony, social order and peace. This dichotomy is reflected in officially prescribed Philippine school textbooks, for example.[18]

In fact, the question of balancing rights and duties, or individual autonomy and the public good, is not peculiar to Asia. All societies must grapple with this question and the answers lie as much in the substantive issues (what is at stake) as in procedural ones (the process of arriving at decisions or resolving conflict). One lesson from the Philippine experience is to treat rights as duties and duties as rights. It is one's right as well as duty, for instance, to assert one's being in the face of state or other forms of oppression, just as it is one's duty to respect the rights of others. Martial law also taught us that not all laws are good or just and that there are manifold, creative ways of resisting injustice. The ouster of the dictatorship was as much a right of the people as an obligation, even if it took us fourteen years to fulfil this realization. The treatment of rights as obligations is also reflected in the 'Declaration of the Basic Duties of ASEAN Peoples and Governments' by the Regional Council on Human Rights in Asia.[19] Note the Council's use of the term 'duties' rather than 'rights' to refer to the set of entitlements we are obliged to assert or exercise.

HUMAN RIGHTS AND ECONOMIC DEVELOPMENT

The second argument in favour of Asian values is that international rights norms stress political rights too much, while tending to ignore the pressing need of Asian countries to develop economically. A dangerous corollary is the thinking that civil and political rights actually

retard economic growth or, stated more diplomatically, can be postponed until such time that the economy is stable enough to allow for such political freedoms. The motto seems to be one right at a time: economic first, because Asia is poor and cannot really afford all the discussion and debate that makes for a democracy; and then political rights later, when all is presumably well (however long that might take).

The dichotomy between human rights and economic development, or more precisely, the right to develop, is artificial and untrue. As a Filipino human rights lawyer put it: 'True, a hungry man does not have much freedom of choice. But equally true, when a well-fed man does not have freedom of choice, he cannot protect himself against going hungry'.[20] But the Marcos dictatorship peddled this dichotomy in order to sustain itself in power. This, too, was the essence of Mr Lee Kuan Yew's message to Filipinos when he recently visited the country, a message so poorly received that even President Ramos had to publicly reject it. Recalling 'our ill-fated flirtation with authoritarianism not so long ago',[21] Ramos explained that adopting the Singaporean model was out of the question.

Unfortunately, experience is not always the best teacher. Only recently, some Filipinos from the private sector and others in the president's circle of power were pushing for the amendment of the Constitution so as to extend the president's term. Their justification: so that Ramos could pursue his economic development programmes.

The belief that political rights stand in the way of economic growth is based really, as noted Harvard economist Amartya Sen points out, on very selective statistics, rather than on a general statistical test over the wide-ranging information that is available. We should not take the high economic growth of South Korea or Singapore in Asia as proof that authoritarianism does better in promoting economic growth any more than concluding the opposite on the basis of the fact that one of the fastest growing countries in the world—Botswana—with the best consistent record of economic growth in Africa has been a real oasis of democracy in that continent.[22]

Sen, who has written extensively on inequality, further argues that apart from the statistics, causal relationships must be considered in explaining economic growth, such as the use of international markets and high rates of literacy. He adds that it is necessary to look into the link between political rights and the prevention of major social disasters. As an example, he cites the fact that no serious famine has ever taken place in a country with a democratic government and a fairly free press, whether in a rich country like the United States or a poor one like Zimbabwe. In other words, the official response to a social or economic crisis also depends on the pressure the people bring to bear on

government, which requires the exercise of such political rights as freedom of expression, of protest, and the like.

POLITICAL RIGHTS SUPPORT ECONOMIC RIGHTS

Of all Sen's arguments, that on the constructive role of political rights has been most applicable to the Philippines. He says:

> Political rights, including freedom of expression and discussion, are not only pivotal in inducing political response to economic needs, they are also central to the conceptualization of economic needs themselves. And this constructive role can be seen to be a central aspect of the importance of elementary rights that make it possible for citizens to interact and to form values and priorities.[23]

Without political rights, government alone (perhaps along with powerful business interests) would determine what the economic needs of the people are, and who would benefit from and bear the cost of development programmes. Yet all these directly affect communities in the development site more than officials (and businessmen) who live in the capital. What economic rights would local communities enjoy, then, without the political right to have some say in the decision-making process?

The dichotomy between political and economic rights increasingly appears as an argument of the ruling elite more than of any other sector of society. From the standpoint of Filipino farmers, in the context of Philippine history and its long tradition of peasant rebellions, there is no wedge between political freedom and economic rights. A Filipino revolutionary soldier captured during the Philippine-American War explained that he wanted independence because 'there will be no labour… and no jails and no taxes'.[24] In the words of Salud Algabre, a leader of the 1930 Sakdal uprising in Central Luzon,

> Freedom was the solution… There was no other answer to the abuses and the poverty. With independence the leaders would cease to be powerful. Instead, it would be the people who were powerful. The people would have their freedom. We would have our own lands; they would no longer be the monopoly of the proprietarios [landowners] and of the government officials. As it was, we had nothing.[25]

Land and basic needs were thus imperative but could not be had without such political rights as sovereignty, the right to decide one's future, and so on. Colonial authorities, however, played on this dichotomy to suit their own interests. 'Independence can wait', the Americans told us, 'until you Filipinos are ready for it. In the meantime, allow us to develop your economy'. The Marcos dictatorship made a similar offer. 'Do you prefer to be free to speak out, for example, or to get rich?' We were not entitled to say we wanted both. The choice between freedom and poverty is so artificially contrived that either way, the people lose. The worst cruelty yet is to use the poverty of the people as a weapon against it.

OFFICIAL PERSPECTIVE

A review of the statements made on behalf of Asian values shows that nearly all have come from heads of Asian states. In 1993, for instance, Indonesian Foreign Minister Ali Alatas told the Vienna World Conference on Human Rights,

> In Indonesia, and perhaps in other developing countries as well, we cannot take an entirely individualistic attitude towards human rights because we cannot ignore the interests of our society and of our country. We believe that since every person has the inherent nature of being both an independent individual and a member of society, his existence, his rights and obligations are meaningful, or, to use the language of Article 29 of the Universal Declaration of Human Rights, 'the free and full development of his personality is possible' only in the society to which he 'has duties'…[26]

Singapore official Bilahari Kausikan maintains that even a 'good' government has to limit political rights in order to preserve social order. For example, arbitrary detention is a necessary tool in the fight against military rebels or religious extremists; freedom of expression can be curtailed in order to prevent social or racial tension.[27] The statist overtones are obvious: public order, security of the nation, national discipline, and so on. Clearly these are Asian governments' views, not (necessarily) those of the people they supposedly represent. In fact, Asian human rights NGOs issued a counterpart declaration to that of the Asian governments' meeting in Bangkok in 1993. The NGO statement asserts the universality of human rights and, while accepting cultural diversity, objects to cultural practices that detract from universal rights norms. Furthermore, the NGOs maintain that international concern for human

rights is not an infringement of national sovereignty as some Asian governments aver.[28]

RIGHTS AS A CONDITION OF AID AND TRADE

The third argument against a universal rights regime is its application as a condition for assistance from or trade with the West. Such action has been viewed as foreign intervention. 'Despite its international aspect', says the government of China, 'the issue of human rights falls by and large within the sovereignty of each state'.[29] As stated in the Bangkok Declaration, Asian governments emphasize the principle 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).[30]

More bluntly, the Declaration states: 'Discourage any attempt to use human rights as a conditionality for extending development assistance'.[31] The heads of non-aligned governments similarly declared that: 'No country, however, should use its power to dictate its concept of democracy and human rights or to impose conditionalities on others'.[32]

No country, however small, takes kindly to overbearing attitudes of more affluent and powerful nations. The Philippines has long been subject to this type of mentality from the United States government, its colonial mentor on democracy. But there is, too, an element of hypocrisy in the protest of some Asian governments against the conditionality of human rights. For example, to retaliate against the Philippines for 'allowing' the Manila conference on East Timor in May 1994, the Indonesian government cancelled twelve joint-venture projects valued at more than $200 million and arrested about 250 Filipino fishermen for allegedly fishing in Indonesian waters. Is this now the Asian version of sanctions but this time for upholding human rights?

The fact is that grave responsibility is attached to a country's membership of the community of nations, and one responsibility is the duty to respect the fundamental rights of humanity and human dignity anywhere in the world. When a government publicly or jointly pledges with other countries to uphold the Universal Declaration, for example, as most Asian governments have, it is accountable first and foremost to its own people. But it must also answer to the larger community. And when a government blatantly violates the rights of its citizens, it certainly should not be the object of outside praise. That is why US Vice-President George Bush's admiration for Mr Marcos' 'adherence to democracy' after he lifted martial law in name in 1981 remains etched in our collective memory as an example of hypocrisy at its worst.

APPROPRIATING THE UNIVERSAL DECLARATION

In the case of the Philippines, internationally accepted norms have been a source of refuge for victims of human rights abuses. During martial law, for example, the international covenants served as an effective means of conscienticizing the people about their rights. The line of reasoning in the popular awareness campaign was simple. According to these covenants, rights are entitlements guaranteed to persons simply because they are human. Everyone in the world ought to enjoy them. Why should Filipinos be entitled to less, because they are Asian (or poor), than others who are not? Because of these charters' international acceptance, the dictatorship could not declare them seditious, although it jailed proponents of human rights for 'subversion'.

Equally important, the human rights documents were our weapon against a dictatorship that was increasingly conscious of its image abroad. What other measure could we use? The martial law constitution was in place; the legislature was a farce; and the dictatorship controlled the Supreme Court. Clinging to an image of benevolent authoritarianism, the regime could not dismiss the UN Declaration and other covenants. The international rights standards helped expose before the Filipino people and the world the true nature of the martial law regime.

The truth is that in human rights discourse, one cannot get away from the Universal Declaration, however much some might vilify it as the product of Western thinking. Even from a pragmatic viewpoint, as Abdullahi advises, it is far better to improve the present rights regime 'if only as point of departure and framework of critique', than to replace it altogether with a new one.[33] The challenge to Asian peoples is to improve upon the Universal Declaration which, after all, is neither complete nor perfect. And here Asians can make a large contribution. The reverence for nature and the environment, the struggle against poverty and equity as the true measure of development, indigenous rights such as the right of cultural communities to their ancestral domain, are some of the areas in which Asians, by virtue of their experience and tradition, can genuinely contribute. Some of these rights may contradict Western (and capitalist) notions of property. But just the same Asians must place them in the agenda of dialogue because the issues they represent are real and meaningful to Asian peoples.

Moreover, if Asian peoples were to infuse their own sense of values into the Universal Declaration, they could actually reshape international charters in a way that would make their countries part of the community of nations, sharing common standards, yet retaining each their own culture and identity. The 1983 'Declaration of the Basic Duties of ASEAN

Peoples and Governments' was precisely an attempt to formulate standards from an Asian perspective. 'Inspired by Asian reverence of human life and dignity which recognizes in all persons basic individual and collective rights, rights that it is the duty of other persons and of governments to respect', the authors of the declaration interpreted fundamental rights provided in international rights instruments in the context of Asian experiences. For instance, the Declaration describes the right to develop as 'independent development' in obvious contrast to colonial and neo-colonial development programmes foisted on poor nations. According to the Declaration, this type of development is to be achieved through the appropriate use and development of indigenous or foreign technology, to achieve the optimum and just use of domestic resources in order to meet the basic needs of the people and to ensure an improvement in their quality of life, in accordance with goals and processes freely chosen or approved by the people themselves.[34]

WHY ENGAGE IN THE DEBATE?

Perhaps the question we ought to ask ourselves is why we take part in the Asian values debate at all. From the standpoint of Asian governments, indigenous culture provides the justification for their mode of governance ('soft' authoritarianism), or so they say. From another point of view, the debate is a reaction to what a Singapore newspaper calls the 'Asian quest for rediscovery of self. As Dr Dewi Anwar of the Indonesian Institute of Sciences puts it, 'We are exasperated at the cultural superiority of the West when East Asia is doing so well economically. We want to assert our identity and we want it recognized'.[35] This remark was obviously made before the currency debacle in the region.

Combining these explanations provides another, more potent reason for engaging in the Asian-values-human-rights debate. We can challenge and disprove, if need be, official notions of human rights more effectively if we delve deeply into our cultures. At the same time, we can discover more about ourselves by researching into our languages and traditions, oral and written, and other aspects of our culture. Here human rights education and research has a distinctive role:

> If human rights teaching then interprets the rights set out in the Universal Declaration in terms of these native concepts, points out how such concepts may differ in content, emphasis or priority from the Universal Declaration, and explains the differences which will, in most cases, have resulted from responses to different problems or from the different level of development which was arrested by the

advent of colonialism, human rights education would promote national identity, lead to rejection of cultural dependency on developed countries, and motivate more arduous, self-reliant and autonomous development efforts.[36]

The cultural material exists; it merely needs to be examined and re-examined. A recent study of the indigenous concepts of *umili* (roughly, citizen) and *wayawaya* (freedom) in the northern provinces of Luzon suggests a whole range of indigenous notions of rights as individuals and as members of the *ili* (community). Rather than juxtapose the dualism of the individual as self and as community member, and the possible contradictions that may arise in the exercise of these roles, these indigenous concepts skilfully blend the two.[37]

Such studies do suggest that there are merits in both the rights thesis and the communitarian concept of rights.[38] The strength of the first rests on its belief in the humanity of all beings as the springboard of universal norms of behaviour, the value of individual autonomy and the equality of all persons. On the other hand, the value of the second thesis is its assertion that individuals belong to a distinct historical and social context in which communities are sources of shared values, and where the collective good is important.

However, in applying the communitarian framework, the notion of community must be clear. From a rights perspective, the community cannot simply be confined to the family or kinship network, but must refer to the larger community at both the local and national levels. Furthermore, the framework should also recognize that power relations at various levels of society mediate the application of culture to the practice of human rights. Culture can liberate; but it can also oppress. From the standpoint of human rights, the only acceptable option is the first.

Rather than choose one perspective or the other, the appropriate answer to the ongoing debate is to apply both the rights and the communitarian theories as frameworks of analysing indigenous cultures in order to enhance, not to detract from, the legitimacy of human rights.

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5

Human Rights and Asian Values in Vietnam

Vo Van Ai

The controversy over Asian values and universal human rights contains a number of paradoxes and contradictions. Perhaps nowhere are these contradictions more apparent than in the case of Vietnam. The first paradox is that Vietnam invokes Asian values to counter Western ideological hegemony and argues the incompatibility of 'Western imposed' human rights with Vietnamese cultural traditions. Yet its own political system is based on a fundamentally Western ideology, that of Marxism-Leninism, to the exclusion of all other forms of political expression and thought. Indeed, the political monopoly of this Western doctrine is enshrined in the Socialist Republic of Vietnam's 1992 Constitution (Article 4) : 'The Vietnamese Communist Party, acting upon the Marxist-Leninist doctrine and Ho Chi Minh thought, is the force leading the State and society'.

The second paradox is that it is precisely the millennial traditional and cultural values extolled by Vietnam's leaders abroad that are being stifled at home in the name of development and political stability in Vietnam today.

Vietnam first entered the 'Asian values' debate at the Bangkok Regional Preparatory Meeting to the Vienna World Conference on Human Rights in 1993. Although Vietnam had formally accepted the principles of universality by acceding to UN human rights instruments such as the International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights in 1982, its delegation nevertheless stated at Bangkok that 'there exists no ready-to-serve formula for human rights that can be imported or, worse still, imposed successfully from out- side'. Along with 49 Asian countries, Vietnam signed the 1993 Bangkok Declaration which emphasized the principles of 'non-interference in the internal affairs of States, and the non-use of human rights as an instrument of political pressure' and stressed the 'significance of national and regional particularities and various historical, cultural and religious backgrounds' to justify Vietnam's exception to the universal rule.

Although this was the first time that Vietnam used the 'Asian values' theory as a conceptual argument to challenge the West, the Vietnamese government has long held its own perception of human rights which differs markedly from the universal view. This paper seeks to examine both official and popular perceptions of human rights in Vietnam, the conflicting imperatives between the government's international human rights discourse and its internal repression of dissent, and the relevance of the Vietnamese cultural heritage—especially Buddhism—to the development of a contemporary, dynamic human rights culture in Vietnam.

HUMAN RIGHTS AND INDEPENDENCE

The idea of human rights was introduced to Vietnam at the beginning of the twentieth century, initially by way of the French, who familiarized Vietnamese intellectuals with the works of Voltaire, Montesquieu, Jean-Jacques Rousseau and the 1789 Declaration of the Rights of Man, and later through translations of Western thinking published in China and Japan. Perceived as a means of emancipating the individual, human rights became a central theme in the Vietnamese movement for independence from French colonial rule in the decades of the 1910s and 1920s. The first Vietnamese intellectuals to seriously examine this concept were Phan Boi Chau and Phan Chu Trinh, both of whom advocated 'the right to life, freedom and human rights for the Vietnamese people', although they differed on the methods by which this should be achieved. Phan Chu Trinh adopted a non-violent, legalist position, contending that non-violent advocacy within French colonial structures could bring about human rights through a process of education and reform. Phan Boi Chau chose the path of resistance, firmly convinced that human rights could never be achieved under the French colonialists' obscurantist policies which reduced the Vietnamese people to a state where they 'have ears but are forbidden to hear, have eyes but are forbidden to see, have arms and legs but are forbidden to move, have minds but are forbidden to think…'[1] His vision of human rights was universal, and he believed that one day 'Human Rights will rise like a golden sun, flooding the world with light'.

Inspired by this example, many Vietnamese patriots adopted the human rights discourse in the 1930s to denounce political repression under the colonial regime. Articles calling for civil and political rights such as press freedom, worker rights and the right to set up trade unions were published in independent newspapers such as *Tiêng Dan* [The People's Voice], *Tiêng Chuong Re* [The Cracked Bell], *Dân Chung* [The

People] in central and southern Vietnam. A particularly forceful petition denouncing inhuman detention conditions in Vietnam and calling for the release of political prisoners was addressed to the French Overseas Territories' Inquiry Commission by a prominent revolutionary figure, Huynh Thuc Khang in 1937.[2]

The Vietnamese Communists also adopted the discourse of human rights during this period, but primarily as a weapon to attack the French colonialists or to attract popular support to the international communist cause. Their prime objective was the establishment of a communist state, as can be seen by the peasants' demonstrations in Nghe An and Ha Tinh provinces in 1930–1931 which were portrayed as the 'Nghe Tinh Soviets'.[3] Ideologically, the Vietnamese Communists rejected the idea that human rights belong to all people on the basis of human nature. They believed that rights were contingent on the class background, political opinions and revolutionary contribution of each individual, and that they reflected the objective economic and social conditions of each society. As Marxists, they considered civil and political rights as 'bourgeois'. As pragmatists, they perceived human rights in general as cumbersome impediments to their political goals. The people's ultimate right, in the Vietnamese Communists' view, was the right to national independence. Consequently, the establishment of an independent Communist state became synonymous with the fulfilment of human rights.

This concept is enshrined in Ho Chi Minh's 'Declaration of Independence' of the Democratic Republic of Vietnam pronounced on 2 September 1945 which opens with the phrase from the 1776 American Declaration of Independence 'All men are created equal…' and continues: 'if we enlarge the sphere of our thoughts this statement conveys another meaning: All peoples on the earth are equal from birth, all peoples have the right to live, to be happy and free'. An article in the official *Tap Chi Công San* (Communist Review) on 'The Declaration of Independence and the problem of Human Rights' analyses the key importance of this statement in the Vietnamese Communists' perspective:

> By 'enlarging the sphere of thought' in such an original way, Ho Chi Minh established a totally logical and fitting link between individual rights and the rights of all peoples. Since individual rights are self-evident and natural, thence peoples' rights are also natural. From there, He *[sic]* concluded that all imperialist forces aggressing or encroaching upon Vietnam are acting against nature and violating human rights as defined by the American Declaration

of Independence and the French Declaration of the Rights of Man. […] In regards to Vietnam, by establishing the parity between individual rights and peoples' rights as an irrefutable truth, Ho Chi Minh made an even more positive affirmation: that the creation of the Democratic Republic of Vietnam is self-evident and natural, for it emerges from the principles of human rights, and is approved of by history.[4]

Thus, the core of the Vietnamese Communists' human rights concept consists of the belief that the establishment of the Democratic Republic of Vietnam (now the Socialist Republic of Vietnam [SRV], since re-unification with the South), under the leadership of the Vietnamese Communist Party (VCP) is in itself the fulfilment of individual human rights. Consequently, all those who are at odds with the Communist State are violating the people's rights. This is the key argument for the legitimacy of VCP rule, and it justifies measures to suppress criticism and maintain the VCP in power at all costs.

This concept is also reflected in the SRV's legal framework. Although four different Constitutions have been adopted since 1946 incorporating various guarantees in the domain of human rights, the official legal journal *Luat Hoc* (Jurisprudence) commented that 'each constitution …is but the incarnation of the Party line and policies in a specific historical period, satisfies the needs of that stage, and must be suitable for the latter'.[5]

THE HUMAN RIGHTS 'DEBATE' IN VIETNAM : THE OFFICIAL DISCOURSE

Once Vietnam was united as the Socialist Republic of Vietnam on 2 July 1976 there was no 'debate' on human rights, in the sense of an exchange of ideas. Official discussion was no longer necessary, the VCP considering that the Vietnamese people were now free from oppression and had thus achieved their basic rights. Unofficial discussion was prohibited. In North Vietnam, virtually all discussion of rights was silenced during the post-1954 period with the repression of the Nhan Van —Giai Pham (Humanism—Belles Lettres), a movement for freedom of expression led by prominent writers and artists which, although similar to the Chinese 'Hundred Flowers' movement, was a spontaneous initiative on the part of writers and intellectuals, not a campaign orchestrated by the Party like its Chinese counterpart.[6] Debate within the Communist Party itself was further curtailed in Vietnam in the 1960s, with the arrest of hundreds of Communist Party members accused of 'revisionism', including several generals, colonels and top-ranking

officers from the People's Army, deputy ministers, editors of major official newspapers and even Ho Chi Minh's personal secretary, Vu Dinh Huynh. Some of these men, like Hoang Minh Chinh, former head of the Hanoi Institute of Marxist-Leninist Philosophy, were to spend the next 20 years in prison and under house arrest for questioning the orthodox Party line.[7]

Human rights were taboo in the official media, raised exclusively as a measure of rhetorical self-defence in reaction to international pressure or domestic unrest. These sporadic official pronouncements nevertheless give an insight into the Vietnamese leaders' position on human rights. On 26 February 1978, during an official visit to New Delhi, SRV Prime Minister Pham Van Dong clearly articulated his Government's view that the right to national independence took precedence over all other human rights considerations—a concept that Vietnam's leaders had never revealed to public opinion during the Vietnam war. Again, in 1979, in an attempt to defuse international outcry over the plight of Vietnamese boat people—notably the campaign launched by the Vietnam Committee on Human Rights in Paris with the support of French intellectuals such as Jean-Paul Sartre and Raymond Aron[8] to charter a 'Boat for Vietnam'—VCP spokesman Nguyen Khac Vien coined the expression 'economic refugees'[9] to justify this tragic exodus in which a million Vietnamese boat people perished on the South China Seas. But perhaps the most explicit and revealing official statement on human rights was the startling booklet entitled 'Vietnam: What human rights?' published by Hanoi's Foreign Language Publishing House in 1980.[10] Designed to provide a response to international criticisms of the detention and ill-treatment of dissidents in notorious 're-education' camps in Vietnam,[11] this booklet contained several articles which, as well as rebuffing foreign interference into internal Vietnamese affairs, argued that re-education was a clairvoyant and 'humane' policy. One article on 'Re-education Camps and Human Rights' even justified the practice of detention without trial: 'Re-education, not punishment—this is the fundamental difference between our system and that of other countries, where incriminated people are brought up before courts of law. By dispensing people from a court sentence, our system spares them from having a criminal record which would affect their whole lives, and could even have repercussions on their children…' Fortunately, in this particular case, the force of international pressure had positive results, for Vietnam later abandoned *de jure* legislation on indefinite detention for re-education—although *de facto,* many untried prisoners of conscience remain in jail.

New human rights language was incorporated into the official discourse during the late 1980s, when Vietnam embarked on its transition

towards a 'Socialist-orientated market economy' and revised aspects of its legal framework. The revised Criminal Code (1985) and Criminal Procedures Code (1989) incorporated new guarantees such as the right to presumed innocence and the compensation of victims. Nevertheless, far from providing increased human rights protection, the new legislation presented a real set-back to human rights, codifying the suppression of political and religious dissent under a whole chapter of 'national security' offences, many of which are punishable with the death penalty. With the introduction of the new Criminal Code, prisoners of conscience became common criminals, thus enabling Vietnam to declare before the UN Human Rights Commission in Geneva that 'there are no political prisoners in Vietnam'.

However, at the same time that the government adopted the language of human rights, it continued unabatedly to violate human rights in Vietnam. Modelling its policy on that of China, Vietnam has adhered to a discourse of double standards, combining human rights dialogue abroad with a policy of repression at home. Whilst expanding contacts with Western countries, participating in exchange programmes and inviting foreign delegations to visit the country, Vietnam has stepped up political controls on freedom of opinion and expression, introducing legislation such as Decree 31/CP on 'Administrative Detention' adopted in 1997 which gives Security Police extrajudicial powers to arrest and detain any citizens suspected of 'threatening national security' for up to two years without a court order. In a climate of increasing restrictions and control, the government has continued to imprison dissidents and stifle all moves towards a human rights dialogue. In the official media, all form of debate remains completely one-sided, dominated by the regime which maintains a strict monopoly on the circulation of information and ideas.

UNOFFICIAL MOVEMENTS FOR HUMAN RIGHTS

Of all the dissident movements in Vietnam, it was most of all the Buddhists, monks, nuns and lay-Buddhists of the independent Unified Buddhist Church (UBCV), who were the first to take up the language of human rights and inspire other movements to follow in their wake. The very first dissidents in the post-1975 era were twelve Buddhist monks and nuns who immolated themselves at Duoc Su Pagoda in Can Tho on 2 November 1975 to protest against violations of religious freedom and human rights. In 1982, after the UBCV was officially banned, many prominent Buddhists were arrested and sentenced to long prison terms; two eminent scholars, Prof. Thich Tue Sy and Dr Le Manh That, were condemned to death in 1988 (their sentences were later commuted to 20

years hard labour due to international pressure).[12] The UBCV Patriarch, Thich Huyen Quang and his Deputy Thich Quang Do were both sent into internal exile and placed under house arrest in 1982. Thich Huyen Quang remains under house arrest in Quang Ngai to this day, without any justification or charge.

Following the demise of Communism in the Soviet Union and Eastern Europe, a new wave of democratic activism broke out in 1989–1992. Dr Nguyen Dan Que founded the 'Non-violent Movement for Human Rights', Prof. Doan Viet Hoat and a group of activists circulated a modest bulletin with news on the democratic struggle, *The Freedom Forum*. At the same time, prominent South Vietnamese Communist Party veterans, revolutionary figures and several Generals and other top-ranking People's Army officers including Nguyen Ho, Ta Ba Tong, Nguyen Van Tran, La Van Liem and Lê Gian, formed 'The Club of Former Resistance Fighters' a movement which strongly criticized Party policies in its newpaper *The Tradition of Resistance*. In the North, liberal intellectuals and academics such as Phan Dinh Dieu and Ha Si Phu circulated essays calling for democratic freedoms and political reform. These appeals were indiscriminately silenced. The establishment critics escaped with relatively 'discrete' sanctions—Phan Dinh Dieu lost his job as Deputy Director of the National Centre of Scientific Research—but the Club of Former Resistance Fighters was disbanded, its newspaper banned and its leaders arrested.[13] Doan Viet Hoat and Nguyen Dan Que received harsh prison sentences of 15 and 20 years respectively.

The suppression of these unofficial movements for free expression and press freedom sparked off heated protests, especially amongst critics close to the Communist Party who had genuinely hoped that the VCP would take the initiative to instigate democratic reforms. In a petition to the Party written shortly before his arrest, Nguyen Ho, President of the Club of Former Resistance Fighters, a veteran labour leader and Party member for 60 years, wrote:

> I find it so hard to understand why, when the South (Cochinchina) was under colonial rule, Communists took advantage of the right to freedom of the press guaranteed in the metropolis (Imperialist France) to publish independent newspapers such as comrade Nguyen Van Nguyen's *L'Avant-garde (Tiên Phong)* or Nguyen Van Tran's *Le Peuple (Dân Chung)* in 1938. They didn't even have to apply for a permit, they just sent off a 'simple déclaration'. Whereas today, under the Socialist regime—the regime of freedom—former resistance fighters are not allowed to publish their own newspaper or even write articles, despite the fact that freedom of the press is

guaranteed by the Constitution as one of the citizens' fundamental rights. It's completely ridiculous![14]

After his release from house arrest, Nguyên Hô pushed his criticisms even further in a 50-page type-written booklet entitled *Quan Diêm và Cuôc Sông* [View-point and Daily Life] circulated unofficially in Vietnam. He charged the Party not only of betraying the people by violating human rights, but also of betraying the international community by acceding to human rights instruments such as the UN Universal Declaration of Human Rights, then blatantly violating this pledge. Worse still, he wrote, was the 'reign of terror' subsisting in Communist Vietnam:

> The Party always claims to be the vanguard in the people's movement for liberation, but throughout the decades it has been in power, the Party has dispossessed the people of their fundamental freedoms and democratic rights, plunging them in the darkest ignorance. From there, the Party has imposed a reign of terror all over the country, striking fear of the Party even into the hearts of veteran officials and cadres. The whole population lives in terror of the Party, exactly as they lived in terror of the emperors and feudal rulers of yore. This is why many people remain silent in face of the Party's mistakes. They dare not express their opinions because they are too afraid. This is the most devastating and harmful consequence of the totalitarian dictatorship in place in Vietnam today.[15]

Democracy, he stressed, is aspired to by all people. It is not the exclusive right of the English, the Americans or the French. The Party is denouncing Western concepts of democracy and freedom as a pretext to suppress the freedoms of its own people. Nguyên Hô challenged the Party to recognize its errors and take steps to put things right.

Other South Vietnamese Communist veterans such as Nguyên Van Trân, quoted in Nguyên Hô's Petition, echoed these protests in a monumental book of memoirs, *Viêt cho Me và Quôc Hôi* [Written for my Mother and the National Assembly] which was published privately by the author in Ho Chi Minh City in 1995 and immediately banned by the authorities. Looking back at his years of struggle, Nguyên Van Trân stressed the crucial importance of press freedom as the basis of all human rights: 'I can only say this: today, as in 1938, I devote myself to the struggle for freedom of the press, using freedom of expression as a thorn to prize out the thorns of human rights abuses embedded in society's flesh'.[16]

Unofficial discussion of human rights was silenced briefly after 1995 following the arrest of virtually all the Buddhist leadership, as well as a number of critics close to the Communist Party, e.g. Do Trung Hieu, Le Hong Ha, Hoang Minh Chinh and Ha Si Phu. But discontent remained widespread in Vietnam, and in 1997 protests erupted all over the country, notably in the northern province of Thai Binh and the predominantly Catholic districts of Dong Nai in the south, where scores of thousands of peasants demonstrated against corruption, official power abuse and the confiscation of land. Criticisms are also being voiced with increasing insistence today by liberal intellectuals and veterans of the VCP who are pressing the Party's new leadership to become the spearhead for change. In a series of extremely forthright statements and letters to the Vietnamese authorities issued in December 1997-January 1998, General Trân Dô, former Deputy Minister of Culture and Deputy Head of the Communist Party's Department of Propaganda, Phan Dinh Dieu, mathematician and former Head of the Information Institute, Hoang Minh Chinh, former Chancellor of the Institute of Marxist-Leninist Philosophy, geophysicist Nguyen Thanh Giang and a number of other former VCP officials wrote to the Vietnamese authorities warning that the Communist Party faced 'collapse' unless it made immediate, radical reforms. In a speech delivered to the Expanded Presidium of the Fatherland Front on 13 December 1997, Phan Dinh Dieu emphasized:

> …The need for democracy in the political realm has become imperative. New ideas and thinking (…) which are opposite to the Party's orthodox line have all been prohibited. The modernisation of society requires fundamental democratic rights such as freedom of thought, freedom of expression, freedom of the press, freedom of association, freedom to vote and to run for office.[17]

This speech is noteworthy, not only because of its rights-based content, but also because it was delivered before a Party Committee. It thus approaches what might be termed a 'debate' between the Party and the critics. However, as these lines are being written, dozens of threatening articles have appeared in the official media attacking 'individuals who abuse human rights to undermine national security', so there is little cause for optimism as yet.

It is important to stress, moreover, that although these statements, letters and speeches have been widely circulated and debated within the Vietnamese community overseas, thanks to smuggled copies and translations relayed on the Internet, they remain strictly prohibited in Vietnam. Not only are such texts forbidden in the official media—most

people would not have heard of them without outside news sources such as the BBC, VOA, Radio France Internationale or Radio Free Asia—but all persons found in possession of such documents, including the authors themselves, risk sanctions and arrest. In a letter to the National Assembly (26 March 1998) geophysicist Nguyen Thanh Giang describes how he was arrested and interrogated for several days after Security Police caught him with an article he wrote on General Tran Do—copies of which he had sent to VCP Party Secretary Lê Kha Phiêu and several members of the Politburo over a month before. General Trân Dô himself protested in a letter to National Assembly President Nong Duc Manh on 20 April 1998 that his daughter-in-law had been subjected to several weeks of intense police interrogations because she was found with copies of his writings and a book of banned poetry, *Spontaneous Poetry from the Interrogation Room,* by another Government critic, Bui Minh Quoc.

'VIETNAMESE VALUES': THE OFFICIAL VIEW

Vietnam entered a new phase of the human rights 'debate' in 1993, when for the very first time, literally hundreds of articles on human rights were published in the official media. This unprecedented output was triggered off by two major events. The first was the UN World Conference on Human Rights in Vienna and its Preparatory Regional Meeting in Bangkok where Vietnam first adhered to the Asian values premise. The second was a demonstration of 40,000 Buddhists in the ancient capital of Hue on 24 May 1993. This massive public protest—the first of its kind in Communist Vietnam—shook the authorities deeply, for they were totally unprepared for a popular challenge of such proportions.

The debate in the official media was divided into two categories of articles: (a) theoretical analysis of the human rights premise in an attempt to elaborate a concept based on 'Vietnamese values', and (b) caustic attacks on the Buddhist demonstrators in Hue for 'abus[ing] human rights and religion to harm the interests of the State'. Ironically, these articles merely served to highlight the contradictions in Vietnam's cultural relativist argument, since the very same 'Vietnamese values' advanced in the former category were strongly criticized in the latter. One essay on 'Human Rights and Vietnamese Ethics',[18] incorporated both conflicting views. Arguing in favour of a Vietnamese human rights concept based on the Buddhist principles of tolerance and compassion, it cited the example of fifteenth-century King Lê Loi and his Buddhist statesman Nguyên Trai who, after defeating the Chinese in battle, ordered boats to be built to transport the Chinese prisoners of war back home. Yet it ended with a sombre condemnation of Buddhism in Vietnam,

denouncing all those who 'hide under the cloak of religion' to oppose the Party and the State, and equating Buddhist activism with 'peaceful evolution', a global conspiracy waged by 'hostile forces' to undermine the regime. This contradictory position characterizes the official attitude even today. Whereas Vietnam's officials and academics praise the political engagement of Buddhist emperors and statesmen in the Ly and Tran dynasties, they condemn and imprison modern-day Buddhists who merely voice appeals for a minimal respect of religious freedom and human rights.

This was the first and last time 'Vietnamese values' were alluded to in the official press. The media campaign was followed by a widespread crackdown on the Buddhists, and prominent clergy and lay-followers were arrested in its wake. It was also the first and the last time that the authorities experimented with television to put their message across. In what was something of a premiere in Communist Vietnam, footage of the Hue demonstration had been shown on national television in order to portray an 'extremist' image of the monks. However, this strategy seriously backfired, only attracting increased public sympathy to the Buddhist cause.

After 1993, human rights once again became a taboo in the State-controlled media. Again faithful to the Chinese example, Vietnam withdrew to the 'non-interference' stance, raising human rights only in highly polemic statements to rebuff interference by Western governments and international NGOs. Vietnam had perhaps realized that the 'Asian values' issue was a real Pandora's box, which, if opened, could unleash popular currents and forces beyond the scope of Government control.

THE FOUNDATIONS OF TRUE 'VIETNAMESE VALUES': BUDDHISM AND CONFUCIANISM

Although I find no foundation in Vietnam's theory of cultural exceptionalism, I do believe that Vietnam has its own traditional and original concept of human rights—based more on ethics than on law—which reinforces, rather than detracts, from the universal rule. Indeed, individual rights and freedoms are a fundamental and ancient feature of Vietnamese culture, rooted in a cultural heritage over four thousand years old. The two pillars of this concept are Buddhism, which reached Vietnam more than 20 centuries ago, and Confucianism, which the Buddhists integrated into the State apparatus from the eleventh century onwards.

Confucianism has many different schools, but all are united in the belief that the universe is governed by three driving forces—Heaven,

Earth and Humankind—and that Humankind is the central pivot of all. As Mencius (ca. 380–289 BC) said, 'The people are of paramount importance, second comes the State and last comes the Sovereign, who is least important of all'. On a similar basis to the 'Western' concept of human rights, Confucianism recognizes the legitimate right to resist oppression, and to overthrow the ruler if he is unjust. To use the image of Xunzi (ca. 340–305 BC), 'Water can keep the boat afloat, but can also overturn it'.

But it is undoubtedly Buddhism, introduced into Vietnam from India in the first century AD, and adhered to by three-quarters of the population in Vietnam today, which inspired the culture of liberty, social justice and tolerance inherent in Vietnamese traditions, and made the most important contribution to the development of Vietnamese civilization and the foundation of an independent political system in Vietnam.

The Buddhist concept of human rights dates back 2,500 years, when Sakyamuni Buddha revolutionized the thinking of his time by defying the caste system and demanding the integration of pariahs (untouchables) and women into the clergy, thus becoming one of the world's first advocates of equality and gender rights: 'There can be no caste system, no discrimination between beings whose blood is identically red, and whose every drop of sweat is tinged with salt'. Although Buddhism does not enshrine individualism as it is perceived in the West, but rather 'Vo Nga', the Non-self, or interdependence, there is perhaps no higher tribute to the inherent dignity, equality and inalienable rights of the individual than that expressed by Sakyamuni Buddha when he declared, 25 centuries before the UN Declaration of Human Rights: 'Each person is the Buddha to be'. This means that every individual is endowed with buddhahood, the potential ability to extinguish suffering and injustice for the liberation of humankind, and with the capacity to overcome every imaginable form of slavery, oppression and ignorance. Thus, the Buddhist vision of human rights, based on the mutually-reinforcing precepts of Karuna (compassion, love) and Prajna (absolute knowledge), not only defines the framework for the protection of human rights, but re-examines the whole question of mankind's place at the centre of society and within the universe.

Vietnamese Buddhism is deeply impregnated with this spirit of freedom and social justice; in fact it was the influence of Buddhism that ensured the survival of Vietnamese civilization and formed the basis of Vietnamese cultural identity. Whereas all the other 'Bach Viet' (Hundred Viet) tribes from the provinces of Guangdong and Guangxi were absorbed by China, only the Viet people in Giao Châu (modern day

Vietnam) survived, preserving a unity of thinking, language and culture from the origins of their history until today. The profound influence of Buddhism on Vietnamese thinking and cultural expression also stems from the fact that Buddhism was introduced into Vietnam through the oral narration of Buddhist 'Jataka', simple tales of the Buddha's earlier lives, rather than through learned Buddhist sutras accessible only to the intelligentsia. Thus, Buddhist thinking permeated Vietnamese society from the grass-roots upwards, rather than being imposed from above.

Besides its profound impact on the people's development in the spiritual realm, in the social and historical realms Vietnamese Buddhism developed from the very outset a tradition of activism and a commitment to social justice unique in South East Asia. Predominantly following the Mahayana school, which stresses the link between self-enlightenment and the commitment to emancipate one's fellows from ignorance and injustice, Vietnamese Buddhists practice 'engaged Buddhism', actively participating in all aspects of the nation's social and political life. Early Vietnamese Buddhist sutras such as the *Luc Dô Tâp Kinh* [Book of Six Ways of Liberation] dating back to the second century AD taught these principles of individual engagement: '[Each one must say to him/herself], if the people are unhappy, it is my own fault', or 'When the Boddhisattva[19] hears the cries of his people, he must set aside his own troubles and throw himself into the combat against tyranny, whereby saving the people from suffering'. The sutra also articulated the Buddhist vision of an ideal society which defines extremely modern concepts such as the protection of the environment, social equality, promotion of universal education, the practice of non-violence and clemency in all affairs of State.[20]

The Buddhist spirit of liberation defined in these early sutras encompasses the combat against obscurantism (liberation from ignorance), the combat for social justice (liberation from suffering) and the struggle for national independence (liberation from foreign oppression), in brief, the liberation of the individual, the community and the nation. Inspired with this spirit, the Vietnamese raised innumerable resistance armies to free their homeland from Chinese domination over more than nine centuries. Their armies counted scores of thousand men—an astounding achievement for a population estimated at 981,735 in the second century AD. Moreover, the Buddhist concept of equality and social justice permeated all organizational levels of the State, to an extent that took the Chinese invaders by surprise. Mouzi, a Chinese Taoist and Confucianist who came to Giao Châu (Vietnam) in the late second century was so impressed by Vietnamese civilization that he became a Buddhist and in 198 AD wrote the *Ly Hoac Luan* [Doubts Raised], a 37-

chapter critique of Chinese Confucianist and Taoist ethics in which he exclaimed: 'Perhaps the Han nation is not the centre of the universe after all!' Moreover, the annals of Chinese history relate that in 43 AD, when China invaded Vietnam, the Vietnamese already had an advanced legal system which 'differed in ten points from the system of Chinese law'.[21]

Throughout the whole period of Chinese domination, Zen Buddhist monks played a prominent role in resistance movements and contributed largely to the foundation of the first independent Vietnamese State in the tenth century AD. In the eleventh and thirteenth centuries, Buddhist monarchs of the Ly and Tran dynasties heralded a golden age in which politics, culture, diplomacy, science and the arts flourished as never before. Under the Lê dynasty in the fifteenth century, the outstanding Hong Duc Penal Code was drawn up which codified modern concepts in advance of contemporary European equivalents:

> We see in Lê Dynasty…a peculiarly Vietnamese effort at building a strong nation-state and protecting legitimate private rights through a progressive legal system with many functional equivalents to contemporary Western legal concepts. We see in Lê law a rather modern legal order, in which there were notions and practices equivalent to present-day Western legal standards, such as the protection of civil liability compensation (including punitive damages) for the victims and the guarantees of procedural due process for the defendants in criminal law, the larger role of public policy in favour of the economically weak in contract law, the consistent and explicit provision of damages payments for all kinds of torts against property, person and reputation, the fair distribution and protection of property ownership, the equality of men and women in civil and property rights, and last but not least, the popularization and standardization of legal forms used among the population.[22]

The Buddhist spirit of liberation was also the driving force of the Vietnamese independence movement against French colonialist rule. An important Buddhist 'Renaissance' movement in the 1920s to 1930s launched vast educational programmes to counteract the colonialists' obscurantist policies, and although Buddhists sought no political role, monks, nuns and followers participated actively in national resistance movements after 1945. Subsequently, although Buddhism was virtually suppressed in North Vietnam under the government of Ho Chi Minh,[23] it continued to exercise an important influence in the South, especially after the overthrow of the Ngo Dinh Diem regime in 1963, stimulating the

country's cultural, social and educational life through a whole network of nursery, primary and secondary schools, Institutes of Advanced Buddhist studies, and prestigious avant-garde universities such as Van Hanh University in Saigon which taught humanities, social sciences and modern languages to over 5,000 students. The Buddhists' independ ent stance was especially salient during the Vietnam war, when UBCV monks massively opposed war and campaigned for a peace solution that would win political independence for Vietnam and preserve the country from becoming a satellite of either the socialist or capitalist blocs.

THE ROLE OF BUDDHISM IN MODERN SOCIETY

Buddhism in Vietnam does not have well-established, structured institutions comparable to religions in the West, in part because of its philosophy of harmony and tolerance, which enables Buddhism to co-exist peacefully without seeking to impose on other religious or political creeds, but also because it has never enjoyed a time of peace to build and consolidate. Because it has remained independent of political control, supporting the State in times of need, checking its powers when the State became too authoritarian or corrupt, Vietnamese Buddhism has been the constant target of repression from a succession of regimes, from feudal to colonial, from militarist to communist. It is therefore impossible to pinpoint Buddhism to a particular social category, or isolate its sphere of influence to a particular sector of political life. But it is clear that Buddhism —by which I mean the independent Unified Buddhist Church, not the State-controlled Vietnam Buddhist Church set up by the Communist authorities in 1981—is playing a crucial role in Vietnamese society today, despite prohibitive government repression. Its impact can be seen in two specific domains: the dynamic and pervasive influence of Buddhist thinking throughout all levels of society, and especially its impact on the Marxist intelligentsia; and the role of the UBCV as the driving force of the movement for human rights and democracy in Vietnam.

Throughout the 1990s, the influence of Buddhist thinking on Marxist intellectuals has become remarkably clear. Before 1975, studies by Hanoi's most eminent historians and ethnologists revealed the paucity of their research material and their total lack of understanding of Buddhism, the consequence of decades of anti-religious policies and the draconian suppression of non-Marxist literature in North Vietnam. Today, however, Marxist intellectuals are beginning to have wider access —through official and underground channels—to books published in the South, particularly works written in 1963–1975, a period when Zen literature flourished, stimulating bold currents of creation and research

amongst a whole generation of Buddhist and non-Buddhist writers alike. Eminent Marxist scholars such as Ha Van Tan are beginning to re-evaluate their historical research in the light of these new perspectives, familiarize themselves with Buddhist humanist concepts and make a reappraisal of Buddhism's historical role in the foundation of the Vietnamese civilization and State.[24] In the long term, this suffusion of Buddhist thinking into Marxist dogma will have indelible effects on the political perceptions of future generations in Vietnam.

In the practical domain, Buddhism has emerged as the only popular force consistently struggling for the defence of human rights in Vietnam. At every level, from democratic activism on a national scale to engagement in local community affairs, UBCV monks, nuns and lay-followers are actively engaged in efforts for social justice, denouncing violations wherever they occur. The most eloquent articulation of the UBCV human rights position—and one that unleashed a wave of Government repression against the Buddhists—is the 'Declaration' issued in 1993 by the UBCV's Supreme Patriarch, Thich Huyen Quang. In this, he called for radical democratic reforms, the right to political pluralism and free elections under UN supervision and stressed the decisive role of religious communities in Vietnam's democratic process:

> After 50 years of devastating war waged in the name of conflicting, imported ideologies, religious movements alone possess an unparalleled capacity to temper hatreds, defuse conflict and restore moral values in a society plunged in a spiritual and moral crisis. As such, they have a vital role to play in the reconstruction of our country…

The key to democracy is tolerance, wrote Thich Huyen Quang, and tolerance lies in the hands of the State. Democratic freedoms and human rights cannot exist, either in principle or in practice, until Vietnam abolishes Article 4 of its Constitution regarding the monopoly of the Communist Party:

> The abolition of Article 4 does not imply the exclusion or the dissolution of the Communist Party…[it will] stimulate the participation of all sectors of the population, regardless of their political affiliations or religious beliefs [and] foster competition as a mutually reinforcing relationship, not as a race to oust one's opponents. After all, whether our compatriots be communists or members of any other political party, they are first and foremost Vietnamese. Our common heritage of 5,000 years' civilization will

form the basis for future dialogue and cooperation, and we will be bound together in one common aim—that of forging a place within the community of nations for a stable, flourishing and prosperous Vietnam.[25]

This 'Declaration', written from the Patriarch's place of exile in Quang Ngai where he has been detained under house arrest since 1982, inspired human rights activists in Vietnam and emboldened them to openly express dissent. The massive Buddhist demonstration which broke out in Hue in 1993 set an example that would later be followed by peasants in Thai Binh and Nam Dinh and by Catholics in Dong Nai, indicating a growing popular awareness of human rights.

THE PARADOX OF THE 'ASIAN VALUES' PREMISE IN VIETNAM

Whereas the Buddhist vision of human rights is genuinely universal, seeking the liberation of Asian societies from authoritarian, militarist and totalitarian rule and the establishment of a new human rights culture for the twenty-first century, the Communist authorities are turning back the clock. Just as French colonialists relied on alcohol, opium, and superstition to maintain the people in ignorance, Vietnam is now reviving antiquated rites, festivals and folklore to assuage the people's spiritual needs and to maintain political control. At the same time, it is developing State-sponsored religious bodies whose activities are strictly confined to the celebration of prayers, meditation, fasting, even fortune telling, thus supplanting freedom of religion with the minimal right to freedom of worship and reducing religion to the practice of quasi-superstitious rites.

The long-term implications of this policy are extremely serious, and they lie at the core of the current discussion on Asian values in Vietnam. By emptying the great religions of their moral and spiritual content and preventing them from contributing their immense potential to the development of a vibrant, stable and prosperous society in Vietnam, Vietnam is stifling civil society and jeopardizing the country's future for generations to come.

If there is any significance in the Asian values debate, it is the reminder that the dynamic, humanist values inherent in the cultures of Vietnam, China, Tibet, Burma, Indonesia and other Asian countries are threatened today not by 'Western imposed' human rights concepts, but by the practices and policies of their very own governments who are using this

argument to suppress these values and violate human rights with impunity.

NOTES

1 Thiên Hô, Dê Hô, *Phan Bôi Châu* (1923). Hanoi: Social Sciences Publishing House, 1978.

2 'Petition to the French Overseas Territories' Inquiry Commission', Huynh Thuc Khang, 9 November 1937, *Boite 31, Fonds Commission Gernut, Centre des Archives Nationales d'Outre-Mer, Aix en Provence, France.*

3 In 1930, peasant uprisings against the oppressive policies of the French colonialist broke out in Nghe An and Ha Tinh Provinces. The Vietnamese Communists appealed for help from the French Communist Party to transform this uprising into a movement for Communism in Indochina. A total of 150,000 propaganda leaflets in Vietnamese were printed in Paris by the French Communist Party in 1931 (six different leaflets with a print run of 25,000 copies each) and sent to Vietnam to support the Communist movement. See *NhânDân* [The People], Hanoi, 14 September 1980.

4 Nghiêm Dinh Vy and Lê Kim Hai, The Declaration of Independence and the problem of Human Rights'. *Tap Chi Công San,* Hanoi, September 1993.

5 Nguyen Dinh Loc, *Luât Hoc,* 4, 1985, Hanoi.

6 See Vo Van Ai, preface to Nguyên Manh Tuong, *Un Excommunié: Hanoi 1954–1991, Procès d'un Intellectuel.* Paris: Quê Me Editions, 1992, pp. 8–13, for a more detailed analysis of this movement, which lasted from 1955 to 1958. After its suppression, over 500 writers, poets, artists and intellectuals were sent to re-education and forced to write self-criticisms. Over 100 were imprisoned or sent to New Economic Zones, and were forbidden to write for the following 30 years, e.g. Trân Dân, Phan Khôi, Hoàng Câm, Lê Dat, Phùng Quan, Trân Duc Thao, Dao Duy Anh, Huu Loan, Nguyên Manh Tuong… See also the book of memoirs by Nguyên Manh Tuong (quoted above), written (in French) in Hanoi and sent clandestinely to Quê Me for publication in France, in which this brilliant lawyer describes his own fall from grace and the subsequent 30 years spent with his family in poverty and solitude, ostracized from society, forbidden to write or work.

7 For details on top-ranking cadres and intellectuals arrested in the revisionist purges, see 'Report to the 52nd Session of the UN Human Rights Commission in Geneva, FIDH and Vietnam Committee on Human Rights', Paris, March 1996, and *Quê Me magazine,* Paris, No 136, July 1996.

8 Some 184 French and international personalities, including Raymond Aron, Jean-Paul Sartre, Simone de Beauvoir, Eugene Ionesco, Michel Foucault, V.Rostropovitch, Jean-François Revel, Lionel Jospin, Michel Rocard, Claudie Broyelle and Bernard Kouchner joined the 'Comité Un Bateau pour le Vietnam' launched in Paris in 1978 and raised funds to charter a rescue ship for boat people, the 'Ile de Lumiere'. As a result of this initiative, thousands of Vietnamese boat people were rescued. Similar initiatives were

subsequently launched in Germany, Italy, Norway and several other European countries.

9   Nguyên Khac Viên, 'Ceux qui partent—le problème des émigrés qui quittent le Vietnam'. *Le Courrier du Vietnam,* Hanoi, 1979.

10 Hoang Son, 'Re-education Camps and Human Rights', in 'Vietnam—Quels Droits de l'Homme?' *Le Courrier du Vietnam,* Hanoi, 1980, pp. 81–103.

11 The French press, notably *Le Monde* (31 May 1978), *L'Express* (12–18 June 1978), *Libération* (31 May 1978), *L'Aurore* (31 May 1978), *Le Figaro* (30 May 1978) published the testimonies of political prisoners and a map of Vietnamese re-education camps released at a press conference organised by Quê Me in Paris. For more details on re-education camps and the prison system in Vietnam, see the report made public at the press conference, *Charte 1978: La Nordmalisation des Prisons Vietnamiens.* Paris: Quê Me, May 1978.

12 For more details on the UBCV and Buddhist movement, see *Vietnam: Violations of the right to Freedom of Conscience, Religion and Belief,* Vols I–V Paris: Vietnam Committee on Human Rights, 1992–1997.

13 For more details on this important movement of South Vietnamese dissident Communists, see *Quê Me magazine,* No. 104, Paris, November 1989.

14 Nguyên Ho, Petition to Nguyên Van Thông, Head of the VCP Information and Cultural Bureau in Ho Chi Minh City, Duong Dinh Thao, Head of the Ho Chi Minh City Department of Ideology and Propaganda, Trân Hoan, Minister of Information and Trân Trong Tân, Head of the Central Committee Department of Ideology and Propaganda—Ho Chi Minh City, 20 February 1989. Nguyên Hô was formerly Deputy Head of the Vietnam General Confederation of Labour and Head of the Fatherland Front in Ho Chi Minh City.

15 Nguyên Hô, *Quan Diêm và Cuôc Sông* [View-point and Daily Life]. Ho Chi Minh City, 20 May 1993.

16 Nguyen Van Tran, *Viêt cho Me và Quôc Hôi* [Written for my Mother and the National Assembly]. Ho Chi Minh City, 1995. This 544-page book created a great impact in Vietnam. It was banned and seized by the authorities a week after its publication on the recommendations of a classified 'Secret' report addressed to Party Secretary General Do Muoi, Dao Duy Tung and Le Kha Phieu by Staff group 6-BC, Hanoi, 30 October 1995. The report warned:

>   This is an extremely dangerous book… Its author is a veteran communist, well-known for his revolutionary activities in the North and South, respected as an intellectual and scholar in South Vietnam. He has held many important positions in the Communist Party (…) For all these reasons, this book is bound to have a much wider influence than the writings of others such as Ha Si Phu, Nguyen Kien Giang, or even Phan Dinh Dieu (…) It will have a particularly strong

influence on certain intellectuals and Party cadres in the South, and will appeal strongly to young people.

Nguyen Van Trân, who was 82 when he wrote this book, died in Ho Chi Minh City on 1 May 1998.

17 Phan Dinh Dieu, 'On the need to continue reform in the current period', Hanoi, 12–13 December, 1997.

18 Nguyen Phu Trong, 'Human Rights and Vietnamese Ethics'. *Nhan Dan* [The People], Hanoi, 14 May 1993.

19 Boddhisattva: literally an 'Enlightened being', i.e. a being who seeks Enlightenment not only for himself, but for others.

20 'The State will not implement warring policies, not imprison unduly, the seasons will be respected, the nation will be strong and the people prosperous, people will have no grievances, no-one will read spurious literature, the six precepts (of Buddhism) will be followed *by one and all*.' Luc Dô Tâp Kinh, *The Book of Six Ways of Liberation,* second century AD.

21 *The History of Ma Yuan*. The Books of the Late Han Dynasty, Book 54.

22 Oliver Oldman, Director of East Asian Legal Studies, Harvard Law School, Page VIII, Vol. 1, Preface to the English translation of Nguyên Ngoc Huy, Ta Van Tai and Trân Van Liêm, *The Lê Code: Law in traditional Vietnam.* Athens: Ohio University Press, 1988.

23 Dr Thich Quang Do wrote a detailed account of religious repression in North Vietnam in *Nhân Dinh vê nhung sai lâm tai hai cua Dang Công san Viêt Nam dôi voi Dân tôàc àa Phât giao* [Observations on the grave offences committed by the Vietnamese Communist Party against the people and against Buddhism]. Paris: Quê Me Editions, February 1995. An English translation of this book is in preparation.

24 For a more detailed discussion on Marxist interpretations of Vietnamese history, see Vo Van Ai, *Nguyên Trai, Sinh thuc và Hành dông* [Nguyên Trai, the conscience of being and the theory of action—a study of the 15th-century Vietnamese strategist and Zen master]. Paris: Quê Me Editions, 1981.

25 See 'Les bouddhistes de l'EBU demandent qu'une "opposition légale" soit autorisée', *Le Monde,* Paris, 8 December 1993. The full text of Thich Huyên Quang's 'Declaration' is published in *The Buddhist proposal for Human Rights and Democracy in Vietnam.* Paris: International Buddhist Information Bureau, 1993.

6
Particularism, Identities and a Clash of Universalisms: Pancasila, Islam and Human Rights in Indonesia

Jon O.Halldorsson

Indonesia is a country of remarkable ideological innovation. Although largely unnoticed in the international Asian values debate, Indonesian political leaders were decades ahead of mainland Southeast Asians in formulating culturally specific and cohesive political conceptions to underpin their rejection of Western claims to political universalism. Indonesia, however, is also a world unto itself more than most other countries. The country's leaders have never seen much need to link their own particularistic conceptions and practices of democracy and human rights with a wider notion of values shared over large parts of Asia, although instances of such linkages could be seen half a century ago and again towards the end of Suharto's rule. Corresponding to this, the rest of Asia has taken a distinctly limited interest in the often rich ideological debates that have been a pronounced feature of Indonesia's half a century of independence.

It was in Indonesia, however, that the essence and sentiments of the putative values of Asia gained their most substantive political expression. In contrast to the mainland states of Malaysia and Singapore, where the basic structures of states and political institutions rest on essentially Western principles of divided powers, however eroded these principles may be in practice, the Indonesian state, the political system of the country, and the manner in which power was exercised under Suharto, were all based on principles supposedly derived from local culture. These putatively Indonesian cultural principles will look familiar to students of the Asian values debate. They can be summarized for the moment as an organic notion of state and society; the traditional family as a model for society; respect for hierarchies; communitarianism over individualism; consensus in place of contest; and obligations over rights. These principles have formed the basis for the official interpretation of the national ideology of Pancasila. All social, political and religious organisations in the country that were not explicitly based on Pancasila were banned in the mid-1980s.

In the current transitional period in Indonesia, all institutions, and all ideas are under review, but it would be most surprising if some of the structures of Indonesia's authoritarian past were not to substantially influence the outcome of the current turmoil. The Habibie government, for instance, continued to formulate its human rights policy through the same cultural and ideological references used by the Suharto government, insisting that the 50-year-old state ideology used to legitimate successive authoritarian regimes 'enshrines' human rights that are 'in line' with the Universal Declaration on Human Rights.[1] The transition from authoritarian government may indeed be lacking in substance for a long while yet. The country's rich, but often authoritarian ideological inheritance is therefore certainly of more than historical interest for those who want to assess prospects for human rights in the country.

Recently, and more auspiciously for those interested in human rights and democracy, Indonesia is playing the role of a pioneer in an entirely different discourse, which nevertheless is somewhat tied to the former, and with equally strong implications for democracy and human rights. This is the development of an Islamic universalism with characteristics sharply different from the most pronounced features of Middle Eastern Islam, namely a combination of a deep Islamic faith with a rejection of Islam as a detailed programme for politics. Given the history of Indonesia, this fairly recent development may be of cardinal importance in freeing the country from the long impasse of politics dominated by the military. This is because of certain dynamics of identity politics, to be discussed in this chapter. These dynamics have put Indonesian Islam on a collision course with the military, which in turn has greatly contributed to the latter's paramount position in Indonesian politics, and more generally to the authoritarian politics and the violation of basic human rights that have characterized Indonesia for decades.

The Indonesian human rights situation is likely to remain in a state of flux for some time. Suharto is gone, and the authoritarian system he constructed with careful, systematic and mostly logical references to Indonesia's version of Asian values is mostly in ruins. Censorship has been lifted, most political prisoners have been freed and political parties and labour organizations, long banned in Indonesia except for state sponsored entities, have been given new freedoms. Any improvements, however, remain precarious for a number of reasons. Among them is the military's continued proximity to political power, the military's likely pivotal role in any conflict over secessionist demands in Ache, Irian Jaya or elsewhere, long traditions of a bureaucracy infused with paternalism, the absence of properly constituted guarantees for the

independence of the judiciary, the weakness of representative institutions and the incoherence of political forces committed to human rights and democracy.

It is not the intention of this chapter to speculate on the prognosis for potential trajectories for the development of a new human rights regime in Indonesia. Unusual economic, racial, religious and historical lines of division in society, as well as the political and economic upheaval of the post-Suharto period, draw an uncommonly complex picture in this respect. Instead, this chapter will discuss the background to problems of identity, culturally specific values and human rights in Indonesia. The purpose of this is to give an idea of long-term structures that shape perceptions and mould the terrain for contestation over issues of human rights. Due to the increasing centrality of Islam in Indonesian politics, a particular attention will be paid to different trends within Islam as these relate to human rights.

ROOTS OF AUTHORITARIANISM

A major reason for Indonesia's preoccupation with ideology lies in the origin of the country. Indonesia is a somewhat improbable state that incorporates thousands of islands, hundreds of cultures, several religions and a corresponding profusion of different regional, religious and cultural identities. All this had to be assembled into one state in such a way as to create a political accord and a sense of nationhood. This imperative for a common identity has provided central dynamics to Indonesia's post-independence politics. The politics resulting from this have often been destructive and occasionally extremely violent. The massacres of half a million suspected leftists in the mid-1960s, organized by the military and Muslim groups, and the death of hundreds of thousands East-Timorese in the mid-1970s in the wake of Indonesia's invasion, stand out as examples of extreme violence, but ethnic and religious tensions persist throughout the country. The acute, if most often unspoken awareness of the fragility of a common Indonesian identity greatly contributed to making the Suharto dictatorship possible, and for long periods of time, seemingly quite acceptable to much of the Indonesian public. Suharto founded his political power on the perceived need to keep in check any forces that could potentially fracture Indonesian unity, either through jeopardizing the territorial integrity of the state, or by undermining the social order. Communism, political Islam, ethnic politics and liberalism were identified as the main enemies to national unity. By banning communism and massacring suspected leftists, Suharto's regime removed a threat to the established social order.

By banning political Islam, which had been strongly identified with native Muslim trading interests, as well as with demands for regional autonomy in the outer islands, Suharto not only countered a religious opposition to his rule, but also emasculated political representation of native middle class and bourgeoisie interests. This move, in turn, was instrumental in making Suharto's crony capitalism possible. Rhetorical opposition to liberalism, which has a strong resonance in Indonesia because of the identification of liberalism and capitalism with colonialism, further aided the construction of the economic base for Suharto's state-centred patronage system. The economic as well as the political base for Suharto's resilient regime was in this way made possible by the dynamics of Indonesia's identity politics.[2]

The creation of an Indonesian national identity in the early decades of the twentieth century was a project intimately tied up with a widely perceived need to modernize the backward colony.[3] In spite of the often appalling human rights record of the Dutch colonial government, individual liberties and human rights were never central issues in Indonesia's fight for freedom; all emphasis was on gaining a collective freedom as a nation. What may have added to this emphasis was the perception, largely shared by leaders of Indonesia's national awakening, that ethnic and political fragmentation in the archipelago together with socio-economic backwardness made it possible for the Netherlands to dominate the vast colony. The solution to this was national unity and modernization.

At first modernization, rather than independence, could be seen as the primary goal of the emerging native intellectual elite. Among the early modernizers were people who saw Dutch colonial rule as playing an instrumental role in modernizing Indonesia. Many more, however, took the opposite view, and saw colonialism as a barrier to development. A committed group of activists and intellectuals in Indonesia's cities identified Marxism as route to a state of affairs, where modernity would be achieved by transcending capitalism. Another strong body of opinion looked to religion and saw Islam, or Islamic reform, as Indonesia's best or only viable route to modernity. These different tendencies had all taken an organized form in nationalist, Islamic and socialist movements in the years following the First World War. A quest for modernity, however, was not a sufficient basis for national unity, and the different routes to modernity favoured by different groups were a source of deep conflict. It was widely felt, however, that the independent state of Indonesia needed a specific religious or ideological base.

The conflict over a basis for the new state came to be played out between essentially two different tendencies, although a wide spectrum

of opinion existed within and between them. On one side of this debate was a large number of voices that primarily identified themselves with Islam, although split into different Islamic tendencies. Their demands were initially for an Islamic state, but in the drawn-out debates this demand was replaced by a request for the constitution to make clear that Muslims in Indonesia, the bulk of the population, were bound by Islamic laws.[4] On the other side of the debate were a number of people representing a wide spectrum of political opinion, having perhaps only in common a commitment to Indonesian independence and a rejection of a national Islamic identity. It would be misleading to represent the conflict over the basis for the Indonesian state as a fight between religion and secularism. This is because some sections of the non-Islamic group could hardly be described as secular in outlook. Their hostility was directed at a proposed role for orthodox Islam in Indonesia rather than at the principle of a role for religious ideology in politics.

A compromise reached over the constitution at independence was widely seen as a defeat for orthodox Islam, although it was not a victory for secularism and still less so for Western principles of constitutional rule. The independent state was to be based on the five principles of Pancasila. These are normally translated into English as; Belief in one God; Nationalism; Humanitarianism; Democracy; and Social Justice. Pancasila as such consists of nothing but these five principles. Successive regimes, however, as discussed below, constructed a complex and in the end a fairly cohesive ideology on these principles and sought monopoly for interpreting Pancasila.

The constitution adopted after the proclamation of independence in 1945 was an authoritarian one, although it also contained several articles on human rights that allowed for most of the 'thinly conceived' rights that are essential for democratic politics, as well as social and economic rights, such as those to education and work. This constitution was briefly replaced by a more liberal one, primarily as a ploy to win acceptance from the West for Indonesia's independence. A constitutional assembly, the *Konstituante,* elected in 1955 (at a free and democratic election), was charged with replacing this temporary constitution.

The *Konstituante,* which at one time formally endorsed a number of human rights provisions,[5] was dissolved by president Sukarno in 1959 after it had struggled for three years to find a compromise between the two main tendencies in the constitutional debate. The authoritarian constitution of 1945 was put into force again. By this time Pancasila represented a compromise to few Muslims. Indonesia's first president, Sukarno, had started to use Pancasila systematically to thwart Muslim political aspirations and, increasingly, with much resonance among many

military officers, as a culturally based ideological alternative to democracy. This coincided with a drift towards authoritarianism and an increased political participation of the military. Regional rebellions supported by modernist Muslims were instrumental in emasculating the political power of Modernist Islam. The military, on the other hand, saw its political fortunes vastly increase, both with a victory in the regional rebellions, and with the nationalization of foreign enterprises, which put much of the corporate economy of Indonesia under military control.[6]

In the mid-1960s the military took full control of Indonesia in a process that gave rise to some of the grimmest violations of human rights in Asia's recent history. More than half a million suspected leftists were massacred, hundreds of thousands were imprisoned and millions of individuals were made to suffer for decades as a punishments for alleged connections to leftists in the 1960s. Suharto's assumption of power was initially supported by Muslim organizations, and this for different reasons. The modernists, supported by trading elements and urban constituencies, hoped for the ban on their political party to be repealed by Suharto, and for a more liberal trading environment. The traditionalists, strongly supported by landowners in Eastern and Central Java, sided with Suharto in his fight against communists, who had supported land reform and had even taken that to effect. Both were to be disappointed as Suharto constructed a centralized authoritarian regime, legitimized by Pancasila, and widely seen as hostile to Islamic interests.

During Suharto's long reign, the Indonesian state was comprehensively transformed from a fairly remote and feeble apparatus into an entity of ubiquitous presence, a supplier of services and provider of vast array of economic opportunities, no less than a controlling, repressive machinery penetrating every sector of society. In addition to the usual human rights violations of an authoritarian regime backed by the military, the Indonesian state under Suharto managed Indonesian society in an uncommonly intrusive way through complex and often parallel hierarchies of corporatist and controlling mechanisms that reached from the highest institutions of the state, under a centralized control of the presidency, down to the village level. There, a combination of a command over economic opportunities and an effective ideologically backed system of both informal and outright control over the lives of individuals, provided little scope for serious dissent until recently.[7]

The Suharto regime, which added East Timor to Indonesia in a particularly bloody invasion in the mid-1970s, based its rule on the four pillars of patronage, economic development, coercion and ideology. Indonesia's economic development brought the country away from endemic poverty to a relative, if an uneven prosperity. By 1997 Indonesia

ranked as the twelfth largest economy in the world measured on a purchasing power parity scale. Even after the onset of the Asian financial crisis, most international economists continued to be convinced that Indonesia had some of the strongest economic fundamentals in Asia.[8] The economy, however, due to a financial crisis crashed in late 1997, making Suharto's position untenable.

The patronage system constructed by President Suharto had few if any parallels anywhere in the world in its scope, liquidity and complexity. Sums that sometimes rivalled the state's budget were channelled through state-owned monopolies, extra budgetary instruments, state banks and the regular state budget for patronage purposes, while access to Indonesia's huge labour force and growing army of consumers was in effect awarded through monopolistic arrangements to well-connected companies, or sold to foreign ones through informal taxation.[9] The excesses of the patronage system, particularly its growing bias towards Suharto's own children became the undoing of the Suharto regime and of Indonesia's brief encounter with relative prosperity.

DIFFICULT ENCOUNTERS

To understand the implications of this ideological inheritance for human rights it is necessary to go back in history. This will also reveal the genesis of the 'Asian values' discourse in Indonesia and some of the ways in which Indonesian cultural particularism grew out of the country's encounter with different forces claiming universalism. It is possible, and perhaps profitable for this discussion, to talk of three different waves of international forces that impacted Indonesia at various points in time to such an extent as to shape the perceptions and aspirations of various segments of modern Indonesian society. The first of these were Indic influences, represented variously through Hinduism or Buddhism, that swept the western parts of Indonesia well over a thousand years ago. The second wave was one of Islamic influences, which in a continuing process have been spreading and deepening for more than 700 years. The third of Indonesia's encounters with international forces, in this conceptualization, was the one with the West, starting with colonialism in the sixteenth century and continuing through processes of globalization in the present. It has often been asserted that Indonesian culture is made up of different layers, each representing influences, such as those of Islam and the West, which are seen in ideal essentialist forms. Nowadays, most scholars would reject such a view of cultural interaction and offer instead a far more dynamic view of the interaction between different cultural axioms.

All of the mainsprings of modern Indonesian cultural influences were clearly present when identity was sought for the new state and nation. Early notions of Asian and Indonesian values were, of course, attributed to pre-Western and often pre-Islamic influences. In many instances, such values, however, could equally well be traced back to such European thinkers as Hegel, or even more interestingly, to notions of state and society that prevailed in medieval Europe. This is certainly true of the most basic political expression of Indonesian and Asian values, both at present and at the time of Indonesia's independence, namely the organic notion of state and society, which will be discussed briefly below. Some notions of 'Asian values' in the early discourse on Indonesian identity may also have been filtered through the originally Western-sponsored theosophical movement, which in Indonesia was instrumental in reviving a form of Indic values and conceptions.[10]

Other Western influences were present in discourses on socialism and nationalism, and even more importantly, in setting the agenda for debate. The notion of the modern state had, of course, originated in the West and was deeply influenced by essentially Western conceptions of political life. This influence could be conceived of through Lukes' notion of a three-dimensional view of power.[11] Such a view allows for an examination of the ways in which the weight of structures and institutions shaped the agenda and the selection of political issues. The lack of fit between institutions of politics and legitimate political issues, on the one hand, and political movements in Indonesia, on the other, is perhaps best exemplified by Nahdlatul Ulama (NU), the traditionalist Islamic mass organization in Indonesia, which played the role of a political party in the early decades of Indonesian independence. Through secular eyes, NU looked like a failure in politics as its conduct was characterized by opportunism, lack of policies, corruption and an accommodation of authoritarian forces. In religious terms, as pointed out by Ben Anderson, this was not necessarily so, as politics could be seen by the NU religious leadership as a form of liaison with the outside secular world for the preservation and propagation of what truly mattered to its adherents, the religious way of life.[12]

From a Western perspective, the lack of a common understanding of what properly constitutes public issues, the absence of secularism and differentiation, and the resulting lack of a delimitation between the public and the private can be seen as one root of Indonesia's problems of authoritarianism, capricious human rights regime and corruption in politics. Something of a dominant trend in Indonesian studies, particularly from the 1960s to the 1980s, saw such problems as manifestations of more or less timeless characteristics of Indonesian

culture. The most prominent scholarly query into the question about why democracy failed in Indonesia, was famously dismissed by Harry Benda, a leading scholar on Indonesia, who suggested that Indonesian history might find 'a way back to its own moorings', after the 'deviation' of colonialism, a place where the odds would clearly be stacked against constitutional democracy.[13]

The success of the Suharto regime in building political legitimacy on its highly authoritarian, and culturally specific, ideological constructs, convinced many of the wisdom of Benda's assertions. Serious academic studies on the possibility of democratization and increased respect for human rights in Indonesia were scarce, to say the least, for a substantial part of Suharto's long reign. For many scholars, probably even the majority of those who commented on Indonesian politics, democracy and human rights were off the agenda for the foreseeable future. Some scholars, however, complained about the common confusion between certain observable culturally shaped perceptions on the one hand, and the expedient political ideology of the Suharto regime on the other.[14] The expedient nature of Suharto's use of ostensibly cultural principles to sustain a thoroughly corrupt and violent regime should by now be clear to most observers of Indonesian politics. This notwithstanding, the universalism claimed for the Western understanding of human rights has been widely perceived in Indonesia, as just that: a particular Western understanding of a problem common to humanity. Thus the principles contained in the Pancasila discourse continue to have a wide resonance in Indonesia.

THE CULTURAL BASIS FOR PARTICULARISM

The traditional imagery of social truth in Java is of a contrast between the order and civilization of hierarchical city states and the wilderness of nature and its inhabitants, the less-refined humans included. Seen in these terms, the intellectual basis for the Suharto regime was a civilizing mission, a quest for pacification of the disruptive influences of primordial sentiments in society as represented by ethnic, religious and class-based loyalties. Suharto frequently referred to divisive sentiments in society as primordial and his policy of de-politicizing the less-sophisticated rural population, which he referred to as a 'floating mass', can be seen in this perspective. From this cultural and ideological viewpoint it is also possible to understand the insistence by successive regimes in Indonesia that the use of the undivided powers of the state for a social and national mission should take precedence over the potentially destabilizing process of democratization where state powers are likely to

be dispersed. In this view, state and society are not to be separated. The intellectual basis for this organic view of state and society was created by Indonesian thinkers half a century ago, and represented through the concept of an 'integralist' state; a conception that continues to enjoy popularity among the Indonesian military.[15]

In the earliest phase of the debate over Indonesian cultural particularism, proponents of the organic view of the state sought to link their sentiments with a wider notion of a contrast between the East and the West.[16] This early instance of a notion of Asian values, however, seems to have quickly exhausted its usefulness as a system of Indonesian values was constructed by such gifted ideologues as Ki Hadjar Dewantoro, Professor Supomo and President Sukarno. There was no dearth of concepts that these men could use for encapsulating the essence of Indonesian culture. One of the most important of these was the concept of a 'family principle', *kekeluargaan*, developed by Dewantoro before Indonesia's independence. The traditional family, according to this principle, with all its characteristics of paternal authority, maternal care, filial duties and hierarchical and functional specificity, was to be an ideal model for society. This, according to Sukarno, Indonesia's first president, was the guiding principle of the Indonesian constitution. In the economy this was to be expressed through state ownership of important branches of production and the encouragement of co-operatives. In politics the family principle was expressed through centralization of power in the presidency and an absence of properly constituted separation of the executive, the legislature and the judiciary. A second concept that has been used to epitomize Indonesia's cultural values is that of *gotong royong* (mutual help). This principle, along with the principle of consensus through deliberation, *musyawarah untuk mencapai mufakat*, was said to be at the heart of a village democracy practised since ancient times in Java. The historical roots of these concepts and the putative traditions behind them are suspect to say the least.[17] Although the respective regimes of Indonesia's first two presidents, Sukarno and Suharto, who served for a combined total of 53 years, were in some respects at opposing ends of the political spectrum between left and right, both leaders shared a great affinity for these ideological constructs. Sukarno claimed to have dug them out of Indonesia's soil, while Suharto frequently stated that the whole of Pancasila, which he saw as the legi timization of his regime, could be reduced to the single principle of *gotong royong*.

During his long reign, Suharto was able to construct a fairly cohesive ideology, under the banner of Pancasila, through a systematic use of such concepts. The government devoted huge resources to the propagation of an official interpretation of Pancasila, which was more than anything

based on Suharto's own speeches. A special Pancasila promotion programme was made compulsory for all civil servants, graduating students, military personnel and a variety of other groups seen as having a strategic role in society. The values taught at these courses were, again, mainly derived from Suharto's speeches and were supposed to be 'internalized and implemented by every member of Indonesian society'.[18] Among the 40 or so main principles taught at these courses were such Suharto exhortations as 'not leading a luxurious life' and 'loving each other'.[19] Other potentially more political principles included 'giving priority to state' and 'unanimity based on the family spirit'.[20] At the heart of the official discourse on Pancasila was a relativist notion of all values. A strong emphasis on human rights and democracy, for instance, or indeed a primary emphasis on the belief in one God, is said to constitute a failure to see Pancasila as a whole, or as an interrelated set of values.[21]

It is clear that many Indonesians have continued to value Pancasila highly as an ideology of national unity and tolerance, which alone, in popular opinion, can ensure social peace. Because of the history of how Pancasila came about, however, and even more because of the stretching of the simple principles of Pancasila into a deeply authoritarian political ideology, Suharto's initial efforts at propagating Pancasila met with a great deal of resistance in the 1970s and 1980s, particularly from Muslim organizations.[22] Opposition against Pancasila as the sole legitimate basis, *azas tunggal,* for organization in society, was generated both by suspicion of Pancasila as an anti-Islamic or pantheistic formulation, and also because the government was seen to be seeking legitimacy for a virtual one-party political system in Indonesia.

In the end, however, all Islamic organizations in Indonesia came to accept Pancasila, as the basis for all social and political organization in Indonesia. Some did this with much conviction, while others, it seemed, accepted Pancasila as a matter of expediency. Amien Rais, leader of the largest modernist Muslim organizations, Muhammadya, and leader of the opposition that toppled Suharto, and more recently the speaker of the *Majelis Permusyawaratan Rakyat,* Indonesia's Sovereign People's Consultative Assembly, likened his acceptance of Pancasila to buying a bus ticket for the bus of Indonesia.[23] Paradoxically, the completeness of Pancasila's victory opened the way for greater influences in Indonesian politics from different universalisms, such as Islamic secularism, Islamic modernism and Western universalism, by undermining the government's monopoly on interpreting the ideology.

DIFFERENT ISLAMIC IDENTITIES

Indonesia is the most populous Muslim country on earth, with 170 million adherents to the faith out of Indonesia's population of over 200 million. The faith arrived late in Indonesia, half a millennium after its establishment in Arabia, through India where mediating influences had already favoured characteristics that were generally less pronounced in the Middle East. In Indonesia, Islam encountered cultures that had borrowed selectively from Hinduism and Buddhism. Geographically, Islam spread from west to east, not least through inter-island trade, and from coastal areas to the interior. It became customary in scholarship on Indonesia to highlight the continued differences between coastal areas and the interior, particularly on Java, as signifying different degrees of Islamisation. In the interior, it was frequently said, Islam faced a resilient resistance from earlier religions that continued to have deep influences on the population while Islam was added as a new religious and cultural layer. This conceptualization has been pushed aside by new studies on Indonesian Islam that have highlighted the Islamic character of the supposedly syncretist traditions of Java and firmly positioned Indonesian Islam within the diverse traditions of Islam.[24] Much the same fate seems to await the once highly influential categorization of Javanese Islam by Clifford Geertz, into the orthodox *santri*, the syncretist and largely peasant, or low class, *abangan* and the aristocratic and syncretist *priyayi*.[25] Geertz's conceptualization, which became the basis for much political science analysis as well as for sociological and anthropological work from the late 1950s onwards, is still extensively used in casual commentary but many scholars have criticized it for failing to comprehend the essentially Muslim character of Javanese religion.[26] It has been suggested that Geertz was influenced by Islamic modernism and adopted a far too narrow definition of what constitutes an Islamic faith.[27] It has also been pointed out that followers of Javanese mystical groups see their mystical quest as complementary rather than contradictory to Islam, and that the *abangan* should not be seen as followers of a separate religion, but as Muslims that are not zealous about certain Islamic observations.[28] Rather than categorizing much of Javanese Islam as a syncretic mixture of Islam and Indic influences, fashioned by Islam's slow and shallow penetration of the Javanese interior, Mark Woodward has claimed that Javanese Islam represents one of the 'most dynamic and creative intellectual and spiritual traditions of the Muslim world'.[29]

There are, however, important lines of divisions within Indonesian Islam with substantial implications for identity politics, although recent developments have served to greatly reduce some of these differences.

Chief among these are the remarkably rapid spread and deepening of orthodox Islamic influences in Indonesian society in recent years, and the blurring of differences between modernist and tradition Islam on an intellectual and national level. The prognosis for a convergence between the main tendencies of Islam in Indonesia, however, is uncertain at best. Both main tendencies are represented by huge organisations, the traditional Nahdlatul Ulama, and the modernist Muhammadya, each of which has around 30 million members.

The traditionalists have looked to long-established interpretations by revered Indonesian scholars of the Koran and the Sunna for their guidance. In religious terms they practise the received wisdom of accepted traditions, or *taqlid,* and look to the consensus of revered religious scholars, *ijma,* which may include dogmas not found in the Koran. Conversely, the modernists emphasize the role of *ijtihad,* independent, rational judgement on matters not explicitly and for all time covered by the Koran, or the *Sunna,* and stress the need to cleanse Islam of beliefs and practices that have no direct foundation in the scriptures or the earliest traditions of Islam. The modernists tend to view the traditionalists as backward, superstitious and followers of beliefs and practices that could result in the watering down of the *tauhid,* the oneness of God, the central principle of Islam.

It is worth noting that there are certain social, political and economic dimensions to divisions in Indonesian Islam, although these may have been blurred with rapid economic and social development of recent years. The traditionalists have their strongholds in East and Central Java, while the modernists are strongest in the outer islands of Indonesia, in the bigger cities and on northern coastal areas of Java. The traditionalists tend to have a rural background and many of them are landowners, mostly of modest means in absolute terms, although often of some substance in local terms. The modernists, on the other hand, are closely identified with trading interests and have a greater following in towns and cities. Politically, the modernists were emasculated in the wake of regional rebellions in the 1950s, with enormous implications for Indonesia's political and economic development, as briefly noted earlier, while the traditionalists have alternated between client type relationships with successive governments and periodic opposition.

Of the two streams, modernism would at first glance seem to have a greater potential for incorporating individual rights because of its emphasis on individual responsibility, which has helped to foster values needed for success in modern conditions. In this respect, modernism has been compared to Calvinism and other early Protestant movements in Europe of the reformation period. These movements in Europe, however

were certainly not noted for their concern for human rights. In the case of modernist Islam, an emphasis on individual responsibility is also coupled with a strong ideological dimension, which sees Islam as a total civilization, incorporating the political in the religious. With regard to human rights and democracy, it has become increasingly difficult to generalize about the two main Islamic tendencies in Indonesia, although as discussed in the final section below, each of the two is characterized by different problems in this respect.

SECULAR ISLAM

In a continuation of Indonesia's often neglected contribution to original Islamic thought, a number of Muslim intellectuals have contributed in recent years to the development of a religious and political discourse, which combines deep religious faith with the withdrawal of the Islamic religion as a programme of politics. A separation between Islam and politics, of course, is unthinkable to many Muslims and nothing less than a perversion of the faith. Islam, more than any other major religion, contains a systematic prescription for social behaviour and a legal system that covers areas that in secular states are matters for a politically contested legislation process. In early Islam at least, and in the Koran, the legal and the religious are found side by side without any obvious distinction. The concept of secular Islam is fraught with greater contradictions than is the case with secular Christianity.

The most remarkable early contribution to the discourse on secular Islam came from Nurcholis Madjid, an often controversial former leader of an Islamic student movement. The concept of secularization for Madjid refers simply to the temporalizing of values which are temporal in reality but are often regarded as otherworldly by Muslims. Madjid has argued that secularization, in this sense, that is the divestment of divine significance from mundane objects, flows logically from a veneration of the oneness of God, the *tauhid*, which is a strange conclusion to many Muslims.[30] Madjid further claimed that one of the most serious problems of the Muslim community is an animistic tendency to regard all aspects of life as governed by religious norms. Through the *tauhid*, on the other hand, Madjid claimed, the animist is taught to look at material things as they are and to approach them with intelligence rather than through religious ceremonies.[31] For Madjid this type of secularization could entail the liberation of the Muslim community from old, backward-looking values and instead open the way towards intellectual freedom, creativity and progress. Although Islam is a religion containing socio-political teachings, Madjid and a number of his like-minded colleagues, who form

a somewhat diverse intellectual elite, have claimed that Islam is not a political ideology, and that religion should not be used to govern states, but only to rule private lives. Islam, according to this view, is a concept of society rather than state. For the critics of this position, however, Madjid and others of this school of thought ignore the existence of the sacralized normative precedents of the Islamic *Sunna* for the organization of society, thus robbing Islam of its wholeness.[32]

Madjid is far from being the only original contributor to a secular Indonesian Islamic discourse, which can be broadly classified as neo-modernism, following the conceptualization of the influential Pakistani-American scholar Fazlur Rahman.[33] Although the roots of this movement, as Rahman's appellation indicates, are to be found in modernist Islam, this tendency cuts across the old modernist-traditionalist divide in Indonesia.[34] From a political point of view, the most important contribution to neo-Modernism in Indonesia, which is largely an urban intellectual discourse, may paradoxically have been made by Abdurrahman Wahid, the leader of the traditionalist mass organization *Nahdlatul Ulama* (NU), who was elected President of Indonesia in late 1999. It is difficult to determine how large a part of NU's membership actually supports their leader's views. Given the reverence shown to leading traditionalist scholars, Wahid has undoubtedly benefited from his ancestry, as his grandfather founded the organization and his father became its leader. Wahid's contribution has been not only politically important, but also highly original. He advocates not only democracy and respect for human rights in a deeply authoritarian country, but uniquely for a leader of Muslim mass organization in a country where Islam has been frequently harassed by the government, when in opposition he regularly warned the government against favouring Muslims.[35] Wahid's frequent protests against any preferential treatment of Muslims and Islam by the Indonesian state has, not unexpectedly, earned him the displeasure of many leading Muslims, not least many of the younger intellectual leaders of the Modernist movement.

Wahid's central political commitment is to pluralism. He argues that a fundamentally undemocratic state might emerge from democracy, if the process of democratization came through Islamization of politics. In his view, the Indonesian military has a more basic commitment to pluralism through its support for ethnic and religious equality than many of the leaders of Islam. Therefore, the great Indonesian bridge between groups in this respect is seen as Pancasila. For Wahid, Pancasila, which Suharto and the military used to legitimate authoritarian rule, is Indonesia's basis for pluralism and democracy.

Although it would be inaccurate to see Wahid's contribution to the religio-political discourse in Indonesia simply in terms of a response to recent changes in Indonesian politics, it may be profitable for this very brief discussion to examine Wahid's ideas in conjunction with a discussion on the former regime's changing relationship with Islam. The most important institutional development in this respect was the founding of Indonesian Muslim Intellectuals' Association, ICMI, in 1990. In terms of membership this organization is tiny in comparison to the Muslim mass organizations, but in terms of influence on the regime in the final years of Suharto's government, ICMI was far ahead of them. The founding chairman of ICMI was B.J.Habibie, later president of Indonesia. The organization was set up through a marriage of the expedient purposes of two parties that were previously often at odds, namely President Suharto and a group of mostly modernist Muslim intellectuals.

For Suharto ICMI was an attempt to co-opt some of his critics and to broaden his base, which was made particularly important by a growing separation between the president and the military, and no less by Islam's rapidly growing social influence in Indonesia. For the Muslim intellectuals that found their place in ICMI, the organization represented an opportunity for a degree of inclusion in the highly exclusionary regime of Indonesia. Although relatively few ICMI members were elevated to important positions, the organization gave Islam a new voice and new opportunities for influence. Its eventual membership was made up of a mixture of intellectuals committed to the advancement of largely modernist Islamic agenda and a far larger group of bureaucrats, who, while not particularly noted for their Islamic, or intellectual standing, found it increasingly expedient to join ICMI. None of the three highly important intellectuals mentioned so far, namely Wahid, Rais and Madjid, were key members of ICMI, although Madjid is a member of the organization and Rais was one for a limited period, before being kicked out of the organization for political reasons. Although many of the intellectuals who joined ICMI, were acutely aware of Suharto's intentions to use ICMI for his own political purposes, the founding of the organization represented for many a watershed in the history of Indonesian Islam.[36]

Many of ICMI's intellectuals are committed to democratization but the route to this is through religion. Adi Sasono, one of ICMI's more important leaders who served as a junior minister in Habibie's government, reasoned that appeals for democratization based on Islam would make it easier to organize people for democratization and demilitarization of politics.[37] Sasono, who has run a development research institute within ICMI, was responsible for a very auspicious

move within ICMI, from a human rights point of view. The very first national event to be sponsored by this institute was a seminar on human rights where outspoken activists from outside ICMI were included. Presentations at the seminar, which included frank evaluations of the human rights situation in Indonesia were later published in a move that could have cost Sasono his position, as he has argued for democratization to be made a central purpose of ICMI.[38] Later, however, in a response to a particular and widely discussed human rights violation of the Suharto regime, namely a ban on the publication of several non-Islamic magazines, Sasono chose to remain silent while suggesting that Muslims had to be cool-headed about this issue and clear about their political priorities.[39]

This is where differences with Wahid's stance on Islam and politics emerge. While ICMI's intellectuals, and most of the modernist Muslim leadership looks to the Muslim community as their particular constituency, Wahid does not, in spite of his leadership of the country's largest Muslim organization. Whereas ICMI's intellectuals and the modernists in general argue for an Islamic society in Indonesia, where Islamic values inform government policy, which for many of them would include democracy and human rights, Wahid argues simply for democracy and human rights and against any form of confessionalism in politics.

Many observers of Indonesia regarded Wahid's fears about ICMI as exaggerated. Suharto, some argued, was simply taming Indonesian Islam further by co-opting some of the potentially dangerous critics of his regime to a government-sponsored, and ultimately government-controlled entity. ICMI, however, outlived Suharto in politics, and gained much prominence during Habibie's transition regime of 1998– 1999. Although the general politics of Indonesia are beyond the scope of this discussion, it is worth noting that one of the chief characteristics of the Indonesian economy, which came crashing down in early 1998, is the almost total marginalization of Muslims from leading positions in the modern corporate economy. Indonesia's corporate world, which consists of a couple of hundred diversified conglomerates is comprehensively dominated by members of the socially isolated Chinese minority, which accounts for only three per cent of the population, and members of the now discredited Suharto family. The economic marginalization of Indonesian Muslims will make for a number of highly-charged issues in the post-Suharto period. In the face of Muslim marginalization in the economy, politics of Islamic identities will offer tempting solutions, which is not an auspicious situation for human rights and democracy.

A PLACE FOR HUMAN RIGHTS?

This chapter has focused on Indonesia's inheritance from its encounters with Islam and even older religious and cultural forces. This is not to minimize the importance of a great number of movements within Indonesia that have fought extremely difficult battles for human rights without any reference to cultural or religious specificity. Some of these movements are elite groups, such as Forum Demokrasi, founded by Abdurrahman Wahid, now the president of Indonesia, while one of the most important is the large and diversified Legal Aid Institute, founded by Adnan Buyung Nasution. Other important groups are based on radical activism, such as Infight, the Indonesian Front for the Defence of Human Rights, while yet others are primarily concerned with particular dimensions of Indonesia's human rights problems, such as women's rights, labour conditions, land rights and the rights of indigenous people. It is worth noting that movements for human rights in Indonesia have tended to focus on the plight of the poor and are not always easily separated from movements for economic and social justice.[40] In addition to these human rights organizations, a number of student movements have campaigned against particular and general human rights abuses for some time in Indonesia. Increasingly, however, student movements seem to be split over questions of Islam. This, once again, highlights the implications of Indonesia's encounters with different universalisms and particularisms for the development of human rights.

Except for the Islamic neo-modernism, none of the main traditions of thought in Indonesia discussed in this chapter provide a fertile ground for the development of individual human rights. In this respect, and from the perspective of Western universalism, each has its own problem. Pancasila integralism fails to see the need for guaranteeing the rights of the individual vis-à-vis the state. Traditional Islam in Indonesia has been characterized by a deeply authoritarian outlook because of its reverence for the authority of established religious scholars. Modernist Islam sees Islamic religion as a complete civilization that contains a universally valid ideology for the just society. Both the integralist version of Pancasila and the conception of Islam as an ideo logical basis for a state are in conflict with the idea of a constitutional separation between state and society, which is an essential basis for a individual human rights and a democratic control over the state. In the case of Islam it is worth noting that in the Cairo Declaration of Human Rights in Islam, which was agreed on in 1990 by 25 Muslim-dominated states after 13 years of negotiations, all the rights and freedoms mentioned are said to be subject to the Islamic *Sharia* law.[41]

The question of human rights in Islam can be seen to revolve around limitations to popular sovereignty. Although there can be no doubt in Islam that sovereignty rests ultimately with God alone, modernist Islam has allowed for certain notions of popular sovereignty. The sovereignty of the people is then seen as a limitation on the sovereignty of temporal rulers, rather than in opposition to God's ultimate sovereignty, which is not to be questioned. For an example of the implications of such a limited conception of popular sovereignty for human rights it is instructive to examine comments by Amien Rais, the speaker of the MPR and the leader of Muhammadya, the modernist Muslim mass organization. When he highlighted the democratic principles of Islam, Rais made the controversial statement that the United Kingdom was more Islamic in one sense than the Kingdom of Saudi Arabia. According to Rais, although Britain is a monarchy, sovereignty in the UK is vested with the people, which is in line with Islam, while in Saudi Arabia the state is ruled by hereditary kings that are not accountable to the people, which is in contravention of Islam.[42] Popular sovereignty, however, according to Rais, is limited by the fact that Islam is a moral paradigm for society. As an example of this, Rais has pointed out that popular democracy in an Islamic state could never legally sanction homosexuality and the use of alcohol, because this would conflict with Islamic law.[43]

Islam shares this outlook with all religions that claim to include a codified prescription of how society should be organized. Christianity, for instance, shared with Islam until relatively recently the certainty that human legislation should be drawn up on the basis of religious teachings rather than through the expression of popular will. Those who believe that religious values should always take priority over individual rights will, of course, come to conclusions on human rights that are unacceptable to those who do not accept the teachings of the particular religion in question as a final word on their rights in society. It has been pointed out by Ann Elizabeth Mayer, that Muslim scholars writing on human rights have difficulties in accepting the shift in emphasis from human duties to human rights that characterizes much modern thought on human rights and that many of them fail to see the need for protecting the individual in his potentially adversarial relation ship with the state.[44] Mayer has also pointed out that the difficulties in finding an Islamic basis for human rights are such that Muslim scholars concerned with the subject need to deviate from traditional Islamic jurisprudence and adopt a hybrid system of Islamic and modern non-Islamic principles.[45]

This does not mean in practice that many Indonesian modernist Muslims will by necessity come to a conclusion on human rights that differs greatly from the universalism that originated in the West. The

origins of the Western discourse on human rights, as pointed out in several contributions to this volume, are certainly not derived from a single unbroken cultural or ideological tradition. Some of the key elements of the Western tradition are also clearly present in Islam. Michael Freeman, in his contribution to this volume, traces the idea of universal human rights from Stoic natural law philosophy, the Christian notion of human beings as children of God, rather than members of particular nations, and the notion of private property rights derived from Roman law. Islam, it should be noted, places a far more explicit emphasis on human beings as members of a single indivisible community than Christianity does, and Islamic law is particularly strong on private property rights, although all things are ultimately only held in trust for God.

Those who subscribe to the idea of universal human rights based on man's natural rights are bound to see Islam as something of a straightjacket in this respect. Many Muslim scholars, however, claim that most of the human rights contained in the Universal Declaration of Human Rights can be deduced from Islamic teachings. In Indonesia, Amien Rais has claimed that the overlapping and intersection between the Universal Declaration of Human Rights and Islamic human rights is almost total.[46] Many, particularly those most concerned with rights of women, would doubt the reality of this almost total overlapping, as would, for instance, advocates of gay rights as Rais' position related above would suggest. Once differences in conceptualization are overcome, however, an essentially similar debate takes place within Islam on human rights as within the Western-dominated debate. Both try to come to terms with the question addressed by Joseph Chan in this volume: when should the rights of an individual be judged to be of such an importance that the possibly conflicting interests of the others should not be allowed to defeat the right-holder's interest? Islam, and even more so the integralist Pancasila ideology, have tended to find a balance that in the West is seen to unduly favour community rights over those of the individual.

The debate, however, is ongoing, and given Islam's position in Indonesia an Islamic formulation of answers to questions of human rights is of crucial importance. It seems quite possible that in these matters, Indonesia will again play a pioneering role in an ideological debate that has much relevance in other parts of Asia. Indonesia's long history of ideological formulations born out of problems of modernization and clashes of historically constructed identities, and exploited by political leaders for expedient purposes, may also offer a vantage point for viewing the rise and the decline of the Asian values debate in neighbouring countries.

NOTES

1 Quotes from Habibie's speech at the launch of the Indonesian human rights action plan, *Istana Negara,* 25 June 1998, Sekretariat Negara, Jakarta.

2 The political economy of the Suharto regime is analysed in a book manuscript by Jon O.Halldorsson: 'Authoritarian Imperatives—The Political Economy of State and Democratisation in Indonesia'.

3 For a discussion on this see Robert Cribb, 'Nation: Making Indonesia', in Donald K.Emmerson (ed.), *Indonesia beyond Suharto: polity, economy, society, transition*. Armonk, NY: M.E.Sharpe, 1999, pp. 3–38.

4 For analysis of these debates, particularly with regard to Islam, see e.g. B.J.Boland, *The Struggle of Islam in Modern Indonesia*. The Hague: Martinus Nijhoff, 1982.

5 For a brief discussion on this, see Adnan Buyung Nasution, 'Human Rights and the *Konstituante* Debates of 1956–1959', in David Bourchier and John Legge (eds), *Democracy in Indonesia, 1950s and 1990s*. Monash Papers on Southeast Asia no. 31, Clayton: Centre of Southeast Asian Studies, Monash University, 1994.

6 For a discussion on Indonesia's drift towards authoritarianism in the late 1950s, see Herbert Feith, *The Decline of Constitutional Democracy in Indonesia*. Ithaca: Cornell University Press, 1962. See also various contributions to David Bourchier and John Legge (eds), *Democracy in Indonesia*.

7 For a description of the various forms of state control at village level in West Java, see Hans Antlöv, *Exemplary Centre, Administrative Periphery: Rural Leadership and the New Order in Java*. London: Curzon Press, 1995. For slightly different findings from research in Central Java, that indicates loosening of political control in villages, see Juliette Koning, 'Generations of Change: A Javanese Village in the 1990s', PhD thesis, University of Amsterdam, 1997.

8 For analysis of the legitimacy problems faced by the Suharto regime, see Mochtar Pabottingi, 'Historicizing The New Order Legitimacy Dilemma', in Mutiah Alagappa, *Political Legitimacy in Southeast Asia*. Stanford: Stanford University Press, 1995.

9 For analysis of this system, see Jon O.Halldorsson, 'Authoritarian Imperatives'. For a more detailed description see Schwartz, Adam, *Nation in Waiting, Indonesia in the 1990s*. Sydney: Allen and Unwin, 1994. See also Jeffrey Winters, *Power in Motion: Capital, Mobility and the Indonesian State*. Ithaca: Cornell University Press, 1996.

10 For a brief discussion on this, see David Reeve, *Golkar of Indonesia, An Alternative to the Party System*. Singapore: Oxford University Press, 1985.

11 Steven Lukes, *Power: A Radical View,* London: Macmillan, 1974.

12 Ben Anderson, 'Religion and Social Ethos in Indonesia Since Independence', in 'Religion and Ethos in Indonesia'. Conference paper, Monash University Centre for Southeast Asian Studies, 1975.

13 Harry J.Benda in a review article of Herbert Feith, 'The Decline of Constitutional Democracy in Indonesia', 'Democracy in Indonesia', *The Journal of Asian Studies,* May 1964, pp. 449–456.

14 For a sustained critique of a culturalist approach to politics in Indonesia, see the works of Richard Robison, who has analysed Indonesia from a political economy perspective. See e.g. Richard Robison, 'Culture, Politics and Economy in the Political History of the New Order', in Ben Anderson and Audrey Kahin (eds), *Interpreting Indonesian Politics, Thirteen Contributions to the Debate*. Ithaca: Cornell University Modern Indonesia Project, 1982; Richard Robison, *Indonesia: The Rise of Capital*. Sydney: Allen and Unwin, 1986; and Richard Robison, 'Indonesia: An Autonomous Domain of Social Power', *The Pacific Review,* 5, 4, 1992. Also, for a critique of simplistic equations between observable cultural traits and national politics, see Joel S. Khan, 'Ideology and Social Structure in Indonesia', *Comparative Studies in Society and History,* 1978, pp. 103–122.

15 See Douglas Ramage, *Politics in Indonesia, Democracy, Islam and the Ideology of Tolerance*. London: Routledge, 1995.

16 See David Reeve, *Golkar of Indonesia,* 1985, pp. 7–9.

17 See Ina Slamet, 'Cultural Strategies for Survival, The Plight of the Javanese', *Comparative Asian Studies Paper,* Rotterdam: Erasmus University, Faculty of Social Science. See also John R.Bowen, 'On the Political Construction of Tradition, Gotong Royong in Indonesia', *Journal of Asian Studies,* 45, 3, 1986.

18 For a description of the so-called P 4 courses in Pancasila, their contents, value and role, see Faisal Ismail, 'Islam, Politics and Ideology in Indonesia: A Study of the Process of Muslim Acceptance of the Pancasila', PhD thesis, McGill University, Montreal, 1995.

19 Ibid., pp. 151–152.

20 Ibid., p. 152.

21 Ibid., p. 308. Faisal Ismail quotes Alfian, a locally well-known Indonesian political scientist on this point.

22 For a brief discussion on Islam and the state, see C.W.Watson, 'Muslims and the State in Indonesia', in Hussin Mutalib and Taj ul-Islam Hashmi, *Islam, Muslims and the Modern State, Case Studies of Thirteen Countries*. London: Macmillan, 1994.

23 Faisal Ismail, 'Islam, Politics and Ideology in Indonesia', p. 259.

24 Among the most important of these is Mark Woodward, *Islam in Java, Normative Piety and Mysticism in the Sultanate of Yogyakarta*. Tucson: University of Arizona Press, 1989.

25 Clifford Geertz, *The Religion of Java*. Glencoe, Ill: The Free Press, 1960.

26 See e.g. Mitsu Nakamura, *The Crescent Arises over the Banyan Tree*. Yogyakarta: Gadjah Mada University Press, 1983, and Mark Woodward, *Islam in Java,* 1989.

27 See e.g. Mitsu Nakamura, 'The Cultural and Religious Identity of Javanese Muslims: Problems of Conceptualization and Approach', *Prisma,* 31, 1984.

28 See e.g. a discussion by Zifirdaus Adnan, 'Islamic Religion: Yes, Islamic Political Ideology: No!, Islam and the State in Indonesia', in Arief Budiman (ed.), *State and Civil Society in Indonesia*. Monash Papers on Southeast Asia no. 22, Clayton: Centre of Southeast Asian Studies, Monash University, 1990. esp. pp. 443–457.

29 Mark Woodward, *Islam in Java,* 1989, p. 242.

30 For a critical discussion of the early works of Nurcholis Madjid, see Muhammad Kamal Hassan, *Muslim Intellectual Responses to the New Order in Indonesia*. Kuala Lumpur: Dewan Bahasa dan Pustaka Kementerian Pelajaran Malaysia, 1982.

31 Nurcholis Madjid, 'More on Secularization', see appendix B in Muhammad Kamal Hassan, *Muslim Intellectual Responses,* 1982, p. 202.

32 See e.g. Robert W.Hefner, 'Islamization and Democratization in Indonesia', in Robert W.Hefner and Patricia Horvatich (eds), *Islam in an Era of Nation States*. Honolulu: University of Hawai'i Press, 1997, pp. 82–86.

33 See e.g. Fazlur Rahman, *Islam: Challenges and Opportunities*. Edinburgh: Edinburgh University Press.

34 For a discussion of the neo-Modernist movement in Indonesia see Greg Barton, 'The Impact of neo-Modernism on Indonesian Islamic Thought: The Emergence of Pluralism', in David Bourchier and John Legge (eds.), *Democracy in Indonesia,* pp. 143–150.

35 For an overview of the political views of Abdurrahman Wahid, see Douglas Ramage, *Politics in Indonesia*. See also Anders Uhlin, *Indonesia in 'The Third Wave of Democratization : The Indonesian Pro-Democracy Movement in a Changing World*. London: Curzon Press, 1997.

36 For a discussion on ICMI, see Douglas Ramage, *Politics in Indonesia.*

37 Quoted by Douglas Ramage, *Politics in Indonesia,* p. 96.

38 See Robert W.Hefner, 'Islamization and Democratization in Indonesia', pp. 108–109.

39 Quoted by Hefner, 'Islamization and Democratization in Indonesia', p. 110.

40 For a discussion on some of these movements see Anders Uhlin, *Indonesia and the 'Third Wave of Democratization'*.

41 See e.g. Masykuri Abdillah, 'Responses of Indonesian Muslim Intellectuals to the Concept of Democracy, 1966–1993', PhD thesis, Hamburg University, Pub. by Abera Network, Austronesia: Hamburg, 1997, p. 82.

42 Amien Rais, *Cakrawala Islam Antara Cita dan Fakta*. Bandung: Mizan, fifth edn, 1992, p. 47.

43 Amien Rais in an interview with Masykuri Abdillah, 'Responses of Indonesian Muslim Intellectuals'.

44 Ann Elizabeth Mayer, *Islam and Human Rights: Traditions and Politics*. Boulder: Westview, 1991.

45 Ibid., see esp. pp. 168–169.

46 See Masykuri Abdillah, 'Responses of Indonesian Muslim Intellectuals', p. 87.

7
Modernization without Westernization? Asian Values and Human Rights Discourse in East and West

Hugo Stokke

Human rights as a system of ideas goes back considerably in time and its roots can be found not only in modern history, primarily associated with the Enlightenment, but prototypical elements can be found as far back as in European antique philosophy.[1] Interestingly, attempts have been made at investigating the compatibility of human rights with the classic texts of other cultures, for example Confucianism.[2] However, human rights as we know them today are inextricably bound to the emergence and proliferation of international organizations and to the growing regulation of interactions among states by international legal treaties. The Universal Declaration of Human Rights and the following Covenants are part and parcel of an irreversible trend towards legal regulation of inter-and intra-state relations by third-party organizations such as the United Nations. While many treaties are uncontroversial, the International Bill of Human Rights, as the above instruments are commonly known, has been beset by controversy almost from day one. For most of the post-World-War-II period, controversies revolved around East-West tensions rooted in the competing ideologies of the United States and the Soviet Union which resulted in separate treaties on civil and political rights and on economic, social and cultural rights. With the entry of the developing nations, controversy has turned on the precise nature of the right to development and what obligations this right entails on the part of Northern governments. In the 1990s, controversies have raged on the distinctiveness of cultures and their implications for the universality of human rights.

The argument for distinctiveness has basically come from the Asian region. At a meeting in Bangkok from 29 March to 2 April 1993, 49 Asian countries convened to prepare for the 1993 World Conference on Human Rights that was to be held in Vienna on 14 to 25 June the same year. The regional meeting produced a Bangkok Declaration that was notable for putting in doubt the universality of human rights. In para. 8 of the Declaration it was stated that the participating countries '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'. In para. 7 the Asian countries 'stress the universality, objectivity and non-selectivity of all human rights and the need to avoid the application of double standards in the implementation of human rights and its politicization, and that no violation of human rights can be justified'. Para. 6 states that the parties 'reiterate that all countries, large and small, have the right to determine their political systems, control and freely utilize their resources, and freely pursue their economic, social and cultural development'. In other words, the Declaration argues for contextualization in norm-setting, consistency in application and a non-interfering mode of monitoring. Other paragraphs speak of a positive, balanced, and non-confrontational approach (para. 3), the discouragement of attempts to include human rights conditionality in development assistance (para. 4) and emphasize non-inference and warn against the use of human rights as an instrument for political pressure (para. 5).[3] Taken together, the Declaration, although it nominally upholds the universality of human rights, does seem to introduce so many reservations as far as norm-setting and application are concerned as to compromise the universality of human rights and thereby provide less room for dialogue on the matter.

However, this is not necessarily so, according to Philip Alston.[4] He argues that a distinction should be made between the core rights that are concerned with the physical integrity of the individual and those that are concerned with society, tradition and culture. Assuming that human beings are physically equally vulnerable everywhere, a rigorous approach would be as appropriate as it would be inappropriate for the latter group of rights. For this group, a more reflective and less demanding approach is called for in order to avoid counterproductivity in the application of the rights.[5] Furthermore, critics of human rights frequently argue as if the human rights edifice is monolithic and with out internal inconsistencies. Such inconsistencies may indeed abound, such as between individual and collective rights, and require discussion in order for a reasonable point of balance to be struck.[6] Finally, the claims of contextualization and relativization of human rights are most often made by governments and frequently in the face of internal opposition groups. There may be a strong case for investigating the validity of these claims by non-governmental organizations in their own countries to bring out more clearly which discrepancies exist and which do not. For it to

happen, certain guarantees as to freedom of expression and association would have to be in place.

These comments may indicate that there is room for dialogue, both on a formal level, as in the relevant fora provided by the treaty-based UN human rights bodies as well as more informally between scholars and activists from different parts of the world. This chapter follows on from some of these considerations. I shall start by discussing two views based on cultural particularism of which there is a Western and an Eastern version. The Western version is argued in the recent work of Samuel P.Huntington and the Eastern by the proponents of so-called 'Asian values'. I shall try to show that the opposing views share basic assumptions that are less about culture than about the nature and essence of politics and the role of the state in society. These assumptions show that instead of focusing on culture, the human rights situation can be better understood and explained if the attention is directed towards politics and the tasks of states as they have been defined in the course of the twentieth century. This refers to what I see as the main point in the current debate: is modernization conceivable without Westernization or are these inextricably linked and in what sense? I shall argue that the two views or theses do not come to grips with these questions as far as human rights are concerned and it will be demonstrated through an assessment of the human rights situation as it has been reported in Malaysia and Singapore. From this exposition, I shall conclude by way of a hypothesis for further investigations that the human rights problems and disputes are far more likely to be rooted in modernization processes that are of universal scope and might as easily crop up in African, Latin-American and European countries as in Asian countries.

CULTURAL CRITIQUES: WEST AND EAST

The critique of human rights applicability is based on an argument of cultural particularism, of which there is a Western and an Eastern argument. The Western argument has been advanced most recently by Samuel Huntington and the Eastern argument by the proponents of 'Asian values'. These arguments will be looked at in turn and an attempt made to assess on what they are based. Of course in doing so, it should be borne in mind that 'Western' and 'Eastern' do not necessarily signify anything more than the respective locations of the proponents.

Huntington's clash-of-civilizations thesis, originally published in *Foreign Affairs* and subsequently expanded into a book,[7] is that the pattern of conflicts in international affairs has changed over the course of the last 350 years. In the period from the peace treaty at Westphalia to the French

Revolution in 1789, the pattern was dominated by conflict over princely territories. The fall of L'Ancien Regime and the emergence of nation-states implied that the structure of conflict no longer evolved around the territorial ambitions of princes, but around popular national sovereignty. In the period from the Russian Revolution in 1917 to the fall of the Iron Curtain in 1989, conflicts were defined by the contest of mutually exclusive ideologies. After the Cold War epoch, the most important dividing lines among humanity will be cultural in nature and go between the West and non-Western civilizations and among non-Western civilizations. In the new era of the politics of civilization the non-Western civilizations are no longer the objects of Western colonialism, but join the West as shapers and designers of history.

What is a civilization? According to Huntington, 'a civilization is… the highest cultural grouping of people and the broadest level of cultural identity people have short of that which distinguishes humans from other species'.[8] Why are civilizations the primary focal points of allegiance and not nation-states? That is because nation-states have only held this position for a relatively short time, whereas in the larger frame, history is about contending and conflicting civilizations and this is likely to set the stage for future conflicts. Why is that so? For once, contentions among civilizations are not only real, but also more fundamental as they are the product of the turn of centuries and are therefore more resilient and permanent than other forms of cultural allegiance and political organization.[9] Second, higher mobility and contacts among people reinforce rather than reduce consciousness of civilization. Third, economic modernization and social change weaken not only local identity, but also the nation-state as a source of identity. Civilizational consciousness enters to fill the vacuum left by the erosion of alternative sources of consciousness.[10] Fourth, this consciousness is strengthened by the double role of the West as the centre of power, but alas, no longer the centre of civilization. Cultural characteristics and differences are, fifth, less malleable and therefore less subject to negotiations and compromises than differences among models of politics and economics. Economic regionalism is, sixth, rising and should be understood as manifestations of culture.

All of these trends, taken together, incline towards an 'us against them' mentality in the relations among groups of different civilizational attributes. In the absence of ideologies as sources of mobilization, shared religion and civilizational identity will be the new sources for groups and governments. Hence Western attempts to promote its civilizational values will be met by culturally conditioned resistance from other civilizations. In the aftermath of the Cold War, the kin-country syndrome

will replace ideologies and power of balance considerations as the primary basis for co-operation and coalition. The Eastern complaint against the West's double standard on human rights is no longer relevant: 'A world of clashing civilizations…is inevitably a world of double standards: people apply one standard to their kin-countries and a different standard to others.'[11] Promotion of Western values is therefore unfeasible as it presupposes a common standard. Even the idea of a universal civilization is a Western idea contradicting the particularism of Asian societies and their emphasis on what divides a people from another.[12] The dividing line will run between West and the Rest and Huntington expects the rest to react in one of three ways, either to retreat into isolation (North Korea), or to jump on the bandwagon and assimilate Western values or to modernize without Westernizing. The latter way is the one chosen by the group of newly industrializing countries in East Asia, as will be seen below.

An interesting corollary of Huntington's theory is that nation-states are stable to the extent they are culturally and civilizationally homogenous. The membership of nation-states of one of the prevailing civilizations provides the safe framework that national actors need to advance their economic and political interests. A state comprising several nations (or exponents of colliding civilizational values, as it were) is an unstable state steering towards an internal 'clash'.[13] Huntington is nothing but consistent in warning against the rejection of a colourblind society of equal individuals and the attendant dangers of a colour-conscious society with government-sanctioned privileges for some groups. The push for multiculturalism and the rewriting of American history from the viewpoint of non-European groups are signs of danger. Both the demands for special group rights and for multiculturalism encourage a clash of civilizations within the United States and contribute to its disuniting. Envisaged is the spectre of internal civil war against which, one might conjecture, state actors need to respond forcefully.[14] They would similarly need to restrict immigration in order to avoid becoming 'cleft' countries, countries comprising distinct religious and ethnic communities which are not easily assimilated. Policies would vary between countries which are basically immigrant societies (the United States) and those which are not (most European countries).[15] However, this piece of advice may in practice amount to an attempt of reversing the clock. Both Malaysia and Singapore, which will be looked at below, are multi-ethnic, multi-religious societies, thus in Huntington's terminology, multi-civilizational. Both state leaders are aware of that and are apt to strike down any attempt at mobilizing communal discontent.

The Eastern-Asian values thesis shares many features with the one laid out above though propounded in a somewhat less strident and confrontational tone. The argument is motivated by a sense of parity with the West, possibly even superiority as regards alleged social dysfunctional features of Western society. Also involved in the argument may be a project of constructing a pan-Asian identity similar to previous projects of pan-Africanism and pan-Arabism.[16] In the Eastern argument, which is not an argument of Asia as such as it curiously leaves out the Indian sub-continent, the project is on the Asianization of Asia,[17] or the possible emergence of a Pacific community,[18] which will straddle civilizational boundaries and pave the way for a fusion of cultures.

For some reason, the proponents of the Asian values have frequently been Singaporeans and Malaysians which, perhaps paradoxically, may be related to their familiarity with Western ways of reasoning and their high grasp of the English language, being a former united colony under the British. In the following, we shall highlight some of the key points in the critique, as summarized by a Singaporean official.[19]

For once, Asian governments are sceptical of the propensity of Westerners to put civil and political rights above economic and social rights. The relationship should rather be reversed. In any case, economic development, with or without corresponding rights, comes before civil and political rights.

Second, Asian governments are more likely to emphasize consensus-seeking mechanisms than to endorse the adversarial style of Western politicking. More generally, whereas the individualist West puts the individual over society, the communitarian East puts society (being government at the macro-level and the family at the micro-level) over the individual.

Third, Asian governments are sceptical of the tendency to trump the rights of individuals over state interests and to regard authority as inherently repressive. Hence Asian governments are more prone to emphasize duties than rights.

Fourth, good government in the sense of honesty, accountability and effectiveness may in the course of its functioning have to detain people without trial, restrict press freedom and enact draconian laws in order to achieve rapid development. There is room for at least a discussion of this in the interpretation of international human rights law as long as it does not interfere with the core rights concerning the prohibition of murder, genocide and torture, according to the Singaporean official.

Fifth, rights are to be subordinated to national interests, whether it is state sovereignty, territorial integrity and the preservation of the political systems.

There may be variations among countries in which points to raise with what insistence, but the set comprises the core objections of the proponents of Asian values. If these critical points are looked at jointly, it is found that they only intermittently speak of values as embodied in cultures and then largely by analogy by drawing a comparison between the individual as a family member and as a citizen. Far more than cultural values, these critical points speak of a certain conception of what the tasks of the state and of politics as the means of executing state policies are. The preference for economic and social rights over civil and political, independently of whether this is sincerely meant or merely is intended as a rhetorical ploy, clearly indicates the preference for an active, interventionist state rather than one abstaining from interference in economic and political life. The other critical points all concern the demand upon the citizen to accept government authority, in the name of national security or rapid economic development. The perception in the East of a Western tendency to be sceptical of government authority or not accepting it unreservedly is a sign of the East's claim to culturally based differences rooted in incompatible traditions of thought.

However, there may be a strong case for doubting whether these points are indeed representative of the region as such or whether they are valid independently of time and place. In a recent article, Kishore Mahbubani finds that '[m]ost people in the Asia-Pacific welcome the principle of equality under the law, which is the foundation of Western societies. East Asians worry about arbitrary justice, still prevalent in many parts of the region. Indeed, for most East Asian societies with lingering feudal traditions, the introduction of the rule of law could have revolutionary implications.'[20] Whether a shared desire for good governance in the sense of accountability, predictability and effectiveness translates into general respect for human rights is another matter. Good governance may be a necessary condition, but not sufficient in and of itself.

Moreover, if the above differences were indeed culturally based, one would expect not to find similar viewpoints in the tradition of Western thought. This is of course far from the case. There is a distinct anti-liberal tradition in Western thought. One version, associated with Marx and Engels and Lenin, came to have a lasting effect on China and the Indo-Chinese countries of Laos, Cambodia and Vietnam and sprouted underground movements throughout most countries of Southeast Asia. Another version, based on a conservative critique of liberalism, similarly provided some of the ideological ground for the Fascist movements of Europe in the first part of this century in countries such as Italy, France, Germany and Spain. In the Asian critique there is a tendency to regard

liberalist thinking as so evident in the West so as not to require any further explanation. The history of this century should remind us that there is nothing obvious about liberalism and human rights in the West.

THE WESTERN ANTI-LIBERAL CRITIQUE

In an important study, Stephen Holmes proceeds to dissect the anatomy of anti-liberalism. While this critique comes in many forms, it nevertheless shares some basic assumptions as the anti-liberals,

> excoriated liberalism for its atomic individualism, its myth of the pre-social individual, its scanting of the organic, its indifference to community, its denial that man belongs to a larger whole, its belief in the primacy of rights, its flight from 'the political', its uncritical embrace of economic categories, its moral scepticism (or even nihilism), its decision to give abstract procedures and rules priority over substantive values and commitments, and its hypocritical reliance on the sham of judicial neutrality.[21]

Huntington writes in response to his critics, '[w]hat ultimately counts for people is not political ideology and economic interest. Faith and family, blood and belief, are what people identify with and what they will fight and die for'.[22] What Huntington grasps in his thesis of the clash of civilizations is exactly the concept of the political as enunciated by the anti-liberal critique. In everyday politics far too much concern has been with political ideologies and economic interests and far too little with questions of identity, allegiance and expressive types of political action. Huntington's axiom is that a world without the potentiality of conflict would be a world without a foreign policy (and possibly a home policy). In this light, it is of less importance that the enemy has been redefined from being ideological (Soviet Union) to being cultural (non-Western civilizations) as it does not alter the fact that states (US) or groups of states (West) are the ones acting in the foreign arena. Huntington's mode of thinking is anchored in the realist tradition in international relations theory, even though realism is given more sub stance than the maintenance of the balance of power *per se*.[23] For the West to act united outwardly presupposes its unity inwardly based on those civilizational values Huntington reserves for the West only. Huntington's contribution is not about culture, if anybody should have been so deceived, but about politics in an illiberal sense.[24] But even if Huntington conjures up a world of friend-enemy distinctions, it would be misleading to think that it represents a perspective that blinds the analyst from drawing insights

from the example of other civilizations. Underneath the thesis is a continuing preoccupation with the conditions for public order which straddles civilizational boundaries. As nicely pointed out by Stephen Holmes,

> [l]ong ago, in *The Soldier and the State* (1957), Huntington extolled West Point as a glorious remnant of Sparta surviving amid the Babylon of petty Yankee commercialism and bourgeois squalor. Forty years later, West Point has been replaced by Singapore, a city state epitomising the Asian virtues of authority, hierarchy, the supremacy of state over society, and the supremacy of society over the individual. Even those who think of Singapore less as an authentic expression of Asia's indigenous authoritarian capitalism than as a piece of real estate rented by foreign financial institutions, will be struck by the sincerity of Huntington's sympathy with Lee Kuan Yew's theory of Western decline—a sympathy which, by demonstrating the essential porousness of cultural divides, completely counter to Huntington's theory, vindicates the hope that individuals from one civilization can understand the underlying philosophies and ways of life of another.[25]

One would be less struck if one realizes that the argument is less about civilizations than about the conditions for public and political order, a theme running through all of Huntington's writings.

ASSESSING THE CRITIQUES

As I have attempted to show, there are commonalties between the two critiques investigated, namely that modernization does not result in Westernization. Huntington rejects the arguments advanced by his critics; first, that 'increased interaction—greater communication and transportation—produces a common culture' and second, that 'modernization and economic development have a homogenizing effect and produce a common culture closely resembling that which has existed in the West in this century'.[26] In the East Asian version, enunciated by the political leadership of Singapore and Malaysia, the primacy of the collectivity, of group interests, of the country over individuals are all non-Western assets enabling the more rapid economic development of the region in contrast to 'the self-indulgence, sloth, individualism, crime, inferior education, disrespect for authority, and 'mental ossification' responsible for the decline of the West'.[27]

While there are commonalities between the two critiques, there are significant differences. For Huntington the dependent variable, i.e. that which needs to be explained, is international relations in the post-Cold War era, in particular, the future substantial orientation of American, and by extension, Western foreign policy. Foreign policy is to be understood in the classical sense associated with the promotion of national interest in which national security is primary. For Huntington, foreign policy has much less to do with the promotion of economic interest which is at best the promotion of *sub-national* interests. In the 'Asian values' critique, the dependent variable is rather the economy, and foreign policy is much more related to the pursuit of economic interest and less to national security as such. This has quite obvious reasons, as much of the value consensus would dissipate once the discussion turns to geopolitical and security concerns. Consequently, one does not find in the region economic and political integration comparable to the European Union nor a military alliance comparable to NATO. Economic integration does not extend beyond trade agreements and the fora for security concerns produce collective talk rather than collective action, due to the propensity of the regional governments to a non-interfering and non-critical type of diplomacy which is hardly conducive to joint action.

The role of culture in the Asian critique is accordingly narrower than in the clash-thesis, as it is to be understood as the models of social organization producing optimal economic growth. Culture or the prime nation-building component is the social key to economic strength. When the East claims status parity with the West or even supremacy, it is based on the assumption that the cultural, nation-building component is as optimal, if not more so, than that of the West for the rapid economic development of the region. The comparative economic weakness of the West is to be explained by dysfunctional or inexpedient forms of social and cultural organization in the West. The resistance of the East to the human rights criticisms of the West is based on the claim to status parity which rules out instructions:

> East and Southeast are now significant actors in the world economy. There is far less scope for conditionality and sanctions to force compliance with human rights. The region is an expanding market for the West… It is also becoming a source of capital. What hurts East and Southeast Asia also pains the West.[28]

The cultural, nation-building component has in the Asian critique a significant role in explaining economic success. It is of importance to ascertain whether 'Asian values' are instrumentally or intrinsically

valuable. If they are instrumentally valuable, their value would correlate with the degree of economic success, but if they are intrinsically valuable, they are so independently of whatever economic results they produce and are supported because they promote a vision of the good life or good society.[29] In the critique, the instrumental side to the values argument is more apparent. For example, one contestant finds that

> the real interests underpinning the debate have nothing at all to do with questions of culture, or indeed, human rights. Rather, they are related to Asian economic success and confidence and Asia's continuing reaction to colonialism… I do…detect a sense of panic among many Western scholars and politicians—a result of the fact that many Asians appear to be speaking from a position of strength; strength drawn not from the merits of intellectual argument but from economic success… Western liberalism and its ideals are under threat, and this siege on the Western citadel has drawn more and more Western leaders and intellectuals into the fray, compelled to stage a spirited defence against Asia's confident and well-considered alternative worldview. But, it could be true that Asian intellectuals are just having too good a time enjoying their newly acquired wealth to worry so much about such conceptual debates.[30]

Notwithstanding the point that Asia would probably benefit more from a liberal West than a non-liberal West, the argument, for what it is worth, shows the purely instrumental value of the 'Asian values' thesis.

A closer look at the cultural, nation-building component of wealth creation does not reveal any joint Asian values. Francis Fukuyama has explored the notion of trust and the attachment to groups and communities in explaining wealth and prosperity.[31] He distinguishes between what he calls high-trust and low-trust societies and not unexpectedly finds that it cuts across East—West boundaries. In the European region, Germany was much earlier in creating large-scale, private businesses with professionally managed hierarchies than Italy where traditionally smaller family businesses dominated. In the Asian region, there is a similar contrast between Japan on the one hand and the Chinese societies of Taiwan and Hong Kong. Moreover, Fukuyama finds that the United States, in contrast to the image of rampant individualism, must also be characterized as a high-trust society as evidenced by the multitude of large-scale corporations and intermediate associations between the individual and the state. Typical of low-trust societies is a strong allegiance to the family or the clan combined with distrust of almost everybody else. As argued in a study of Hong Kong businesses, 'The key

feature would appear to be that you trust your family absolutely, your friends and acquaintances to the degree that mutual dependence has been established and face invested in them. With everybody else you make no assumptions about their goodwill.'[32] In another study of the business systems in East Asia, Japan is found to score much higher on the significance of collective non-personal authority than Korea, Hong Kong and Taiwan and the bases of trust of obligation are in Japan institutional and in the other societies ascriptive and reputational. Hence the primacy of family commitment is in Japan only medium while it is high in the three other societies.[33] These differences translate into differences in authority relations. Personal ownership and owner domination is low in Japanese businesses, but high in Korean and Chinese businesses. Conversely, the significance of formal co-ordination is high in Japanese businesses, medium in Korean and low in Chinese. The managerial style is facilitative in Japan, directive in Korea and didactic in Chinese businesses.[34]

These differences across East Asia throw in doubt whether the cultural, nation-building component is sufficiently uniform so as to see prosperity as a result of trust and social virtues. The community of one's allegiance varies between countries in the region and it cuts across regions as family or clan-based enterprises are as common in Southern Italy as in Taiwan and corporate allegiances as common in Germany as in Japan, both countries graduating out of authoritarianism into democracies and economic dynamos in their respective regions. If Southeast Asia were also included, even larger differences would undoubtedly emerge.[35] Clearly, the cultural components are neither uniform, nor are they unique in explaining wealth and prosperity. Moreover, as the economic development in the Asian region has suffered what may hopefully be only a temporary setback, to be amended by reforms in the financial sectors of the various countries, the set of values that were instrumental in the period of rapid growth must similarly have to account for readjustment and reform.

Clearly some more reflection is needed and the attention has to be turned to the problems to be faced by any society in the process of modernization. As remarked in an editorial article in the *Economist*, the interesting questions are to be found in the overlapping features of the East and the West. These questions have to do with 'how to organize any rich, modern society late this century and early next century; and about how to strike a balance anywhere between freedom and order, and between government responsibility and family responsibility'.[36] However, in the following section on the human rights record of

Malaysia and Singapore an attempt will be made to assess the inter-pretatory value of these two theses.

THE ALI BABA CONNECTION

There is in Malaysia a common practice known as 'Ali-Babaism' whereby Malays are appointed to nominal management and ownership positions in companies that are practically run by Chinese. Huntington writes of the Islamic-Confucian connection, involving security relations between China and various Muslim countries, which he sees as the main civilizational threat to the West.[37] In yet another sense, the connection has to do with the Asian values debate as Singapore and Malaysia frequently appear as the main advocates of Asian values. In this section we propose to look at their human rights record with a view to assess the two theses as examined in the former section. If the 'clash' thesis is correct, significant differences in their human rights record would be expected on account of these two countries belonging to different civilizations. On the other hand, if the 'Asian values' thesis is correct, significant similarities would be expected in their human rights record. I hope to show that none of the theses is fully borne out by the evidence and that theories purporting to explain their human rights record would have to sought elsewhere. Where to look will be briefly elucidated in the concluding section.

We propose to use the annual Country Reports on Human Rights Practices as published by the US State Department in 1997.[38] It is not an ideal source as it is an official document which may not be devoid of reporting biases. However, NGO sources are not ideal, either. Amnesty International reports on a narrower range of rights than does the US State Department, and their information for the last one to two years has been considered supplementary to the US State Department on those topics covered by Amnesty. The Country Report has the added advantage that country entries follow explicit guidelines, making comparison between countries easier. The next section will summarize the report on these two countries following the structure of the report, beginning with the 'core' rights and proceeding to the more 'contextual' rights.

PHYSICAL INTEGRITY RIGHTS

There were no *politically motivated killings* reported in either country in the period under review. No *disappearances* were reported. In both countries, there were reports of one case each of *extra-judicial killing*, but in both instances the guilty were prosecuted and sentenced to imprisonment.

However, while the US State Department report says nothing about the use of *capital punishment*, Amnesty refers to six death sentences and three executions in Malaysia, mostly related to drug trafficking, and to at least 38 executions in Singapore, also mostly for drug offences. One particular case in Singapore concerned the execution of five Thai migrant workers found guilty of murdering three workers, despite appeals for clemency from both Thai officials and private organizations.[39]

As regards *degrading punishment and treatment*, concern has been expressed about the use of caning for various criminal offences. In Malaysia, caning can be administered for narcotic possession, the use of forged passports as well as for violent crimes such as kidnapping, rape and robbery. In Singapore, caning is also used for cases involving criminal force, including drug-trafficking and illegal immigration. Law in Singapore prohibits torture, though reports of tough police interrogation methods involving sleep deprivation are known. Prison conditions in both countries are generally good.

Regarding *arbitrary arrest and detention,* there are interesting legal similarities between the two countries. In Malaysia, the Internal Security Act (ISA) of 1960 provides that detainees can be held for periods of up to two years; those released before the end of the period are subject to restricted rights and movement. There is only limited judicial review of detentions and advisory board decisions are only non-binding on the Ministry of Home Affairs. Originally intended to be used against internal subversion by Communists, the ISA is now mostly used against forgerers and Islamic fundamentalist groups and potentially against 'irritating' NGOs. The latter refers to a planned conference of Malaysian NGOs on alleged abuses of police power. The Emergency Ordinance, dating from the 1969 communal riots in Malaysia between groups of Chinese and Malays, provides detention for up to two years in order to protect public order or to prevent crimes involving violence. In Singapore, the similarly named Internal Security Act provides that persons can be held for periods up to two years at a time; there is a right to counsel, but not to a court challenge of the substantive basis of detention; and the advisory board can only make non-binding recommendations. None is held at the moment, but a previously held detainee under ISA from 1966–1989, Chia Thye Poh, is subject to restrictions on speech and travel. Criminal Law (Temporary Provisions) Act is basically used against drug traffickers and secret societies. As of mid-1995, 570 were reported to be held under this act. Forced exile is reportedly not used in any of the two countries. Moreover, under the Dangerous Drugs Act in Malaysia, persons can be detained for two-year periods without charge, though subject to advisory board reviews whose decisions are binding. Under the Misuse of Drugs

Act in Singapore, persons can be committed to drug rehabilitation centres for up to six months with extensions, depending on urine analysis.

Concerning *the administration of justice,* in Malaysia, constitutional amendments and certain laws limit the scope for judicial review. Various election-related and commercial cases have intensified the debate on judiciary independence in recent years. Judicial procedure is in general fair, though standards for accepting self-incriminating evidence are lower in security cases and detainees may be held for an unspecified time without formal charges, also in criminal cases thought to come under security laws. In Singapore, constitutional provisions for an independent judiciary are circumscribed by government control over the assignment of judges and the absence of judicial review of cases under the ISA and other subversion laws. Judicial procedure under the Criminal Procedure Code is fair and efficient and rights are extended to all citizens.

Finally, as regards *privacy,* in Malaysia, provisions exist to enter and search homes and confiscate property under security legislation; cases of police using this legal authority are known every year. In Singapore, searches of person, home and property without warranty are permitted under the ISA and the Misuse of Drugs Act. There is a capability for surveillance by government law-enforcement agencies, though no proven allegations of its use were recorded in 1996.

In viewing the record on 'core' rights in total, there are striking similarities between the two countries. A tough attitude on drugs is combined with restrictive legislation used against drug offenders and other criminals as well as internal political enemies, whether they are Islamists in Malaysia or secret societies in Singapore. The image conveyed is one of law and order where order is administered very much in legal ways. Whereas the 'consensual' nature of 'Asian values' is rhetorically played out, the record on core rights demonstrates that there are clear limits to political and social deviation. The right to life is not absolutely guaranteed as capital punishment is used for certain criminal offences, but the same can be said for the United States, one of their primary targets of criticism for exhibiting liberal, permissive values.

CIVIL LIBERTIES

Regarding *freedom of expression,* constitutional provisions exist though they may be restricted in the interest of security or public order in Malaysia where the Sedition Act and the Printing Presses and Publications Act were used against the opposition politician Lim Guan Eng in 1995 for criticizing the handling by the authorities of a statutory rape case of a 15-year-old Muslim girl by a former chief minister.[40]

The Printing Presses and Publications Act (1984) requires annual applications by domestic and foreign publications for permit, and it was amended in 1987 making 'malicious news' a punishable offence and prohibiting court challenges to suspension and revocation of publication permits. This Act was also applied against the activist Irene Fernandez for her work in exposing the conditions in detention camps housing illegal immigrants from various parts of Asia. The report told of abuse as well as deplorable living conditions, resulting in a number of deaths.[41] The Official Secrets Act allows government considerable discretion in withholding documents from public scrutiny and the Bar Council and NGOs want certain provisions repealed.

In Singapore, there are also constitutional restrictions on freedom of expression and they tend to be broadly interpreted and applied. As regards the media, all general circulation newspapers are owned by Singapore Press Holdings, a private corporation with ties to the national leadership. The newspaper editorials follow government policy which criticizes the 'Western model' of journalism where journalists report what they see fit. Foreign publications have to post a bond and accept legal service and banning may occur under the ISA and the Undesirable Publications Act. The Newspaper and Printing Presses Act provides for the limiting of circulation (gazetting) of publications deemed to interfere in domestic politics. Censorship is practised on a range of media, justified on the basis of the stability of the state and the prevention of pornography, violence and glorification of drug abuse and communal disharmony. The Singapore Broadcasting Authority regulates access to the Internet and controls access to content. The Singapore International Media has a near monopoly on broadcasting and satellite dishes are practically banned. There are restrictions on the residence permits of journalists for foreign publications as the 'liberal Western media' is seen to undermine government rule and to be engaged in irresponsible reporting. Defamation or libel suits are used by senior government ministers to prevent critical reporting by foreign media.

With respect to *freedom of assembly and association,* assembly is constitutionally provided in Malaysia, though subject to restrictions in the interests of security and public order. The 1967 Police Act requires a police permit for all public assemblies with the exception of striking workers. Public rallies were banned after the communal riots in 1969 however, indoor 'discussion sessions' are permitted during election campaigning. On occasion, permission is not granted. In Singapore, assembly is constitutionally provided, though restricted in practice. Assemblies of more than five persons need permission from the police, just as speakers at a public function need permission to speak. Associations of

more than ten members must be registered with the government under the Societies Act and registration may be denied to groups for purposes detrimental to public peace, welfare and public order for which government has full discretion to decide.

As for *freedom of religion*, Islam is the official religion in Malaysia, though Islamic laws do only apply to Malays, despite pressures from Islamic groups for extension of application to all segments of the population. Government action has been taken against 'deviationist' Islamic groups, usually Islamist in orientation. A Supreme Court decision in 1990 permits parents to decide the religion of their minors under the age of 18. In Singapore, freedom of religion is constitutionally provided, there is no state religion and all residents on public housing estates shall have access to the religious facilities of their ethnic groups. Some religious groups, notably Jehovah's Witnesses, are banned under the Societies Act on the ground of, *inter alia*, their opposition to military service. The Maintenance of Religious Harmony Act (1990) prohibits the involvement of religious groups in political affairs and is exempt from any judicial review.

Regarding *freedom of movement*, it is generally guaranteed in Malaysia, but passports or national ID cards are required for travel to the East Malaysian states. Emigration is generally permitted, but foreign travel may be restricted if the purposes of the foreign visit can be regarded as detrimental to the country's image, though this happens infrequently. There are restrictions on the freedom of movement of former ISA detainees and former members of the Communist party until the rehabilitation period has been successfully concluded. In Singapore, freedom of movement is constitutionally provided, but may be subject to restrictions on account of security, public order and public health. A national ID card is required and there are restrictions on foreign travel and limits on passport validity due to obligatory military service and reserve training. Also in Singapore, the freedom of movement of former ISA detainees is restricted, former members of the Communist Party can only return to Singapore on certain conditions and residents staying abroad for more than ten years may lose their citizenship.

In reviewing the record on civil liberties, there are again striking similarities. There is a tendency to brand oppositional figures as traitors and leftists, apparently on the basis of a hypersensitive concern for the country's 'international image'. This concern was again manifested in relation to the 'haze' enveloping parts of Southeast Asia as the Malaysian Cabinet banned academicians at institutions of higher learning from making comments on the pollution, unless cleared by their university directors and the Government.[42] There is an irony in this, as the efforts to

contain the perceived damage to the international image may do more damage to this image than what needed to be contained. Singapore's control apparatus appears to be more extensive and fine-grained which may have to do with the size of the territory. Another irony is that Singaporean leaders, critical of rights talk, use the courts to defend their rights in cases of alleged libel and defamation. All of these controls should belie the projected image of essentially consensual societies unless consensus follows dictate unreflectively. Far more pertinent is the image of an adversarial political culture where the need to set enemies is paramount, whether they be Islamists, Jehovah's Witnesses, Communists or the malicious foreign media and the potentially subversive computer network known as the Internet. However, there are notable differences concerning the status of religion.

NON-DISCRIMINATION

As regards *women,* concern about domestic violence in Malaysia led to the passing of the 1994 Domestic Violence Act empowering courts to protect victims and to provide counselling. Muslim women are subject to Islamic law, but the Islamic Family Law as amended in 1989 has provided better protection for property rights and the right to seek divorce. Women are under-represented in decision-making bodies, but their rapidly growing participation in higher education and in the labour force may change that. In Singapore, there is no evidence of widespread violence against women and legal protection is given in the Penal Code and in the Women's Charter, such as barring the spouse from entering the home of the abused. Women enjoy equal legal rights, including equal pay for equal work and the abolition of separate pay scales; they are well-represented in the professions and in the labour force, but as they more frequently hold lower paid jobs, their income is less than that of men.

Regarding *children*, there is a commitment to children's rights and welfare with the passing of the Children's Protection Act. In Malaysia, the Minister of Justice considered a mandatory death sentence for child abuse resulting in death of the child, though no changes have been made on the statute books. There is a concern with child prostitution and trafficking of the under-aged. In Singapore, there is a strong commitment to children's rights and welfare through legislation, education and medical care and services for those who are orphaned, abused or disabled, co-financed with private organizations.

Regarding *minorities*, there are extensive affirmative action programmes in Malaysia benefiting ethnic Malays which, however, have the effect of limiting non-Malay access to higher education,

government employment, business permits and licences. These programmes are justified by the government as instrumental in securing ethnic harmony and social stability. In Singapore, the Indians and Eurasians are generally managing well; the concern is mainly with Malays who are often educationally disadvantaged. A Presidential Council on Minority Rights is charged with ensuring that legislation is not discriminating against minorities.

Finally, regarding *indigenous peoples,* they enjoy the same constitutional rights as others in Malaysia. Their participation in decision-making is low; on Peninsular Malaysia, states may allow individual land titles to members of Orang Asli people; in East Malaysia, there is concern, more from NGOs than government, about 'native customary rights' to land in view of large-scale infrastructure projects involving relocation of people. In Singapore, Malays are seen as the indigenous population.

In reviewing non-discrimination policies, there are significant differences between the two countries. In Malaysia, the politics towards ethnic groups has over the independence period shifted from one of cross-ethnic elite accommodation[43] to one of affirmative action on behalf of Malays, instituted by the New Economic Policy in the 1970s.[44] In contrast, Singaporean policies have stressed meritocracy; competitiveness and action programmes have only been instituted to promote a truer sense of equality of opportunity.[45] The policies of non-discrimination are faced with harder choices in Malaysia than in Singapore, about whether to charge ahead with rapid modernization or to maintain traditions, particularly regarding the status of Muslim women and the indigenous peoples. For Singapore, the choices were easier to make.

ASSESSING THE TWO THESES IN LIGHT OF THE EVIDENCE

At the outset it was said that if the 'clash' thesis was correct, significant differences in the human rights record of the two countries might be expected. In fact, the evidence only partially bears this out and mainly on issues of religion and ethnicity. There are too many striking similarities between the two countries on core rights and civil liberties for the 'clash' thesis to be a reliable guideline. It predicts that, due to the 'cleft' nature of their population mix, both countries should be in bigger trouble than they in fact are.

The 'Asian values' thesis, on the other hand, predicts significant similarities between the two countries on their human rights record. Again, the evidence only partially corroborates the thesis. The similar ities are, as was seen, in core rights and civil liberties. Beyond

these categories, the differences are highly visible. On non-discrimination, on religion and gender, Malaysia and Singapore follow distinct, but divergent paths. Public religion in Malaysia is contrasted with secularism in Singapore and affirmative action in Malaysia with meritocracy in Singapore. If the 'Asian values' thesis was truly reliable, such remarkable differences on central value questions would not be expected.

In sum, none of the theses offers a blueprint for interpreting the human rights record of the two countries. For such a task, we have to start looking elsewhere.

ASKING THE WRONG QUESTIONS?

This chapter started out with the recent criticisms of human rights universalism by the group of Asian countries prior to the 1993 UN World Conference on Human Rights in Vienna. It was noted that there is some scope for discussion beyond the narrow band of core rights of full universal applicability.

Then the two particularist theses were discussed in more detail, respectively named the 'clash' and the 'Asian values' thesis, the assumptions, arguments and intended uses. While commonalties were found in assumptions and arguments, intended uses differed. The 'clash' thesis is more of a tool for guiding Western foreign policy in the post-cold-war era and the 'Asian values' thesis is more of a means of justifying comparative economic success. Both theses are prone to gloss over differences in national interests in foreign policy and differences in national value systems in explaining economic success.

Finally, the theses were found to be only partially successful in interpreting the human rights record of Malaysia and Singapore. Their respective predictions of civilizational differences and similar value systems are not borne out by the evidence on the ground. In consequence, none of the theses serve as satisfactory diagnostic tools for detailed human rights assessments.

While both theses would argue that modernization is possible without Westernization, I am not so sure. The uncertainty has not the least to do with the conceptual underpinnings of these two terms in which modernization is associated with technology and infrastructure and Westernization with value systems. I am doubtful whether these two terms can be so neatly distinguished. In the early days of social science, modernization and Westernization were inherently related. The pioneering social scientist Max Weber wrote of a process of rationalization that he found to be typical of Western society in general. Its central feature was that everyday life was structured by

standardized impersonal rules that constituted social organization as a means to collective purpose. Authority relations were structured as a legal order that was increasingly bureaucratized, the exchanges in the market place were governed by methods of rational calculation and bookkeeping and the cultural account of society was increasingly formulated in terms of the rational, purposive individual as the basic unit of action.

Weber regarded these developments with ambivalence. Liberal values predominant in the initial phase of capitalism were coming under threat with the process of rationalization and bureaucratization. Individuality required pluralist economic and political structures which could pose a counterforce to the envisaged uniformity of the bureaucratized world. Competition among groups in society and rivalry among states without any group or state dominating the other were healthy signs of liberalism and pluralism. The essence of liberalism was the ability of the individual to pursue a plan of life, something which would become far more difficult in the wake of the spread of bureaucratic rational techniques of social organization and the regimentation of social life following from that. These processes contribute to enhancing instrumental rationality and its calculative and formal features and splitting them off from value-oriented rationality, concerned with the ultimate ends of actions. The progressive disenchantment of the world lead to the new situation that no world-view could any longer lay claim to universal rational agreement. The pluralism of values and ends typical of the modern world co-existed with an instrumental rationality that was in Weber's view both liberating and constraining. It was liberating in one sense in that it opened up for capitalist entrepreneurship and scientific advancement and it was constraining in another sense in that it also opened up for the bureaucratic regimentation of life based on rational impartiality and procedural regulations. With modernity, meansend relations were given a mechanical instead of a religious footing and the metaphor of the 'iron cage' was evoked by Weber to describe the new existential situation.

Rationalization of the twentieth century, following on from Weber's observations, was proceeding at the level of world society and largely taken over by global and regional organizations, some with very little powers to act (UN) and others with considerably more (European Union). As a consequence, the nation-state has been strengthened as well as weakened. It has been strengthened in the sense that the UN is constitutionally based on a system of nation-states and thus accords this system legitimacy. It has been weakened by the demands put upon it in the name of rationalization and by conceding sovereignty to regional entities such as the EU.

The argument for the applicability of human rights follows from the above. Human rights are applicable to the world of nation-states as they form an important part of the process of rationalization, which we witnessed in the twentieth century. They are inconceivable without the appearance of global organizations and their continuing work on global rationalization. They are inconceivable without the prior process of rationalization in the West as described by Weber. However, the scope of this process has now been extended to cover the world and human rights are therefore applicable to any country that is engaging in the global discourse on what it means to be a rational nation-state in the latter part of this century and is letting action follow talk. Rights cannot be imposed on any nation-state unless it voluntarily accepts supranational authority, but none can pretend to deny or overlook the global discourse.

As Weber observed, the Western type of rationalization presents a universal opportunity for other cultures to relate to, though he found that its rightness was only binding on the West. Similarly, as rationalization has been lifted up to the global level, its application is global. Human rights are thus applicable to any nation-state that sees itself pursuing the type of rationalization described by Weber in the West and extended globally as argued by others following in Weber's foot-steps. As noted, Weber was sceptical of rooting the trends he observed in any prior, ahistorical theory of natural rights.[46] Nonetheless, human rights in the modern sense may have an analogous function to the one of liberalism in his time as providing a set of procedures and institutions for expressing and mediating between ultimate and sometimes incompatible values. Human rights may be the sort of middle ground necessary for preserving the plurality of values that he observed.[47] The argument for the middle ground does not have to rely on theories of the source of validity of human rights; it would rather, in the Weberian spirit, rest on procedures, rules, institutions and mechanisms that ensure the plurality of social life, the differentiation of political and legal functions that provide for checks and balances and prevent centralization of power and balance majority decisions against minority protection. The complexity of modern societies and the complexity of the set of human rights themselves vitiate against the theoretical reduction to a specific theory of human agency. Advanced theory-building these days operates at the intersections of morality, politics and law and reflects the complexity of modern societies.

NOTES

1 See the discussion of the natural rights theories of the Epicurean and Stoic schools of Hellenistic philosophy in Ernst Bloch, *Naturrecht und menschliche Würde.* Frankfurt a.M.: Suhrkamp, 1977.

2 For a discussion of the virtue ethics of Confucianism, see Joseph Chan, 'A Confucian Perspective of Human Rights'. Paper prepared for the second workshop on the Growth of East Asia and its Impact on Human Rights, Chulalongkorn University, Thailand, 24–27 March, 1996.

3 For the full text, see UN doc. A/CONF.158/ASRM/8—A/CONF.157/ PC/ 59, 7 April 1993.

4 Philip Alston, 'The UN's Human Rights Record: From San Francisco to Vienna and Beyond', *Human Rights Quarterly,* 16, 2, 1994, pp. 375–390.

5 This point of differentiating between core and non-core rights seems to match Michael Walzers's distinction between 'a (thin) set of universal principles adapted (thickly) to these or those historical circumstances'. Michael Walzer, *Thick and Thin. Moral Arguments at Home and Abroad*. Notre Dame: University of Notre Dame Press, 1994, p. 4.

6 The Declaration on the Right to Development is both an individual and collective right to what is essentially a collective good. The Declaration cannot be construed on any plausible interpretation to be a state right.

7 Samuel Huntington, *The Clash of Civilizations and the Remaking of World Order*. New York: Simon & Schuster, 1996, pp. 137–154.

8 Samuel Huntington, 'The Clash of Civilizations?', *Foreign Affairs,* 72, 3, 1993, pp. 22–49, p. 24.

9 This has been criticised by Stephen Walt, 'Building up New Bogeymen', *Foreign Policy,* no. 106, pp. 177–189, as downplaying the importance of nationalism and the state in explaining conflicts historically and in this century. Before this century conflict was largely intra-civilizational whereas World War II involved multi-civilizational alliances on both sides.

10 If this is indeed the case, one might wonder what room is left for promoting the national interest as the primary objective of foreign policy. Apparently less than before as Huntington (1997) finds that US foreign policy is increasingly encroached upon by the promotion of (sub-national) business interests and the influence of (trans-national) ethnic interests in formulating policy.

11 See para. 7 in the Bangkok Declaration.

12 If values were truly particularistic, the proponents of the 'Asian values' would have no grounds for criticizing the West on their human rights record and negative social trends. This critique assumes that values can be generalized and even universalized.

13 In Huntington's terminology, a 'cleft' country is one comprising several (incompatible) civilizations whereas a 'torn' country is one wanting to move from one civilizational grouping to another to which it implicitly does not belong. Australia's desire to join the East Asian bloc would be an example of the latter. See Samuel Huntington, *The Clash of Civilizations and the Remaking of World Order*, pp. 137–154.

14 An alarmist tone is also struck by Hans Magnus Enzensberger in his book on civil war: *Aussichten auf den Bürgerkrieg*. Frankfurt a.M,: Suhrkamp, 1993. In contrast to Huntington, his wars are mainly intra-civilizational and intra-national in which violence is anomic and states fail to maintain social order.

15 See Huntington, *The Clash of Civilizations,* pp. 198–206.

16 Pan-Europeism, however, is not known to exist, except perhaps as figments of the imagination of Euro-bureaucrats in Brussels. The European institution-building process was not founded on a sense of a pan-European identity, though it may be rationalized as such post factum.

17 Yoichi Funabashi, 'Asia's Identity', *Foreign Affairs,* 72, 5, 1993, pp. 75–85.

18 Kishore Mahbubbhani, 'The Pacific Way', *Foreign Affairs,* 74, 1, 1995, pp. 100–111.

19 Bilahari Kausikan, 'Asia's Different Standard', *Foreign Policy,* 92, 1993, pp. 24–41.

20 Kishore Mahbubbhani, 'An Asia-Pacific Consensus', *Foreign Affairs,* 76, 5, 1997, pp. 149–158.

21 Stephen Holmes, *The Anatomy of Antiliberalism*. Cambridge, Mass.: Harvard University Press, 1993, p. xii.

22 Samuel Huntington, 'If Not Civilizations, What?', *Foreign Affairs,* 72, 5, 1993, p. 194.

23 While Huntington finds realism 'a highly useful starting point for analysing international affairs', states do not only define their interests in terms of power. 'Values, culture and institutions pervasively influence how states define their interests. The interests of states are also shaped not only by their domestic values and institutions but by international norms and institutions.' Huntington, *The Clash of Civilizations,* p. 34.

24 It is interesting to note that Stephen Holmes' review of Huntington's book is titled 'In Search of New Enemies'. Book review of Huntington, *The Clash of Civilizations. London Review of Books,* 24 April 1997, pp. 3–10.

25 Samuel Huntington, 'The Erosion of American National Interests', *Foreign Affairs,* 76, 5, 1997, pp. 28–49.

26 Samuel Huntington, 'If Not Civilizations, What?', p. 192.

27 Huntington, *The Clash of Civilizations,* p. 108

28 Bilahari Kausikan, 'Asia's Different Standard', p. 29.

29 In the communitarian critique of liberalism and also in Chan's discussion of Confucianism, the accent is on the intrinsic value of the principles expounded and discussed. This may be seen in Chan's references to perfec tionism as articulated by, among others, Joseph Raz, *The Morality of Freedom*. Oxford: Clarendon Press, 1986.

30 Kevin Y.L.Tan, 'What Asians Think about the West's Response to the Human Rights Debate', *Human Rights Dialogue,* vol. 4, 1996, at http:/www.cceia.org/dialog4.htm.

31 Francis Fukuyama, *Trust. The Social Virtues and the Creation of Prosperity*. New York: Free Press, 1995.

32 Gordon S.Redding, *The Spirit of Chinese Capitalism*. Berlin: DeGruyter, 1990.

33 See Whitley, 'The Social Construction of Business Systems in East Asia', *Organization Studies,* 12, 1, pp. 1–28, 1991, esp. p. 21, tbl. 3.

34 Whitley, 'The Social Construction of Business Systems in East Asia', p. 3, tbl. 1.

35 For a discussion of both South Asia and Southeast Asia, see Lucian W.Pye, *Asian Power and Politics. The Cultural Dimensions of Authority*. Cambridge, Mass.: Harvard University Press, 1985.

36 *The Economist,* 28 May 1994, p. 13.

37 Huntington, *The Clash of Civilizations,* pp. 186–192.

38 US State Department, *Country Reports on Human Rights Practices for 1996*. Washington, US Government Printing Office, 1997.

39 See Amnesty International ASA 36/02/96.

40 For details, see Amnesty International ASA 28/03/97.

41 For details, see Amnesty International ABA 28/09/96.

42 See 'Academicians Slapped with Gag Order', *The Star,* 6 November 1997, on line edition at http://www.jaring.my/star/current/06frba.html.

43 The concept of consociationalism has been used to describe the pattern of inter-ethnic elite co-operation in the first period of independence from 1957 to 1969. This policy was scrapped with the ethnic riots in 1969. See David Brown, *The State and Ethnic Politics in Southeast Asia*. London and New York: Routledge, 1994, pp. 228–230.

44 On the NEP, see Just Faaland, J.R.Parkinson and Rais Saniman, *Growth and Ethnic Equality. Malaysia's New Economic Policy*. Kuala Lumpur: Dewan Bahasa Dan Pustaka, 1990.

45 For the shifts in Singaporean policies, from the ethnic mosaic policies of the first period, via meritocratic and ethnically neutralist policies in the 1970s to inclusionary corporatism from the 1980s onwards, see Brown, *The State and Ethnic Politics*.

46 For a study that investigates Max Weber's work from the point of view of analysing and justifying human rights, see Winfred Brugger, *Menschenrechtsethos und Verantwortungpolitik. Max Webers Beitrag zur Analyse and Begründung der Menschenrechte*. Freiburg/München: Verlag Karl Alber, 1980.

47 Rights may have a function akin to the one envisaged by John Rawls in *Political Liberalism*. New York: Columbia University Press, 1993, as rights adherence does not presuppose subscribing to a comprehensive worldview.

8
Human Rights in Vietnam: Exploring Tensions and Ambiguities

Tine Gammeltoft and Rolf Hernø

Mr Khoa is impeccably dressed in the modern businessman's suit and tie. As a former public servant, now director and partner in a thriving private consultancy firm in Hanoi, he represents the prototypical contemporary Vietnamese private-sector entrepreneur. When asked about freedom and democracy, he says,

> Vietnam is by nature a democratic country. Even if individuals are not officially allowed to do things, they do them quietly anyway. It is not freedom that is limited, only the legal recognition. You Westerners are only concerned with the recognition. These rights are not called human rights, but they are similar. But I think that by avoiding confrontation and outright demands, human rights can be introduced gradually. People are becoming more aware of rights and want recognition.[1]

In Vietnam, human rights issues touch upon culturally contested and politically sensitive topics.[2] The focus of our discussion will be on *reproductive rights* and *economic rights,* both of which represent areas of core concern to both the everyday lives of Vietnamese people, to the Vietnamese state, and to the international community. Within each of these areas we shall first examine reproductive and economic rights as set out in international human rights documents, then discuss official Vietnamese policies and practices within the two fields, and finally present our findings from fieldwork interviews with women and private entrepreneurs about rights issues.[3] Our main arguments are, first, that the cultural values with which human rights engage are not necessarily consensually shared by members of a given community and second, that much more analytical attention needs to be paid to the processes of power and signification through which some values come to achieve cultural dominance over others.

Before turning to the situation in Vietnam, we shall briefly consider the concepts of *culture and cultural relativism,* including notions of 'values', which have become so central to the human rights debate.

CULTURE AND CULTURAL RELATIVISM

A common relativist perspective in human rights debates holds that due to the differences between cultures, no universal rights standards can be set.[4] We would rather argue that due to the differences *within* cultures, universal standards *need* to be set, in order to protect the least powerful members of society. As noted by John Davis, 'social organization sometimes hurts'—and so initiatives need to be taken to protect the interests of those who are the most vulnerable in any society.[5]

The idea of cultural relativism is closely linked to a concept of culture which by now seems to be almost an anachronism—an idea of culture as congruent with a certain 'space', a place on the map with clearly demarcated borders. Yet as recent theoretical debates in anthropology have emphasized, rather than representing uniform systems of values and ideas, cultures are always complex and contested, consisting in a multiplicity of co-existing and changing traditions of thought and practice. Whereas anthropologists have previously tended to see cultures as distinct and relatively coherent complexes of meanings and values which were tied to separate territories, today the dominant view is one which stresses the fluidity and complexity of culture and the co-existence of multiple cultural traditions within any given geographical area.[6] In human rights debates, however, the idea of culture as localized, homogeneous and static still seems to prevail. As felicitously phrased by Gupta and Ferguson, the spatially delimited and static view of culture 'has enabled the power of topography to conceal successfully the topography of power'.[7] The idea of culture as localized, essential and self-contained tends to create a blindness to the multiplicity of meanings and values which always exist within a given social space and so to the processes of cultural contestation and transformation which unfold incessantly in all social settings.

The questioning of essentialized concepts of culture also implies a questioning of cultural relativism. Cultural relativism is a particularly unfortunate outcome of the view of cultures as homogenous and static and of the ensuing well-meant wish to 'respect other cultures' as if they were peacefully and consensually shared by all their members. Yet cultural institutions and practices—while upheld by dominant groups in a society—are hardly ever universally accepted or appreciated. Considered in this perspective, the 'Asian values' debate clearly concerns

power as much as culture, involving issues of representation and authority more than cultural essences. An important analytical and political challenge therefore lies in tracing out the differing social experiences and perspectives existing among members of a given society, paying attention not only to attitudes that are loudly articulated, but also to those that are less openly expressed. Failing to do this may easily lead to a condoning of structural violence with reference to cultural particularity and to a too-ready acceptance of cultural practices that are harmful to less articulate members of a society. In other words, the crucial analytical questions concern not so much what a culture 'is' as how it is represented: who has the power to represent a culture in a certain way or to define which values belong to a certain geographical space? Which alternative representations of culture or identity may be found beneath dominant representations? To answer these questions in more detail, a theoretical shift must be made from the static view of culture to the analysis of culture as practices embedded in local contexts and in the multiple realities of everyday life.[8]

In the following we shall apply an analytical 'bottom-up' perspective to the situation in Vietnam, considering both everyday values and practices and the ways they articulate with dominant social and political ideas concerning reproductive and economic rights. In each case we shall start by briefly outlining the relevant international human rights documents.

SEXUAL AND REPRODUCTIVE RIGHTS IN VIETNAM

Sexual and reproductive rights touch upon issues that are of central importance to the lives and well-being of men and women all over the world, including the abilities to make autonomous reproductive choices and to control sexual lives. Also in Vietnam, where an ambitious population policy aims at curbing the rapid growth of the country's 77-million population, reproductive processes and outcomes are key concerns to everyone.

As stated in the Report of the International Conference on Population and Development in Cairo in 1994, 'reproductive rights embrace certain human rights that are already recognized in national laws, international human rights documents and other consensus documents. These rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health'.[9] Since the International Conference on Population and Development (ICPD) in Cairo in 1994, the concept of sexual and reproductive rights has become

commonly used and accepted all over the world. The ICPD Programme of Action, which was also endorsed by Vietnam, emphasizes the rights of everyone to exercise their reproductive rights and stresses the need for provision of voluntary reproductive health services. The widespread use of the concept of reproductive rights, which reaches far beyond the conference halls and corridors where it was 'invented', is due not least to the work of international organizations as the United Nations Fund for Population (UNFPA) and various NGOs working in the population field. But while being in increasingly common use, the concepts of sexual and reproductive rights also cause controversy, meeting opposition which is usually based on cultural or religious arguments.

In Vietnam, sexual and reproductive rights are discussed in several different fora. Immediately after the Cairo conference the journal of the National Committee for Population and Family Planning (NCPFP), *Dan So Va Gia Dinh,* published a special issue on the international year of the family which brought translations of Cairo documents and an article on human rights translated from UN documents, thus introducing the notions of sexual and reproductive health and rights to family planning programme managers, cadres, and providers throughout Vietnam.[10] In its latest country programme, UNFPA Vietnam places a very strong emphasis on advocacy, arranging seminars and workshops to disseminate the concepts of sexual and reproductive health and rights which were endorsed at the Cairo conference. In NGOs, such as the national Centre for Gender, Family and Environment in Development (CGFED), or the international CARE International, Pathfinder International, or the Population Council, concepts of reproductive health and rights are the topics of lively discussion, both in general and in relation to the situation in Vietnam. According to UNFPA country director Erik Palstra, concepts of reproductive health and rights have now gained appreciation and acceptance among senior government officials.[11] In other words, what may initially be 'external' or 'foreign' concepts and ideas seem to be rapidly becoming part of an 'internal' culture and language in Vietnam, and the concepts of reproductive health and rights appear to be quickly gaining general political acceptance. But to what extent are reproductive rights valued and protected in practice?

A very useful Charter on sexual and reproductive rights developed by the International Planned Parenthood Federation (IPPF) outlines the links between abstract human rights concepts and practical family planning and service delivery realities.[12] Assessed according to the standards outlined in the IPPF Charter, sexual and reproductive rights are relatively well-protected in Vietnam. Most of the population (with the exception of unmarried youth and people in remote areas) have easy access to free or

affordable reproductive health services, abortion is legal and relatively safe, forced marriages are prohibited and do not seem to take place, and there are no indications of the occurrence of female infanticide. In all these respects, the situation in Vietnam compares very favourably to the situation in many other developing countries. In other respects, however, the status of reproductive rights in the country seems more questionable and controversial.

From a reproductive rights perspective, controversy particularly concerns the central tenet of the Vietnamese family planning policy itself: the norms and standards set for childbearing. The idea of family planning for population control is obviously derived from the Chinese one-child policy, implemented from 1980 onwards;[13] yet the Vietnamese translation is less rigid in both design and implementation. The Vietnamese policy stipulates that each couple should have no more than one or two children, and that couples who violate the one-or-two-child norm may be 'penalized by their immediate management agencies' or may have to 'contribute to a social support fund'.[14] This appears to be a violation of the principle that people should have the right to decide for themselves 'whether or when to have children'.[15] The Vietnamese government legitimizes the policy with reference to the urgent need of curbing population growth in order to secure the social and economic development of the country. Even though explicit references to 'Asian values' do not seem to be made, the government does draw links between the population policy and the Vietnamese 'value structures' on which it is based. In its declaration at the 1994 Cairo conference, the Vietnamese government emphasized that each country has the sovereignty to develop its own population policy, based on the 'historical and cultural traditions, value structures and development objectives' of the country.[16] What precisely is meant by 'cultural traditions' or 'value structures' remains vague. Yet implicit in family planning messages is clearly an appeal to people to think of others rather than themselves, and to place the welfare of their children, their families, and the nation before anything else. Family planning slogans encourage couples to have no more than one or two children in order to contribute to the creation of 'a happy family, a wealthy country'. The family planning policy is represented as a broad mass movement, undertaken under the leadership of the most enlightened members of society and with the participation of all citizens and social sectors. With its emphasis on social duties and obligations, joint efforts towards a shared goal, and a top-down dissemination of knowledge, the policy follows the model of many other mass mobilizing efforts, emphasizing collectivity and joint action.

While strongly insisting on the one-to-two child norm, the government also insists that family planning and contraceptive use are *voluntary (tu nguyen),* as explicitly emphasized in both the 1989 Health Law and the 1993 Population and Family Planning Strategy. Yet viewed from a critical perspective, voluntariness appears to be compromised in several ways in Vietnamese family planning. The use of social and economic disincentives for third and higher-order births, the strong social pressures that are sometimes exerted on people to persuade them to limit fertility, and the inadequate provision of reproductive health services seem to violate people's rights to autonomy and self-determination in reproductive matters.[17] A central question is therefore what the term 'voluntariness' means in practice? To the Vietnamese government, 'voluntariness' seems to mean individual choice and action *on the basis of given social conditions*. In other words: freedom is not freedom to act in a social vacuum, but to act within a pre-set social frame which is established by the most enlightened and educated members of society. In the government's view, people do choose freely whether to limit fertility or not—but they do so on conditions that are set by government policies and which favour small families. The concept of 'voluntariness' thus seems to take on particular meanings depending on the cultural and political context of its use. In the official Vietnamese use, the concept gives primacy to social and political conditions as necessary preconditions for individual action, rather than seeing individual preferences as primary. As a consequence, beneath an apparent international consensus on the importance of 'voluntariness' in reproductive matters may lie vastly differing practical meanings and implications.

The crucial question is, of course, what ordinary women and men in Vietnam feel about this. Do they find the government's interventions in reproductive matters legitimate and acceptable? Do they feel that their childbearing decisions are voluntarily taken or do they feel violated by government measures to limit fertility? Do they expect to have officially sanctioned 'reproductive rights'?

Popular Responses to Family Planning

The immediate impression one gets of people's reactions to the family planning policy is a remarkable degree of acceptance and support. In conversations and interviews, the large majority of both men and women support the policy, expressing an apparently deeply felt recognition of its demographic, social, and economic importance to individuals, families, and the nation.

But these positive reactions to the policy are often contradicted by people's actual practices: in rural areas—where 80 per cent of the population live—most couples still have more children than the one-or-two prescribed by the policy. People usually explain their 'breaking the plan' with reference to the particular needs of their own family. For instance, when we talked to her a few months after she had given birth to her third child, 31-year-old Loan said: 'Of course [the family planning policy is necessary]. There is too little land and it is not good for the economy of families to have too many children'. 'But you have just violated the policy yourself?' 'Yes, but you know, there is also the tradition of the family. According to the tradition of the family, one has to have a son, even if it takes nine children to have him'. Loan's first two children were daughters, but her third, to her own and her husband's relief, was a son.[18] In daily life one meets countless examples of such gaps between the norms and ideals people express verbally and the pragmatic actions they undertake in practice. While verbally expressed norms usually support given social arrangements and the 'collectivity ethos' of policies as the population policy, practices seem to express individual manoeuvrings and active modes of negotiating and managing social institutions and constraints, favouring personal needs and preferences over collective goals.

Perhaps even more importantly, there seems to be a gap between the ideas and attitudes that are expressed in public and those that are expressed in private. The publicly shared support of the family planning policy is often contradicted by the opinions people express in private, when talking to friends or family. Women we knew well were often sharply critical of the policy and its intrusion into private and intimate spheres of life. As a non-contracepting mother of two sons, for instance, Minh was often targeted by family planning cadres who visited her at home to persuade her to adopt a modern method of contraception. Even though she would always receive the cadres and listen to them politely, in the quiet she strongly disliked their visits. She said:

It is people's right, if they want children, they will have children. It is a question of individual freedom. They themselves take care of their family's economy, it is not people outside [i.e. cadres or officials] who take care of it. Whether they can manage their economy or not is their own responsibility. (…) If people [i.e. family planning cadres] come to 'encourage', they will say to them: 'why don't you take care of your own affairs, and I will take care of mine'. So they don't dare to come to one's house anymore, they will only

call on the loudspeakers, 'each couple should have only one or two children.

In effect, people's insistence to decide for themselves in reproductive matters appears to have made policy implementation difficult in Minh's commune. Whereas a few years ago fines were levied on couples who exceeded the two-child norm, today only education and persuasion are used to make people comply with the policy.

Like Minh, many women clearly expect to be able to make their own decisions in reproductive matters, deciding for themselves when to have children and which, if any, contraceptive method to use. Such expectations and desires of autonomy not only affect women's relations to local cadres and officials—with the result that cadres are sometimes treated fairly rudely by the women they are targeting—but also often lie at the root of intra-familial conflicts. In many areas of life, but most urgently in relation to fertility control and reproduction, women clearly expect high degrees of autonomy and self-determination. As they say, 'the one who has the body has the worries' *(ai co than thi phai lo):* since women bear the physical burdens of fertility control and childbearing, many women feel that they themselves should have the authority in reproductive decisions. Such expectations often cause family conflicts in cases where the reproductive agendas of a woman's husband or in-laws differ from her own.[19] Sometimes women, like 36-year-old Trang, take things in their own hands: 'I didn't want any more children, so I decided to have an IUD [intra-uterine device]. I would go whether my husband agreed or not, I didn't ask for his opinion. Because one has to think of one's life and one's children first. The husband is one thing, the wife is another, but first of all it is difficult for oneself. Yet both sexually and socially women often feel forced to 'please' *(chieu)* their husband and comply with his wishes. One woman said, talking about the use of withdrawal as a contraceptive method, 'The wife has to please the husband, […], so she is forced, she cannot push him out. It is a very unsafe method. They put it in, one gets pregnant, has to care for the child. It is very difficult for women'.

The rural women we knew very often complained of their lack of power/rights *(quyen)* within the family, stating that 'the wife has no power/rights', or 'whenever there are conflicts in the family, the husband has the power/rights', or even 'women live under slavery'. Their daily life conditions are perceived by women as conflicting sharply with the formal gender equality in socialist Vietnam. As 28-year-old Khanh said:

> The wife only has rights in the outside world. In the family, if someone comes to borrow something one has the right to lend it to them, but that is the only right one has. In the family, the husband has the rights, in society both husband and wife have rights. So the wife's rights are only outside in society, in the family one does not have any rights.

Notably, women's complaints of their lack of power/rights were usually expressed only in quiet voices and in relatively intimate situations among like-minded women. In public, women would usually talk much more about a generalized 'family harmony' and about their duties as mothers and wives.

In short, many women clearly dislike any outside interference—whether from their husbands, in-laws, or the state—with their bodies or reproductive functions. As perceived by women themselves, however, the most urgent violations of women's autonomy take place within the closed and private sphere of the family, while 'outside in society' women are to some extent protected by formal rights and legal measures. Even though they are not very loudly expressed, ideas of bodily integrity and individual self-determination thus do appear to constitute an alternative, and more silent, discourse beneath the official and public talk about duties, obligations, and collective welfare. Indeed, the concepts of personal integrity and autonomy which underlie reproductive rights concepts cannot be considered as purely Western constructs, as has sometimes been suggested;[20] these concepts are clearly no less urgent and important to Vietnamese than to other women around the world. Even though the concept of 'reproductive rights' as internationally used has only recently been introduced in Vietnam, the values and expectations it covers seem to be widely shared by women.

ECONOMIC RIGHTS

Economic activities and to what extent they should be safeguarded by 'rights' is a key concern to both the international community, the Vietnamese government, and not least to Vietnamese men and women who are trying to make a living from them. Here we shall focus on the rights regime surrounding independent economic activities, i.e., the rights enabling and protecting private entrepreneurs and firms in Vietnam. Along with the liberalizing reforms initiated in the late 1980's, there has been a rapid increase in both numbers and economic importance of private enterprises. The gradual emergence of a

Vietnamese private sector is beginning to put economic rights issues on the agenda.

The specific economic rights in international human rights instruments are relatively few and very general. Both the *Universal Declaration* of 1948 and the *International Covenant on Economic, Social and Cultural Rights* of 1966 (hereafter referred to as 'the Covenant') mention freedom from hunger, right to medical care, and right to an adequate standard of living.[21] In addition, the Covenant mentions the rights to fair wages, to form and join labour unions, to strike, as well as other safeguards for workers. The right to work is formulated in the Covenant as 'the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts' (art. 6, par. 1). This could be read as a right to choose also independent enterprise outside the formal wage sector, but the formulation is vague and to our knowledge this interpretation is not common. Of more direct relevance to private sector activities is the provision about protection of private property.[22] Nevertheless, it must be concluded that the human rights instruments do not include a right 'to do business'.

Yet it can be argued that the dominant international discourse on economic development has given rise to a complex of 'economic rights' that are closely associated with private entrepreneurship. The neo-liberalist recommendations derived from this discourse stress the spirit of free enterprise. Governments—particularly in former and present socialist countries—are requested to reduce their direct interference in the economy and instead construct an 'enabling framework' consisting, among other things, of guaranteed rights for the private economy.[23] This discourse moves beyond the narrow conception of economic rights in the human rights instruments into a range of other, primarily political and civil, human rights, which are considered important for economic enterprise. These include the right to assemble peacefully and to form associations, freedom of thought and the right to express opinions freely, which enable businesspeople to meet, to form and join associations for mutual assistance and to defend their interests.[24] Freedom of speech allows them to express their grievances and interests in the media and vis-à-vis the government. The concomitant pressure to establish a rule of law and so-called 'good governance' conforms directly to the human rights requirement to protect citizens from arbitrary administrative decisions.[25]

The official Vietnamese views on economic rights only partly reflect the dominant international views sketched here, and they are a lot less unequivocal than on reproductive rights. Official formulations of economic policies and programmes are carefully worded compromises between a pro-private sector group and a more conservative, state-

oriented group among the top leadership and influential institutions. The 1992 constitution of Vietnam is a case in point. It institutionalized what was dubbed the 'multi-component economy functioning in accordance with market mechanisms under the management of the State and following a socialist orientation' (art. 15). The entire constitution reflects an intense debate in the leadership on how to combine Marxist-Leninist thinking with a new role of private property and production.[26] Although private ownership to means of production and trading were explicitly recognized, 'ownership by the entire people and by collectives' would still constitute 'the foundation' (art. 15). Another article grants rights to 'the private individual and private capitalist sectors' to 'adopt their own ways of organizing production' and to 'set up enterprises of unrestricted scope', although, it was added, they should operate 'in fields of activity which are beneficial to the country and the people' (art. 21). This article also gave special emphasis to the encouragement of the 'family economy', or household enterprises.

According to the conservative position, private enterprises and their owners should not be accorded any legitimate claims or rights vis-à-vis the state. To many government officials, 'development' has come to be associated exclusively with state-led and state-owned industrialization. Private enterprises are generally considered to be too small and technologically backwards to contribute substantially to national development. Quite on the contrary, the private sector is chided for its lack of order and social responsibility: in the view of most officials, private enterprises are notorious for not paying taxes, for cheating with prices and quality of goods, and for not complying with labour regulations. Private sector managers are considered to be 'uneducated' and immoral because they put the pursuit of private gains above all social obligations. It follows logically from this view that the private sector should not be granted any positive rights, whereas the state must have far-reaching rights to intervene into and control the private sector.

Associated with the conservative line of thinking is a general denial of *individual* rights and a stress on the collectivity and everyone's obligations to contribute to make the Vietnamese nation strong and prosperous. The conservative thinking refers frequently to the national liberation struggle and has calls for 'mobilization' of the population in campaigns as its preferred mode of policy implementation, as is also the case in family planning. Although the conservative argument shows obvious parallels to the 'Asian values' position, the latter is rarely explicitly invoked, while more particularistic references to 'Vietnamese tradition' are becoming more common in the argumentation as Marxist-Leninist dogmas are wearing thin.[27]

Compared to the conservative position, which recognizes only collective rights and emphasizes the 'rights' of the state, the pro-private, or reform-oriented line of thinking has clear tendencies towards promoting individual rights, although there is no room for a radical individualistic discourse in the political climate of Vietnam.[28] The reformist position contends that private and state enterprises should be equal before the law and should compete on a 'level playing field', a metaphor which has recently entered Vietnamese vocabulary. Reformists argue that the private economic sector holds strong potential for contributing to national economic and social development. Consequently, the argument goes, the private sector should be strengthened and supported through the development of an appropriate institutional framework, including certain legally sanctioned rights. In a speech to the National Assembly in 1997, Prime Minister Phan Van Khai stated that the state administration should guarantee 'everyone's right to do business'.[29] Gross abuses by local government officials have been denounced in the domestic press as 'violations of people's democratic rights'. In the same vein, former Prime Minister Vo Van Kiet on several occasions encouraged people to assert their 'rights' to fair treatment by the public administration.

The concepts of individual rights and rights associated with economic activities have clearly become part of the official discourse, but remain circumscribed by the need to accommodate the conservative views. The outcome of the consensus building process has been the project to substitute a 'state rule by law' *(nha nuoc phap quyen)* for the former socialist 'rule by decree'. Whereas some reformist-minded leaders may wish to develop a legal system, in which everybody was equal to the law and the courts—a 'rule *of* law'—the current efforts put more emphasis on the 'rule *by* law', in line with the demand for loyalty towards the state implicit in the 'Asian values' complex. Laws are not promulgated to furnish people and groups with new and equal rights, but primarily to enable the central state agencies to rule the country and the new market economy in a more effective and legitimate way.[30] Yet conceptions of legally sanctioned 'rights' are emerging as an unintended side-effect of the process. The rule by law programme has led to the adoption of a great number of new laws that define the rights and obligations of individual and joint ownership companies (e.g. company laws, a domestic investment law, the labour law and a bankruptcy law). Economic branches have been set up under the People's Courts after 1996 to handle economic disputes.

In sum, the struggle about the meaning of 'economic rights' extends into the top leadership of Vietnam, which makes this area different from

the greater consensus in the policy area of population control. The emerging complex of laws and institutions have created some degree of protection of private business activities, but the framework retains a strong tendency to favour state and party interests and to re-centralize power with the government in Hanoi.

Discourses on Economic Rights and Everyday Practices

When interviewing people about the private sector, the same first impression appears as in the case of family planning: state policies in the economic field apparently enjoy general support. Dissenting views are expressed in diplomatic terms with only mild criticism; only in rare instances are people vehemently opposed to government and party policies.[31] It is, of course, methodologically difficult to distinguish clearly between 'sincere' statements and politically correct views expressed for the sake of avoiding trouble. But like the conversations with women about family planning, it was sometimes possible to attain a modicum of confidentiality in which more personal and controversial views could be aired. While it could be expected that the ambiguity of state policies would pave the way for a greater pluralism and more open debate on economic policies, the opposite seems to be the case. Ambivalent signals from above have created a sense of insecurity which deter many people from taking a firm pro-private stand, whereas the more traditional statist position seems relatively risk-free.

One value, however, seems constant in both 'official' and 'private' views: that is the basic sense of duty towards the country. Virtually all Vietnamese will agree to the prototypical 'Asian values' idea that everybody has an obligation to contribute to national development. A large number of people also share the conservative view that state enterprises exhibit higher social consciousness and better moral standards than private-sector enterprises. The rise in corruption and embezzlement problems is generally attributed to the marketization of the economy. Since state-owned enterprises existed before liberalization was initiated, it seems logical to many people that the 'explosion' in private enterprise is to blame for most of these problems.

Among private entrepreneurs, the major 'rights' issue is the concern for legal protection of their property. Surprisingly many were sceptical of the formal, constitutional guarantees and feared that their private enterprises would be nationalized or forcibly turned into co-operatives. Even if they did not fear outright confiscation, many felt that the current guarantees were not adequate to ensure stability and predictability in business. Especially the strictly limited ownership rights to land were a

source of worry and complaint for many businesspeople. Private entrepreneurs are still obliged to lease land from the government and cannot use it as collateral for credit, while state-owned enterprises generally possess transferable use-rights to their land.

Private entrepreneurs are keenly aware that they and their enterprises are not on an equal footing with the state-owned enterprises, despite the reformist government rhetoric. In private conversations many expressed strong support for the idea of a 'level playing field' and a comprehensive legal protection of citizens. Perhaps because they were talking to foreigners, they could contrast the situation in Vietnam to what they perceived as a perfect legal framework in 'the West'. Likewise, they could easily describe a desired, hypothetical situation in which the government administration would act predictably, impartially and efficiently in relation to the private sector. In sum, most entrepreneurs were yearning for a situation of rule of law with a law-based administration respecting citizens' rights.

Yet, according to their own stories, small-scale private entrepreneurs very rarely used the notion of 'rights' in everyday tussles with public officials since this tactic would be counterproductive or inefficient compared to other means. In practice, they do not feel that they have any rights at all in relation to the public administration. They sense a wide gap between the relatively reformist and pro-private sector tones emanating from the government and the actual practices of local officials dealing with the enterprises. According to them, the administration continues to operate according to the old principle that you must 'ask permission' *(xin-cho)* before doing anything. Obstacles to business are of both official and unofficial nature. The legal and administrative framework is complex and cumbersome. Wide discretionary powers of officials, corruption, and re-interpretations of national laws in line with local interests add to the difficulties and costs of conducting business. In order to get things done, private citizens usually need to mobilize their networks of relatives and acquaintances with influence. Bribes are almost always required to make things happen—or happen faster than at the usual snail's pace. Legal institutions are not trusted to be impartial and settlements of economic disputes in court are still rare.[32]

It is noteworthy that some private entrepreneurs, such as the company director whom we quoted at the beginning of the chapter, do feel that they enjoy certain rights. This viewpoint is typically held by managers and owners of the few larger private enterprises in Vietnam. They have become successful not so much in opposition to the state-biased administration, but because of their excellent connections in the political and administrative apparatus, for example through partial ownership by

a local party organization. It is primarily here that we meet the opinion that the mere ability to do something is similar to an acquired 'right', which points to a broader and more particularistic conception of 'right' than the 'Western' ideal-type right. It is also among the larger private enterprises that we sensed a growing interest in the fledgling business associations of Vietnam because they are increasingly able to expand the opportunities for the larger, well-connected private enterprises. In short, notions of rights and fairness are arising among private entrepreneurs as reactions to oppressive practices of local officials, but they remain largely subdued and illegitimate in everyday interactions with public officials.

CULTURE, POWER AND HUMAN RIGHTS

In our discussions of both reproductive and economic rights, we have concluded that notions of rights and particular values closely related to internationally accepted interpretations of human rights do exist among Vietnamese people, even if they are rarely articulated in public. The two questions that remain concern first the concept of 'rights' itself—when Vietnamese men and women talk about 'rights', what exactly do they mean? And second, if notions of rights and cultural values of autonomy, integrity, equal opportunity, legal protection, and freedom are as strong as we have suggested here, then why are they not more forcefully articulated in public debates in Vietnam?

Both in the context of reproduction and economy, notions of rights—or lack of rights—are very frequently brought up by people. But as indicated in the preceding pages, the concept of 'rights' may take on differing meanings depending on the context. In some cases, as in the question of legal guarantees for private property, Vietnamese people seem to use the concept of rights to describe an officially sanctioned and formalized expectation very similar to the 'Western' legalistic concept of rights. In other contexts, however, the term 'rights' seems to imply a pragmatic ability to act freely rather than expectations that are guaranteed and backed up by legal institutions. 'Rights' seem to be closely associated with the mere opportunity to do something, with the freedom to act in accordance with one's wishes, as when Khoa talked about de facto liberties or Minh talked about the right to have children as a question of individual freedom. This fits neatly with the dictionary's translation of the term *'quyen'* as meaning either 'right' or 'power': 'right' interpreted as a social capability and ability to act freely comes very close to a definition of power. In other words, even though the values underlying human rights claims clearly exist in Vietnam, these values are not necessarily expressed in a 'human rights language' in the standard Western sense, and the

aspirations to autonomy and self-determination that we have noted are—probably for good empirical and historical reasons—are not necessarily accompanied by expectations of protection by a political and legal system.

The next question that arises is why Vietnamese people do not openly criticize dominant social orders and demand official recognition of the rights and freedoms that they are talking about in private? Why these inconsistencies and discrepancies between statements made in public and in private? Do people lie when they express recognition of official policies, while their 'true opinions' are expressed in private? Our interpretation is that people are neither lying nor simply parroting state rhetoric. Rather, they are are juggling two different sets of moral values which are equally real and valid—but of which one is more socially and politically dominant than the other. Simply expressed, we may distinguish between a dominant set of officially sanctioned 'Vietnamese values' which stresses social duties, obligations, collectivity, and hierarchically ordered social relations, and an alternative set of (just as Vietnamese) values which emphasizes individual freedom, integrity, autonomy, and operates with an ideal of more equal social relations. These sets of moral notions co-exist in daily social life, but they do not possess the same degree of legitimacy: the value set emphasizing duty and hierarchy is clearly more morally and politically legitimate than the alternative set of values. In this sense, the alternative value set may be considered as a 'hidden transcript' in James Scott's use of the term—a 'discourse—gestures, speech, practices—which is excluded from the public transcript by the ideological limits within which domination is cast'.[33] While dominant values and moralities are clearly not exhaustive of personal experiences and ideas, they do tend to set the agenda for what may be publicly articulated. In social worlds where duty and responsiblity are dominant values, insisting on personal rights and freedoms is closely associated with selfishness and a lack of concern for others. Therefore, little is gained through a loud insistence on personal rights—to have as many children as one wants or to equal treatment in economic affairs—except the categorization as a selfish, irresponsible and uneducated person. The strategy employed by most people is therefore to express agreement with dominant values in public, while getting as far as possible through pragmatic manoeuverings and 'fence-breaking' in private. In short, the processes through which some values come to achieve social primacy and dominance over others clearly have more to do with power and representation than with given cultural values. As all other cultures, Vietnamese culture is a complex blend of different and contradictory elements which may be strategically employed in various ways. The specific forms that cultural values come to take seem to

depend more on the social and political situation in which they are expressed than on any cultural 'core'. As a Vietnamese woman in Trinh Minh-ha's film *Surname Viet, Given Name Nam* says: 'You have to be careful when you look at our society. There is the form and there is the content. Truth is not always found in what is visible.'[34]

NOTES

1 Interview in Hanoi, April 1997. Khoa and other names of Vietnamese interviewees are pseudonyms.

2 Citation from Vo Van Ai, Chapter 5, this volume.

3 This article is based on several periods of fieldwork in Vietnam. Tine Gammeltoft conducted fieldwork in Ha Tay province for a period of twelve months in 1993–1994 and for six weeks in 1996; Rolf Hernø interviewed businessmen, officials and researchers in Hanoi and Ho Chi Minh City over five months in late 1996 and early 1997. There is admittedly a gender bias to our work in the sense that—for methodological reasons—Tine Gammeltoft talked mainly to women and Rolf Hernø mainly to men.

4 Adamantia Pollis and Peter Schwab (eds), *Human Rights: Cultural and Ideological Perspectives*. International Studies Association, Washington D.C. New York: Praeger, 1980, pp. 22–25.

5 John Davis, 'The Anthropology of Suffering'. *Journal of Refugee Studies* 5, 1992, pp.149–61.

6 See, for instance, Fredrik Barth, 'The analysis of culture in complex societies'. *Ethnos,* 54, 3–4, 1989, pp. 120–142; Fredrik Barth, *Balinese Worlds.* Chicago: Chicago University Press, 1993; Renato Rosaldo, *Culture and Truth. The Remaking of Social Analysis.* Boston: Beacon Press, 1989; James Clifford, *The Predicament of Culture. Twentieth-Century Ethnography, Literature, and Art.* Cambridge, Mass.; Harvard University Press, 1988.

7 Akhil Gupta and James Ferguson, 'Beyond "Culture": Space, Identity, and the Politics of Difference'. *Cultural Anthropology,* 7, 1992, pp. 6–23, at p. 8.

8 Ann-Belinda S.Preis, 'Human Rights as Cultural Practice: An Anthropological Critique'. *Human Rights Quarterly,* 18, 2, 1996, pp. 286–315, at p. 290.

9 United Nations, *Report of the International Conference on Population and Development* (Cairo, 5–13 September 1994), 1994, p. 43.

10 NCPFP, *Dan So Va Gia Dinh. Dac San Nam Quoc Te Gia Dinh 1994*. [Special edition, The International Year of the Family 1994]. Hanoi 1994.

11 Interview in Hanoi, April 1998.

12 International Planned Parenthood Federation, *IPPF Charter on Sexual and Reproductive Rights*. London; 1996. The charter includes twelve rights which are grounded in international human rights documents: the right to life; the right to liberty and security of the person; the right to equality and to be free from all forms of discrimination; the right to privacy: the right to freedom of thought; the right to information and education; the right to choose whether or not to marry and to found and plan a family; the right to

decide whether or when to have children; the right to health care and health protection; the right to the benefits of scientific progress; the right to freedom of assembly and political participation; and the right to be free from torture and ill treatment.

13 For a discussion of human rights aspects, see Zhu Chuzhu, Li Shuzhuo, Qin Changrong, Hu Ping and Jin Anrong (eds), *The Dual Effects of Family Planning Program on Chinese Women*. Xian: Xian Jiaotong University Press, 1997; Cecilia Milwertz, *Accepting Population Control* Richmond: Curzon, 1997.

14 JPRS (Joint Publications Research Service on East and Southeast Asia), 1989. JPRS-SEA-89–007, 8 February. Reprinted as 'Vietnam's New Fertility Policy'. *Population and Development Review,* 15, pp. 169–172.

15 World Population Plan of Action, 1974, Art. 14(f): 'All couples and individuals have the basic right to decide freely and responsibly the number and spacing of their children and to have the information and means to do so; the responsibility of couples and individuals in the exercise of this right takes into account the needs of their living and future children, and their responsibilities towards the community'.

16 NCPFP, *Dan So Va Gia Dinh* 9, 58. (International Conference on Population and Development, 5–13 September 1994). Hanoi 1994, p. 3.

17 Tine Gammeltoft, *Women's Bodies, Women's Worries. Health and Family Planning in a Vietnamese Rural Commune*. London: Curzon Press, 1998; Daniel Goodkind, 'Vietnam's One-or-Two Child Policy in Action'. *Population and Development Review,* 21, 1, 1995, pp. 85–111; Annika Johansson, 'Family Planning in Vietnam—women's experiences and dilemma: a community study from the Red River *delta*'. *Journal of Psychosomatic Obstetrics and Gynecology,* 17, 1996, pp. 59–67.

18 Son preference is strong in Vietnam, and the need for sons very often makes people exceed the one-to-two child norm.

19 Tine Gammeltoft, *Women's Bodies, Women's Worries,* pp. 201–206.

20 Somia Corrêa, *Population and Reproductive Rights: Feminist Perspectives from the South*. London: Zed Books, 1994, p. 77.

21 Vietnam has acceded or ratified the covenants on civil and political rights as well as economic, social and cultural rights. See Edward Lawson, *Encyclopedia of Human Rights*. New York: Taylor & Francis, 1991.

22 Article 17 of the Universal Declaration states that '[e]veryone has a right to own property alone as well as in association with others' and that '[n]o one shall be arbitrarily deprived of his property'. See Edward Lawson, *Encyclopedia of Human Rights*. The formulation of the (later) Covenant, on the other hand, was marked by controversies between developing and developed nations over nationalization and contains no similar articles. See Ta Van Tai, *The Vietnamese Tradition of Human Rights*. Berkeley: Institute of East Asian Studies, University of California, 1988, p. 26.

23 For an example in the Vietnamese context, see World Bank, 1995, *Viet Nam —Economic Report on Industrialization and Industrial Policy*. Washington, D.C.: World Bank, 1995.

24 Universal Declaration, articles 18–20; the Covenant, articles 18–19, 21–22. See Edward Lawson, *Encyclopedia of Human Rights*.

25 The specific rights are the right to fair trial, equality before the law, and protection from arbitrary interference in the Universal Declaration, articles 6–12; and in the Covenant, articles 9–11, 14–17. See Edward Lawson, *Encyclopedia of Human Rights*.

26 Russel H.H.Khng, The 1992 Revised Constitution of Vietnam: Background and Scope of Changes'. *Contemporary Southeast Asia,* 14, 3, 1992, pp. 221–230.

27 Adam Fforde, *Vietnam: Economic Commentary and Analysis No. 8: The VIIIth PartyCongress:Socio-economicDevelopmentPolicyandtheLimitsofDoiMoi*. Canberra: ADUKI Pty. Ltd, 1996.

28 A session of the National Assembly held in April, 1997, identified 'individualism' as the main factor behind the 'social evils' afflicting Vietnam (i.e. pornography, drug abuse, corruption, etc.).

29 He immediately added, 'within the bounds of law', to distance himself from the image of the private sector as lawless.

30 Adam Fforde, *Vietnam: Economic Commentary & Analysis No. 6*. Canberra: ADUKI Pty. Ltd, 1995; David G.Marr and Carlyle A.Thayer (eds), *Vietnam and the Rule of Law*. Political and Social Change Monograph No. 19. Canberra, Department of Political and Social Change, Research School of Pacific Studies, Australian National University, 1993.

31 This was clearly more often the case in Ho Chi Minh City in the South with its more recent history of capitalism and—in the eyes of many Southerners —suppression by the Communist North.

32 For a more detailed description of the clientilistic institutions in Vietnam, see Rolf Hernø, 'Network Capitalism in Vietnam: Some Implications for Understanding the "Transition"'. Paper for the Euroviet III conference in Amsterdam, 2–4 June, 1997, to be published in proceedings edited by Angie Ngoc Tran, Dang Phong and Melanie Beresford.

33 James Scott, *Domination and the Arts of Resistance*. New Haven: Yale University Press, 1990, p. 28.

34 Trinh Minh-ha, 'Surname Viet Given Name Nam'. In: *Framer Framed*. London: Routledge, 1992.

9

Freedom as an Asian Value

David Kelly

Discussions of Asian values and their possible relations to universal norms like human rights, democracy, and so forth, generally suffer from vague and inconsistent usages at many levels of expression, from basic terms and concepts to entire structures of description and argument. This cacophony is, from a philosophical point of view, part of the human condition. Only in narrowly defined academic arenas are (what are for some of us) comfortable levels of clarity and unanimity to be found. Short of retreating to such ivory towers, there seems little alternative to putting up with the clamour, the fuzzy references and stereotypes, hoping the collateral damage to one's own understanding and to communication—in the first place between scholars, but ultimately between cultural universes—does not mount too high.

Another approach is to accept the challenge of multipolarity. What does this mean? In brief, it is an attempt to head off the relativists who would reify Asian values into a mystified domain without paying the heavy price of positing the West as the unique source of civilization. What is needed is medium-level theory which can detach one from the routine assumptions of Western civilization, by uncovering its own accumulation of social practices and attendant value concepts. Only if Western and Asian social practices are placed on a uniform footing and subjected to uniform genealogical scrutiny will headway start to be made.

A fuller answer will require setting out some details of a recent collaborative effort in the intellectual history of several Asian regions, where an approach of this sort seemed to bear some fruit.[1] At the minimum, I shall try to show that a medium-level theoretical programme of historical sociology using, modestly and cautiously, certain approaches of social constructionism can be of assistance.

THE GENEALOGY OF FREEDOM

The key explanatory variable, value, is in itself problematic. The term 'value' is indispensable in the shorthand used to describe social processes. Leaving rigorous definition aside, it can be said that a value is the label of a group-constructed 'text' with 'publishers' and 'subscribers'. Once subscribed to, this text orients or conditions the subscriber's thoughts and actions. Values may be and are often investigated empirically, using questionnaires, samples and similar methods. But like many other aspects of human consciousness, values are often inconsistent (as between various published 'versions'), subject to fluctuation, difficult to measure and define; as individual 'subscribers' we are notoriously fickle and contradictory. Empiricism may also fail to reveal the rich patterns built up over historical time. Take the following (hypothetical) scenario: the values which support gun ownership, often so disconcerting to non-Americans, have a distinctive history. Not only was there a need for armed militia in the Revolutionary War, not only was this sanctioned ('published') in official doctrine, but when these conditions were followed by increasing numbers of guns in the community, more people subscribed to the positive value of gun ownership. A self-fulfilling and self-sustaining cycle of publication and subscription results with consequences familiar to all. It is noted that a full account includes not only the empirical here-and-now, not only the key events but also their sequence of interaction. The pro-gun values have a historical path-dependency which requires a genealogical account to be fully comprehensible.

One influential way of constructing such accounts is the sociological tradition of Max Weber. This approach seeks to define how certain cultural formations (in Weber's own classic case, Calvinism) constrain the way in which individuals formulate meaning, and thus condition vast social and economic orders (e.g. for Weber, modern capitalism). Weber made use of a construct he called an 'ideal type', which involves a 'deliberate exaggeration of the essence' of the cultural formation in question.[2] A number of leaves may be taken from Weber's book. It seems quite legitimate to frame 'Asian values' as an ideal type in the sense of exaggerations which enable fruitful comparison and understanding. This objective helps to distinguish it from rhetoric or bias.

There is then a need to proceed genealogically, to understand the path-dependent processes which result in the values we seek to understand. It is worth noting that an empirically observed value in the present may be formed as a reversal of previously accepted values. Thus, it should not be surprising that Asian statesmen have constructed 'Asian values' in

response to pressures for change in their communities which they perceive as threats to the status quo.

It is an advantage to start not with 'values' or 'Asian values' as the unit of analysis, but with a concrete, specific value. In the present case the value was readily communicated by the word 'freedom' and its cognates in other languages. Of course, freedom is no simple value on the level of, say, gun-ownership, or even honour or filial piety. It is one of the most abstract words used to qualify or describe of human behaviour. It would be feasible to treat freedom purely empirically, as in fact organizations like Freedom House, who survey and rank the degrees of political and individual freedom in many countries and regions of the world, generally do.[3] This empirical view need not be neglected in our notion of a genealogical approach. But as stated above such approaches may fail to yield satisfactory accounts of the rich, path-dependent feed-back processes between practices (which may constitute entire institutions) and ideas (which may themselves be constructs on the level of ideal types).

Let us turn more concretely to the body of theory that provided the starting point, namely, the work of Orlando Patterson. According to Patterson, freedom was first a fact, then a value. Moreover, freedom has only in the medieval and above all modern West been a 'widely held vision of life'.[4] For most ancient peoples, and more recent ones resistant to 'Western values', freedom, which for certain reasons entailed a loss of communal identity, was a very artificial and far from desirable state, one to be taken on most grudgingly. Only after its reinvention did freedom become accepted as a core value. This reinvention began with the institution of Greek slavery in ancient times. Only then could it ramify into the series of usages Patterson describes as a 'widely held vision of life'.

Many aspects of Patterson's genealogy of freedom are open to question. Not everyone finds the constructivist approach to history of ideas sympathetic. What I seek to defend here is not the detail of this theory but the level of analysis at which it is pitched. Rather than rush to judgement as regards the legitimacy of 'Asian values', adding to the cacophony, it is surely preferable to do some serious work in the genealogies of the values in question.

THE SALIENCY OF FREEDOM IN ASIA

Hegel famously held that 'the Orientals knew only that one [the ruler] is free'.[5] He meant only that man's intrinsic freedom was neither recognized nor valued in the Orient. An image of Asia as despotic and

enslaved is, however, consistent with such views, and was transmitted to the modern era by thinkers as diverse as Marx and Nietzsche. Just when the new history of Asia appeared to be escaping these Orientalist stereotypes, they have been rediscovered in, of all places, Asia itself. Influential statesmen and intellectuals have discerned in 'Asian values' a domain where personal freedom plays a lesser role.

Whatever the authority such figures may now command, our impression of the saliency of freedom in Asia is quite different. It is a word discussed frequently and with passion. Nevertheless there is a key cluster which seems again and again to claim centre stage and describe itself as real freedom. This is the cluster centring around ethics, politics and law. Freedom's higher metaphorical registers, its metaphysical dimensions, may reawaken with a vengeance, reconstructing the givens of cultural identity. But for much of the time, freedom really matters in social history when it figures as social practice, an idea, indeed even a 'shared vision of social life', but more specifically as the underlying source of criteria of legal, ethical, and political practices—human rights, the rule of law, civil society, democracy, and so on. This begs the question as to whether the key meanings or language games embedded in the Western vocabulary are present in the non-European culture, albeit in a different format.

The notion of a rights-based morality is certainly one way of describing what is common to many of these, and has the advantage of being accepted political science jargon. Note, however, the danger of reductionism this formula bears with it. Non-European languages may lack un-ambiguous equivalents for either freedom or rights. Thus is China, 'rights' has been rendered by the character *quan,* which had important traditional connotations of sovereignal power, and little of the contemporary connotations of immunity, universal justice, etc.[6]

Modern states are of course generally inclined to adopt some of the legal terms and concepts of Western law, not least commercial law, which is replete with 'rights' and 'freedoms'. Even in the case of Marxist-Leninist regimes, constitutional law emerges in the post-revolutionary 'inclusionist' phase,[7] although it rarely corresponds to any genuinely institutionalized norms of civil society, but rather to the personalized power politics of the elite. Nonetheless the systematically correlated *concepts freedom, autonomy, sovereignty, democracy, law, rights,* emerge in these societies as well.

Even so, despite some common patterns in the emergence of a modern language of freedom, we still have no basis to assume that the referents— the things meant—are entirely interchangeable between languages. There is an incessant struggle to extend or curtail the meanings of local, foreign

and coined expressions to serve different purposes. Putting linguistic complexities to one side, there remain, even within a single Western language like English, intrinsic difficulties of symbol and referent. 'Having a freedom' does not always mean 'having a right'. There are other images or language games encoded as 'freedom', such as the removal of a restraint or impediment, which are for some people (and peoples) the controlling ones. The capacity to flee the reach of the state is similarly one to which rights are irrelevant—or if relevant, ironically so, as when state-ordained 'rights' become something fearful to be fled.

Even after narrowing our conceptual scope to the social-practical we nonetheless encounter a number of blunt value judgements. 'Asia' figures in the minds of many as a kind of Antarctica of freedom, a cultural zone where social order is the controlling value and where well-adjusted members of family-centred communities reject Western political institutions as harbingers of alienation and chaos. It is consistent with (but logically independent of) certain other views: such as that 'folk' ideals of freedom exist but are permanently disabled by other cultural factors. Such constructions are far from being merely Western mirages. Notoriously, they emanate from on high in Asia itself. In a 1993 interview, Lee Kuan Yew stated,

> As an East Asian looking at America, I find attractive and unattractive features. I like, for example, the free, easy and open relations between people regardless of social status, ethnicity or religion. And the things that I have always admired about America, as against the communist system, I still do: a certain openness in argument about what is good or bad for society; the accountability of public officials; none of the secrecy and terror that's part and parcel of communist government.
>
> But as a total system, I find parts of it totally unacceptable: guns, drugs, violent crime, vagrancy, unbecoming behaviour in public—in sum the breakdown of civil society. The expansion of the right of the individual to behave or misbehave as he pleases has come at the expense of orderly society. In the East the main object is to have a well-ordered society so that everybody can have maximum enjoyment of his freedoms. This freedom can only exist in an ordered state and not in a natural state of contention and anarchy.[8]

Lee's view, neatly rejecting 'their' ill-ordered freedom in favour of 'our' well-ordered one, is of unusual significance. It is consistent with the thinking found more obliquely expressed in a document signed by ministers and representatives of Asian states meeting at Bangkok from 29

March to 2 April 1993. In their 'Bangkok Declaration' these leading spokespersons adopted a united stance towards the impending World Conference on Human Rights to be held in Vienna in May of that year. Among the points affirmed, they:

> 8. Recognize[d] that while human rights are universal in nature, they must be considered in the context of a dynamic and evolving process of international normsetting, bearing in mind the significance of national and regional particularities and various historical, cultural and religious backgrounds.
>   10. Reaffirm[ed] the interdependence and indivisibility the economic, social cultural, civil and political rights and the need to give equal emphasis to all categories of human rights.[9]

Innocuous as these formulations sound, their intent seems highly questionable. Put in the simplest terms, the concession to the universality of human rights in Clause 8 can be viewed as disingenuous, since Clause 10, and an earlier affirmation of the priority of the principles of sovereignty, territorial integrity and non-interference, effectively disarm it. More generally, the Declaration's mild terms constitute, given the actual configuration of political powers at work in the region, an ideological message condoning and legitimating illiberal policies.

Senior Minister Lee and the signatories posit a simple dialectic of freedom and order: 'here' (in Asia) they cohabit, 'there' (in the West) they do not. 'Here' is not susceptible to blanket generalizations of this kind. Asia is not all of a piece, even if there are sufficient family resemblances among its parts to establish a basis for comparison and nuanced generalization. Nor are the parts understandable without a grasp of the evolving historical fields and communities within which social practices and ideas circulate.

SOCIAL CONSTRUCTIONISM AND ITS PITFALLS

'I was', Orlando Patterson states in an unpublished paper, 'obliged by the findings of my own scholarship to inform my inquiring friends that the basic historical argument, if not the moral purpose of the Bangkok declaration was fundamentally correct'.[10] Given what we have said above, this (admittedly qualified) support of the Bangkok Declaration raises some serious methodological issues. It is critically important, as has been argued from the outset, that an account of uses of the language of freedom in Asia proceed on the basis of a thorough grasp of the ideological nature of this language, in Asia of course but in the first place

in the West. Historical sociologists like Patterson provide some useful tools in doing this. Without a sense of the ideological context of modern Asian countries, however, the relativist and 'social constructionist' tools of Patterson and other post-Orientalists are all too easily turned to the purposes of certain strains of nativistic antiliberalism with which they have in fact rather little in common. As David Wright-Neville put it,

> Cast as assaults upon lingering hegemonic European forms on behalf of their (increasingly disenfranchised but increasingly affluent) constituents, the cultural rhetoric of East Asian political conservatives is more accurately read as part of a wider effort to buttress their political authority by inventing an imagined enemy.[11]

In a different vein, Daniel A.Bell and collaborators argue from the cultural particularity of the liberal project to the likelihood of 'illiberal democracy' in Pacific Asia. Patterson's argument that the modern form of freedom as an ideal was absent from the non-Western world is adduced in their account.[12]

A searching critique of Western freedom, analysing it into component parts in order to see how these may have been—and are—put together differently—is as noted already, an essential methodological step. But the general methods of social constructionism do not fully support such views as those of Lee Kuan Yew and the Declaration. Thus while Patterson writes of a 'stillbirth' of freedom in the non-Western world,[13] 'freedom' in his sense referred to an elaborately defined cultural complex rather different to the US-style libertarianism so often caricatured by Eastern ideologues.

It is not, however, possible to refute Patterson's ideas of freedom in Asia without refuting commonplaces of Western thinking on the subject as well. Such a procedure involves some troubling methodological and conceptual issues. A title such as 'Asian Freedoms' is open to the objection that Asia is not a coherent geographical or cultural entity. Talking as if it were is the result of a kind of original sin called 'essentialism', which leads Western authorities to project a uniform Otherness on the very different worlds of Turkey, India, Vietnam and so on. This is said to be done in order to incorporate and dominate these parts of the world within a Western hegemony.[14]

Critics of Orientalism correctly point out that there is no underlying unity, no Asian essence, shared at a deep level by all cultures from Turkey to Japan. But to assert, as some seem to, a total absence of cross-cutting relationships is contrary to common experience. To use a no doubt overly familiar analogy, members of a family are recognizable as such

because they each bear one or more, but not necessarily all, of a set of common traits. No one trait is essential. The societies and cultures of Asia —indeed of Eurasia—are linked by many such systems of family resemblance, some broader (like those associated with the world religions, e.g. Buddhism, Hinduism, Islam or Christianity) and some narrower, like those related to Chinese—or, where it applies, English, or Arabic—literary and intellectual culture. In many cases the relationship crosses the imaginary line between Europe and Asia. In certain respects, for example, Marxism-Leninism links China, Vietnam and North Korea culturally to Eastern Europe and the former Soviet Union more truly than to some of their neighbours.

No one now claims, in the manner of General MacArthur, to 'know the Oriental mind'. Nor can we afford to incorporate 'Asia' as a secondary, dwarf variety of something 'we' in Western countries regard as authentic and privileged. But there is a more crucial point, captured metaphorically in Patterson's book, where he notes that The revolutionary originality of jazz as a musical genre created by black Americans is in no way undercut by the evidently strong influence of Western popular and classical music on its development'.[15] There is a major procedural issue at stake here, one with both cultural and political dimensions. It is applied with striking clarity by Edward Friedman, who has argued forcefully that

> [a]lthough it is in no way evil that Westerners feel pride that modern democracy originated in the Atlantic basin, Occidentalism, the glorification of a better part of Western culture as if it were the whole, obscures the actual sources of despotism and democracy. A spotlight on 'Western' culture permits chauvinists elsewhere to strut in traditional garments and stigmatize democrats as virtual foreigners.[16]

Patterson and Friedman stand on the following common ground: in culture, cross-fertilization is all. Neither origins (African music, Asian culture) nor later influences (classical music, Western culture) are sufficient to determine outcomes (jazz, Asian freedoms). Nor are origins obliterated by such influences.

Eurasianism—or alternatively, what I earlier called multi-polarism—is as much opposed to Friedman's Occidentalism[17] as to Orientalism. In many Asian cultures, 'freedom' figures as a neologism coined in order to translate a Western term, which previously had no clear local equivalent in the non-Western language. This fact, however, says nothing about the subsequent history of the concept, its political legitimacy or its realization in social-practical terms. When talking about the universality of certain

interpretations of freedom, what is meant is the sense that jazz, an African-American music, is both culturally specific (not the less 'black' for incorporating 'white' elements) and readily appreciated across cultural boundaries. Nothing intrinsically precludes the ideas discussed as 'Asian freedoms' from living a life of their own in the culture which might perhaps now be relabelled as Eurasian. Equally, a constructionist approach—source of the concept of reinvention adverted to previously— in the humanities and social scientists provides no support for chauvinists who 'strut in traditional garments and stigmatize democrats as virtual foreigners'. From the above discussion the following points may be advanced:

- Servitude and oppression are resented everywhere; in this respect, Asian peoples are not from some other planet. When they themselves appeal to freedom as a universal standard of political and other values, this can hardly be dismissed as a bourgeois Western, hegemonic invention.
- 'Asian' peoples fully participate in global modernity and its paradoxes of increasing liberty and increasing discipline,[18] while differing from other regions of global modernity in ways that render contentious the appropriation of Western intellectual-cultural discourses.

The second point deserves expansion. As Hugo Stokke argues, the process of global modernity—which he characterizes in terms of the Weberian category of rationalization—sets up interactions of state and society which do more to explain the emergence of particular human rights regimes than do overtly cultural factors.[19]

Patterson holds, as stated above, that 'Freedom was socially constructed, not discovered—for it was an invented value'.[20] But this formulation is accepted with a grain of caution. The terms 'socially constructed, invented' appear themselves to imply a freedom of an extreme type, a licence to construct or invent without regard to conditions or limitations. This is not my interpretation. The constructionist formula does not imply that one throws a collection of facts into the air to see where they come down. Nor is it a view that this is what people do in making history.[21]

Also to be kept at a distance is what Roger Keesing identified as the 'cultural constructive paradigm', viz., that 'neither biology nor the material world impinge directly on the human condition except as they are constructed and interpreted through locally cumulated, conventional —that is, cultural—symbols'.[22] As Wright-Neville warns, this paradigm supports 'a proliferation of cultural relativisms' among whose failings is

the tendency to down-play deviations from cultural norms, sub-merging them within an assumption of the state as the 'epitome of the organic unity of the nation'.[23]

Social constructionism is better appreciated rather as a rule of thumb for research into an intrinsically complex topic: it focuses attention on the ways in which culture and thought are subject to systems of power and privilege, yet open to defensive tactics on the part of the powerless. Neither biology nor the material world are ruled out of this field of vision, although it is the material world rather than biology which is more frequently brought into play. In the present era, the nation state holds many strategic means of constructing or inventing values, but rarely is it successful in doing so with totalitarian efficiency. When political elites in Asia epitomize the political culture of their surrounding community in terms of an organic unity, constructionism in our sense alerts us to the questions of legitimacy which such claims seek to preempt. What levels of censorship and surveillance operate in the background of these claims?

FREEDOM AS A CHINESE VALUE

> …the concept of freedom never played a great role in Chinese civilization. The modern word *(ziyou)* is relatively young, and the term *ziran* (which one could translate as 'self-determination') has a distinctively individualist if not anti-social and even anarchic ring.[24]

China provides an apparent case in point of Patterson's thesis of a 'stillbirth of freedom in the non-Western world'. For, despite the existence of developed institutions of slavery and serfdom, and of a politically centralized community with governmental institutions, freedom failed to emerge as a socially significant shared vision of life. That is to say, no positive evaluation of the free state in the socially constructed form so crucial for Patterson—featuring a 'triadic fusion' of personal, civil, sovereignl freedoms—was to emerge until the modern era. Attempts to give political form to opposing constructions of freedom have in that era been attended by explosive conflicts. However, even taking into account the daunting weight of the factors militating against a political culture of freedom in China, we are in the end impressed with its resilience, its spiritual strength and its capacity to grow given the least room to do so.

It is possible to identify, first, a range of values and visions of life which can stand as precursors to freedom; secondly, a range of ways in which

the modern system of concepts was unpacked and reworked in the Chinese context. In particular, notions of civilization, modernity, and development have proven both irresistible, and almost impossible to decouple from the liberal ideology of political freedom which they are said to entail. These perspectives give us some understanding of why modern freedom, while far from securely rooted in China's historical experience, cannot be rejected as an intrinsically alien ideology.

Large-scale slavery was important for much of Chinese dynastic history. It was a developed institution in China through Han times, and was replaced piecemeal by a comparably long-lasting and evolved manorial system where large populations of hereditary bonded serfs were a major component. Hereditary serfdom came to an end in the Ming-Qing transition of the seventeenth century in which both economic and political factors played a role. The Qing (Manchu) state (1644–1911) recognized that disaffected serfs were a potent source of the insurrections which had assisted their own seizure of power from the Ming. The Yongzheng Emperor (1725–1735) abolished hereditary serfdom in the early eighteenth century. Economic changes had led in any case to a flow of capital out of the secure but inefficient and unprofitable forms of bondsman-operated agriculture, into new avenues such as commerce, pawnbroking and urban real estate. The remaining populations of slaves had been increasingly able to buy their freedom.[25] However, none of these developments signal the rise of freedom as a shared vision of life. Rather, there is some confirmation of the thesis that the failure of slavery to come to a head in the same institutional forms as the West militated against the crystallization of freedom as a political value. Other sources of tradition should however be given their due. Certain democratic and libertarian threads in Confucianism are popular candidates.[26] Others argue that these threads should in fact be credited to Confucianism's ancient rival, Taoism. The book known as the *Zhuang Zi (Chuang Tzu)*, or 'Book of Master Zhuang' is the classical source of ideas of inner spiritual freedom which have influenced much Chinese thought.[27]

As a major conduit to East Asia of Buddhism, China developed powerful intellectual variations on it which conditioned the reception of Western schemata of freedom. Buddhism improved greatly on Taoism in that it projected freedom as liberation from slavery to desire onto an expanded inner stage, extending it into infinite kalpas of transmigration. On the other hand, it imposed, as the price of entrance to this transpersonal subjectivity, cessation of the individual and—it would seem to follow—the political self. While Buddhism has been criticized throughout Chinese history for unworldliness, for its tendency to political indifference, Buddhism and Taoism have fed into antinomian

currents whose challenge to the Confucian dominated social order continued up to modern times.

Over many centuries the outlaw heroes known as *hao han* have been another source of anti-systemic values in Chinese popular culture.[28] The great range of literary forms in which they figure is perhaps best represented by the novel *The Water Margin* (also translated as *All Men are Brothers*). The *hao han* glories in antinomianism, in reversing the moral code of a mainstream Confucian society which is regarded as debased and hypocritical. This is a folk ideology of sovereignal freedom; freedom is often freedom to violence over others, who if they are found to fail the *hao hans* code of honour may be killed or brutalized without compunction. Civic freedom is virtually absent.

The drive to antinomianism, to reverse the moral code of a mainstream society which is regarded as debased and hypocritical, resonates more with personal and sovereignal than with political freedoms. The rapid acceptance of liberal notions of personal and civic freedom at the close of the imperial age is all the more remarkable. By the end of the nineteenth century, classical notions of freedom formed an influential political discourse. Reformist intellectuals like Yan Fu (1854–1921), Tan Sitong (1865–1898), and Liang Qichao (1873–1929) helped make it a Chinese value in the elementary sense of a value explicitly labelled and discussed in the Chinese language.[29] Thus Liang Qichao, who began as a fiery reformist and iconoclast, in 1902 wrote a pioneering article on freedom, which he clearly saw as the defining value of the powerful West of his day. He defined freedom as liberty to do as one pleases provided one does not encroach on the liberty of others. Liang viewed freedom as opposed to slavery and in particular slavery of the mind.[30] However, the freedom of the organic community, while resting on that of its component individuals, superseded it.[31]

Importantly, the discourse of freedom of the reformists was part and parcel of a discourse of civilization. Very few disputed that freedom was the key to the cultural mastery of the West. However the West's possession of this mastery could be and was often seen as quite fortuitous or conditional. The West had an unquestionable superiority in social organization and control of material resources, but failed to exemplify the highest of civilized ideals, especially when it came to competing for colonial empires. Many Western thinkers seemed to doubt that their own civilization was well able to sustain the demands placed on it: Nietzsche, Spengler and others taught that it must succumb to decadence. It was not unnatural to think that China could realize its own form of modernity by adapting freedom and the other key modern values to its own style of civilization.

The encapsulating discourse of civilization has continued down to the present, and has deeply conditioned the ways in which freedom has been constructed as a value. Wang Gungwu has suggested that three main viewpoints have dominated since the late nineteenth century:

> those who urged the Chinese people to defend civilization from barbarism by turning inwards…; those who [urged defending] Chinese civilization by changing it and by trying to strengthen it and enrich it with new ideas…; and those who [after debates in the 1920s] went so far as to suggest that, for China to remain civilized, it was necessary for China to change in stages to a new civilization.[32]

With the New Culture Movement (ca. 1915–1925), intellectuals began to dissociate individual freedom from the wealth and power of the state and confer independent value on it, but the intimate relations between the two were never totally eliminable.[33] Hung-yok Ip has recently revised the common view that early twentieth century Chinese intellectuals were 'nation-oriented utilitarians', instrumentalist in their adherence to democracy and freedom. Chen Duxiu and Li Dazhao, in particular, went far beyond this at times, embracing democracy from the perspective of an autonomous value. This, he argues, conditioned their eventual commitments to socialism. Nonetheless, Ip concedes that nation-oriented utilitarianism lay at the base of their commitments and tended to win out.[34]

Following the Nationalists' defeat and the founding of the People's Republic, Marxism-Leninism, as interpreted by Stalin and Mao, took over, claiming to be the sole viable bearer of May Fourth ideals. Marxist-Leninist teachings follow Hegel in strongly supporting the organic sovereignal formulation of freedom; in another terminology they constitute the prime example of ideological reliance on positive rather than negative freedom.[35] The acceptance of Marxism in its Stalinist-Maoist form resulted in a dogmatic, formal doctrine of freedom which has been stable over many decades. A 1990 volume on *Contemporary Chinese Social Philosophy* rehearses this dialectic of freedom and necessity ('freedom is the knowledge of necessity').[36] Freedom in social terms is defined as the opposite of enslavement to alien social forces *(Ziyou' shi yu shou yijide shehui liliang de nuyi xiang duiyingde)*. Under capitalism, as under archaic social orders, freedom in the ultimate sense is impossible.[37] Only with the abolition of class relations can the contradiction between socially necessary labour time and free time (when human potential is fully expressed) be overcome. China seeks first to overcome the antinomy of individual and social freedom. After all in Marx's ideal society, 'the

free development of each is the condition of the free development of all'.[38]

Interestingly, the authors consider at some length the deficiencies in China's realization of individual freedom.[39] Stress is laid on the limitations imposed by China's economic backwardness. China must satisfy its people's needs by advancing commodity production, but the aim should be higher—directed towards Marx's goal of genuine freedom.[40] Similarly, there are political preconditions to be met. The lesson of the Cultural Revolution was that a 'democratic, harmonious' atmosphere is necessary if science and culture are to thrive. China is in need of ongoing reform of the political system. However the political reform and demoralization called for goes little if at all beyond the official pronouncements of Party leaders. Meanwhile, since the Cultural Revolution an influential intellectual counter-elite has stressed legal and democratic reforms as the core meaning of freedom.[41] All being establishment intellectuals, they unambiguously committed themselves to developing a democratic politics, often at the cost of careers, of imprisonment and exile.

A pre-1949 convert to Marxism, Li Zehou, was one of the key figures in this development. Li, using newly available texts of Marx, and 'Western Marxists' like Lukàcs, argued from this datum to the need for reformed political institutions in a socialist regime. Li's account of 'subjectivity' *(zhutixing)* while repeatedly under official attack, was able to function in the 1980s as a surrogate for the still unsavoury terms freedom and democracy. Li was to write:

A great quantity of Western liberal writings [i.e. Popper, Hayek] show that freedom and democracy do not mean unlimited arbitrary license, nor some wonderful ideals. They essentially involve clear demarcations and legal norms regarding ones own, as opposed to others, sphere of rights *[quanxian]*. What is distinctive of democracy and freedom is that they prevent the worst from happening, such as military dictatorship, fascism, anarchy, 'expanding the elimination of counter revolutionaries', etc.

…[I]n the case of freedom, there had been imprecisely defined, general unlimited freedoms in Chinese tradition, but there had been a lack of legal, restricted freedoms, so that these were always 'freedoms' of non-interference in the style of [Sun Yat-sen's simile of] 'a plate of loose sand', or [Marx's metaphor of] 'a sack of potatoes', while at the same time the strong oppressed the weak, the many took advantage of the few, and the high oppressed the low. This was not genuine freedom, and could only lead to the despotism of a

minority. Only by setting up a rigorous rule of law, clearly separating the various powers so that they check and supervise each other, and thoroughly ending things like 'the monk puts up his umbrella, there is neither law nor Heaven' [as Mao described his own autocratic behaviour], party committees being superior to the Constitution, or Party secretaries standing in place of the nation's laws, can modern, concrete socialist democracy and freedom be realized.[42]

The heretical 'humanism' espoused by Li Zehou, Wang Ruoshui and other humanist Marxists in the early Deng period can be understood as a refusal to define Marxism as non-liberal. Yu Haocheng, a legal specialist, roundly refuted the official party line that, invoking Hegelian and Marxist definitions of 'freedom as the knowledge of necessity', always argued that since the party knows what is necessary, it is the sole dispenser of freedom.

If socialist society cannot offer the individual more and greater freedom, how can it display its superiority? Even in capitalist society there is similar law and discipline in the interests of maintaining social order and stability. For a long time we held a simplistic viewpoint, calling those who created anarchy, or thoughts or actions calling for absolute freedom without restrictions, 'bourgeois liberalizers'. Actually this is quite wrong. When this happens, democracy and freedom very easily become derogatory terms associated with the bourgeoisie, as if our proletarians and communists did not want democracy or freedom, only dictatorship or discipline.[43]

This positive value placed on freedom in senses different from Marxist orthodoxy is to be found everywhere in modern Chinese life, and nowhere more so than in the 1989 democracy movement, whose initial demands '…mark an attempt to establish within the existing political framework a mechanism by which to begin the important cultural process of wrenching from the state its monopoly on truth and the moral way and opening up a space for the individual subject'.[44]

Take the case of a 1989 article by Huang Kejian, who argued that free individuality constitutes the essence of modernity.[45] Drawing on Weber, Huang concluded that the transition to modern 'independent man' was a transformation of the value system due to the appearance of new values. The major difference between the old and the new was that the former was based on the group, the latter on the individual. The priority for

China is first to establish what value orientations, in the context of world history, represent the best of our times. In the yet-to-be modernized China, priority should be given to promoting the ideal of individual freedom, since without this value modern civilization and cultural transformation cannot succeed. Without this value, 'hard work' or 'patriotism' remain functions of the old authoritarian patterns. 'A hardworking slave remains a slave'.[46]

Such views were actively suppressed in the wake of the 1989 Tiananmen massacre. In their place emerged a range of alternatives to official ideology. One was known as 'new authoritarianism', which first appeared before the crackdown. Suppressed in the wake of 4 June, it resurfaced as 'new conservatism'. Outwardly in agreement with the party's antiliberalism, some of its representatives propose a quasi-liberalism, promising freedom and democracy after a economic modernization has had a chance to work.[47] More straightforwardly liberal intellectuals argue that this is simply the system which the current round of reforms is seeking to legitimate. It involves relatively large amounts of freedom in the economic sphere, and much of the freedom to indulge in a consumer culture which tends to satisfy the populations of modernized countries. However cynically intended, the theory departs decisively from Marxism-Leninism in that democratic freedoms are accorded a universal value. They will, however, be the gift of a benign authority when it sees fit. The developmentalist focus of new conservatism places it firmly in the category of discourse on civilization and modernity which has been noted as dominant in this century.

The theory of civil society represents yet another Western-derived ideology seeking to naturalize itself in Chinese soil. Its proponents seek to expand from a basis of modest zones of freedom for limited sectors in the present. The statist bias of Chinese intellectuals tended to limit their interest in society as a field of self-organization. Following the spontaneous emergence of semi-autonomous social groupings during and after the Cultural Revolution, a body of theorizing began to emerge. Another body of literature emerged in Taiwan accompanying the accelerated democratization taking place there; this was filtered back to the mainland through intellectual circles. It is interesting to note that one expatriate mainland social theorist warns of a dangerous tendency of these formulations of civil society to be conflated with the rebellious knight errantry described above as the *hao han* folk ideology.[48]

The return to rapid reform in 1992 was marked by the appearance of a well-produced academic journal, *Chinese Social Science Quarterly*, whose editorials and major articles have been devoted to expounding and applying the civil society literature. In an article by the editor, civil

society is proposed as alternative to the two extremes of radical democratization and authoritarianism. 'Civil society has the capability to constrain the state,…to exempt itself from abnormal intervention and infringement by the state. It is in just this sense that we say that civil society is the last bastion to protect freedom and prevent the reversion of authority to totalitarianism'.[49] Rather than waiting for a far-off transition to freedom, civil society is to be constructed in two stages, with increased personal freedom the lead indicator of the first of these.

A final example is that of Bao Zunxin, one of the most outspoken dissidents to take part in the 1989 democracy movement. Bao and Yan Jiaqi, who together established the Beijing Association of Intellectuals in the course of the movement, were co-signatories of one of the most explicit denunciations of Deng's regime.[50] Bao was arrested and served five years in prison. He published the poignant article 'Hopes after "freedom"' in a Hong Kong monthly after his release in 1994; hence the title.[51] The subject, naturally enough, was the nature of freedom in China: why was it something always so remote for the Chinese people? Bao concludes, first, that freedom has a 'stage-' rather than a 'class-nature'. In as far as the CCP had from the Anti-right movement of 1957 to the Tiananmen movement of 1989 suppressed calls for freedom and democracy as 'bourgeois liberalism',

> [f]reedom and democracy are in fact products of the development of human civilization. While among different (i.e. democratic) nations and different (i.e. free) peoples they have specific forms, their basic characteristics are the same, namely, a respect for and protection of human rights. Therefore freedom and democracy have no distinction of East and West, still less of bourgeois and proletarian class character.

We have now registered the consistency of this outlook over a wide part of China's intellectual spectrum. Slavery, which was highly developed over long periods never provided a definitive breakthrough to freedom as vision of life or as a political value (although it has figured in China's acceptance of freedom as an attribute of modern civilization). Nonetheless such breakthroughs have occurred. They have a great deal to do with attempts to implement revolutionary ideals, with ideologies of positive freedom and liberal reactions to these.

CONCLUSION: A CAUTION

It remains for this chapter to look back to the Patterson references to the Bangkok Declaration, to the view of Lee Kuan Yew that freedom can only exist in an 'ordered state'. The Asian response, one might suggest, would be to welcome the clarity offered by Patterson's analysis. However, even if 57 varieties of freedom could be found in various historical formations, there is an eventual value judgement about their relative claims on the present which cannot be endlessly delayed. Most of the Western development of freedom took place before the Enlightenment, but it is precisely the post-Enlightenment cluster of concepts central to liberalism which matters now. If China is anything to go by, it is possible to identify all three freedoms in Asian history. In Patterson's schema, what was stillborn was their 'chordal fusion'. Yet modern Chinese history has to a great extent negated the significance of this stillbirth. The Communists' ideological reconstruction of republican liberty as Hegelian positive freedom orchestrated and allocated by the monolithic Party has reached the end of its reproductive capacity. Waiting in the wings are a wide range of alternative constructions in which the liberal cluster provides a common thread.

Have Western values of freedom been widely accepted in Asia? If the question is now reworded along the lines outlined in earlier sections, it may run: Can a framework be established which advances understanding and comparison of locally constructed functional equivalents of freedom as a value within the cluster of 'Asian' regions? The answer, it seems clear, is yes, though much more needs to be done to flesh this out. Further, many elements in each such value construction are regarded by both publishers and subscribers as identical across cultural boundaries. Indeed the latter are frequently treated as secondary to the sources of difference *within* regions.

We are also entitled to agree with Patterson that the chordal fusion of these elements has differed, lead to radically different outcomes. In more general terms, not only does the local stock of concepts/ practices onto which Western-derived values have been grafted make a difference, even more so does their path-dependent interaction. In the Chinese case just sketched, slavery in classical times failed to produce a functional equivalent of modern freedom, but modern political developments including the rule of a monolithic party state have tended to fill the gap. When, as the Bangkok signatories advise, we bear in mind 'the significance of national and regional particularities and various historical, cultural and religious backgrounds', we may (and do) come to conclusions rather different to those of Mr Lee. The Bangkok declaration

is seriously at fault in excluding the kind of voices and the kinds of intellectual interaction analysed here.

NOTES

1 David Kelly and Anthony Reid (eds), *Asian Freedoms: The Idea of Freedom in East and South East Asia*. Cambridge: Cambridge University Press, 1998. Views expressed here are solely the author's.

2 Stephen Kalberg, 'Weber, Max', in *The Social Science Encyclopedia,* London: Routledge & Kegan Paul, 1985, p. 894.

3 Freedom House, *Freedom in the World: The Annual Survey of Political Rights and Civil Liberties,* 1990–91, 1991–92, 1992–93, 1993–94, 1994–95. New York: Freedom House, 1991 and years following. Information about Freedom House is available on their Internet home page (http:// www.freedomhouse.org/).

4 Orlando Patterson, *Freedom*. Vol. 1: *Freedom in the Making of Western Culture*. London: Tauris, 1991. For critical views see R.W.Davis, *The Origins of Modern Freedom in the West*. Stanford: Stanford University Press, 1995; Dimitrys Kyrtatas, 'The Western Way to Freedom', *New Left Review,* 197, Jan-Feb 1993, pp. 85–95.

5 In full, 'The Orientals knew only that one is free, the Greeks and Romans that some are free, while we know that all men absolutely, that is, as men, are free.'. G.W.F.Hegel, *Reason in History,* trans. Robert S.Hartman. New York: The Library of Liberal Arts, 1953, p. 24.

6 Wang Gungwu, 'Power, Rights and Duties in Chinese History', in *The Chineseness of China: Selected Essays* (Hong Kong: Oxford University Press, 1991), pp. 165–186. See also Marina Svensson, *The Chinese Conception of Human Rights*. Lund: Department of East Asian Languages, 1996, pp. 84–88.

7 Ken Jowitt, *New World Disorder: The Leninist Extinction*. Berkeley: University of California Press, 1992, pp. 88–120.

8 Lee Kuan Yew, 'Culture is Destiny', interview with Fareed Zakaria, *Foreign Affairs,* 73, 2, March/April, 1994, pp. 109–126.

9 'Bangkok Declaration of Asian States', April 1993; published in *Human Rights: The New Consensus*. London: Regency Press, 1994, pp. 293, 295.

10 Orlando Patterson, 'Freedom, Slavery and the Modern Construction of Rights', paper presented *in absentia* to a conference on 'Ideas of Freedom in Asia', ANU Humanities Research Centre, Canberra, July 1994.

11 David Wright-Neville, 'The Politics of Pan Asianism: Culture, Capitalism and Diplomacy in East Asia', *Pacifica Review,* 7, 1, 1995, pp. 1–26; quote from p. 19.

12 Daniel Bell, David Brown, Kanishka Jayasuriya and David Martin Jones, (eds), *Towards Illiberal Democracy in Pacific Asia*. New York: St Martin's Press, 1995, pp. 4–7.

13 See Chapter 1 of Orlando Patterson, *Freedom,* Vol 1.

14 It would be useless to attempt to disclaim the charge of essentialism, or its specific form of Orientalism. It is like a series of other original sins which

are in common currency in the twentieth century. Such terms all too often spell the end of further questioning, of any interest in what else the target of such labelling happens to sustain. This is not to deny the intellectual contributions of many of the critics of Orientalism. For a useful overview of current debates on Orientalism, see Gyan Prakash, 'Writing Post-Orientalist Histories of the Third World', *Comparative Studies in Society and History,* 1990, pp. 383–407.

15 Orlando Patterson, *Freedom,* Vol 1, p. 429.

16 'Democratization: Generalizing the East Asian Experience', in Edward Friedman (ed.), *The Politics of Democratization: Generalizing East Asian Experiences*. Boulder: Westview Press, 1994, pp. 19–57; quote from p. 42.

17 The sense in which this term is used here lies close to, but is not identical with, that of Xiaomei Chen, *Occidentalism: A Theory Of Counter-Discourse in Post-Mao China*. New York: Oxford University Press, 1994.

18 Peter Wagner, *A Sociology of Modernity: Liberty and Discipline*. London: Routledge, 1994.

19 Hugo Stokke, Chapter 7, this volume.

20 Orlando Patterson, *Freedom,* Vol 1, pp. 2–3.

21 My interpretation of social constructionism has points of contact with what Stephen Welch usefully generalizes as phenomenological social science: Stephen Welch, *The Concept of Political Culture*. New York: St. Martin's Press, 1993. In similar vein is the work of Pierre Bourdieu, *In Other Words: Essays Towards a Reflexive Sociology*. Cambridge: Polity Press, 1990.

22 Roger Keesing, 'Asian Cultures?' *Asian Studies Review,* 15, 2, 1991, pp. 43–49.

23 David Wright-Neville, 'The Politics of Pan-Asianism', pp. 12, 25.

24 Comments on Ping-ti Ho, 'Salient Aspects of China's Heritage', in Ping-ti Ho and Tang Tsou (eds), *China in Crisis,* volume I, *China's Heritage and the Communist Political System*. Chicago: University of Chicago Press, 1968, Book One, p. 45. Franke linked this to his view of law as simply a governing tool in China, not an independent institutional order. He regarded this as even more important a difference between China and the West.

25 Mark Elvin, *The Pattern of the Chinese Past*. London: Eyre Methuen, 1973, p. 248. See Ch. 15, 'The Disappearance of Serfdom', *passim*.

26 William Theodore De Bary, *The Trouble with Confucianism*. Cambridge: Harvard University Press, 1991; Roger V.Des Forges, 'Democracy in Chinese History', in R.V.Des Forges, Luo Ning, and Wu Yen-bo, (eds), *Chinese Democracy and the Crisis of 1989: Chinese and American Reflections.* Albany: State University of New York Press, 1993, pp. 21–52.

27 Cf. Chen Guying, 'Zhuang Zi and Nietzsche: Plays of Perspectives', in Graham Parkes (ed.), *Nietzsche and Asian Thought*. Chicago: Chicago University Press, 1991, p. 115–129. Similarly, Burton Watson in his translation of *Zhuang Zi* writes, 'The central theme of the Zhuang Zi may be summed up in a single word: freedom'. See 'Introduction' to Burton Watson, *The Complete Works ofChuang Tzu*. New York: Columbia University Press, 1970, p. 3. 'Zhuang Zi used the flight of freedom *(xiaoyao you)* and the freedom of flight as a metaphor for the joy of the spirit and the liberation of the mind and soul'. Li Zehou, 'Zhuang Zi meixue zaji' [Notes on the

aesthetics of Zhuang Zi], *Zhongguo wenhua yu Zhongguo zhexue,* December 1986, pp. 88–113; trans. in *Chinese Studies in Philosophy,* 20, 1, 1988, pp. 3–42.

28 W.J.H.Jenner, 'A Knife in the Back for a Mate' (Morrison Lecture). Canberra: Contemporary China Centre, 1994, and *The Tyranny of History— The Roots of China's Crisis.* London: Penguin, 1992. He is not responsible for the way in which I have interpreted his ideas.

29 Hu Weixi, Gao Ruiquan and Zhang Limin, *Shizi jietou yu ta: Zhongguo jindai ziyouzhuyi sichao yanjiu* [The crossroads and the tower: Studies in modern Chinese liberalism], Shanghai: Shanghai Renmin Chubanshe, 1991.

30 'Lun ziyou' [On freedom], in Li Huaxing and Wu Jiaxun, comp., *Liang Qichao xuanji* [Selections from Liang Qichao]. Shanghai: Renmin chubanshe, 1984, pp. 223–233. See also Alexander Woodside's Chapter.

31 Xu Jilin, *Zhizhede zunyan—zhishifenzi yu jindai wenhua* [The dignity of the wise—the intellectuals and modern culture]. Shanghai: Xuelin chubanshe, 1991. p. 206.

32 Wang Gungwu, 'The Chinese Urge to Civilize: Reflections on Change' in *The Chineseness of China: Selected Essays,* pp. 145–164 (emphasis added).

33 Hu Weixi *et al, Shizi jietou yu ta: Zhongguo jindai ziyouzhuyi sichao yanjiu,* p. 46.

34 Ibid.

35 Isiah Berlin, 'Two Concepts of Liberty' in *Four Essays on Liberty.* London: Oxford University Press, 1969.

36 Chen Yanqing (ed.), *Dangdai Zhongguo shehui zhexue.* Tianjin: Tianjin Renmin Chubanshe, 1990. Chapter 19, 'Dangdai Zhongguo shehui zhong rende ziyou de tiaojian' [Human freedom in contemporary Chinese society], pp. 555–581.

37 Chen Yanqing (ed.), *Dangdai Zhongguo shehui zhexue*. p. 556–557.

38 Marx and Engels, 'The Manifesto of the Communist Party', in Robert C. Tucker (ed.), *The Marx-Engels Reader*. New York: Norton, 1978, p. 491.

39 Chen Yanqing (ed.), *Dangdai Zhongguo shehui zhexue*. pp. 566–568.

40 'Dangdai Zhongguo shehui shixian rende ziyou de tiaojian', in Chen Yanqing (ed.), *Dangdai Zhongguo shehui zhexue,* pp. 574–581.

41 Bill Brugger and David Kelly, *Marxism in Post-Mao China, 1978–1985.* Stanford University Press, 1990, Ch. 6. Also see David Kelly, 'The Emergence of Humanism: Wang Ruoshui and the Critique of Socialist Alienation', in Merle Goldman, Carol Hamrin and Tim Cheek (eds.), *China's Intellectuals and the State: In Search of a New Relationship*. Cambridge: Harvard University Press, 1987, pp. 159–182; and Merle Goldman, *Sowing the Seeds of Democracy in China: Political Reform in the Deng Xiaoping Era*. Cambridge: Harvard University Press, 1994.

42 Li Zehou, 'Qimeng yu jiuwang de shuangchong bianzou' [Double variation on enlightenment and national salvation], *Zou xiang weilai,* 1988, pp. 18– 36. Cf p. 35.

43 Wu Jianguo, 'Guanyu ziyou wenti de "fansi"', *Hongqi,* no. 17, September 1986, pp. 2–38; Yu Haocheng, 'Ziyou liangzhong gainian buneng hunyao' [The two concepts of freedom cannot be confused], *Wenhui bao,* 7 November 1986, p. 2. See David Kelly, The Student Movement of 1986 and

its Intellectual Antecedents', *The Australian Journal of Chinese Affairs,* 17, January 1987, pp. 127–142; quote from p. 139.

44 Denton, Kirk A., '1989 Democratic Movement and the May Fourth', *Journal of Chinese Philosophy,* 20, 1993, pp. 387–424.

45 Huang Kejian, 'Puzzles of Contemporary Chinese Culture', *Zhexue Yanjiu* no. 2, 1992, pp. 10–19. My summary draws liberally on Michel Masson SJ, 'Chinese Culture and Christianity', *Supplement to Correspondence* (HK), January 1993, pp. 13–14.

46 Huang Kejian, 'Puzzles of Contemporary Chinese Culture', p. 19.

47 Gu Xin and David Kelly, 'New Conservatism: Ideology of a 'New Elite'', in David S.G.Goodman and Beverley Hooper (eds), *China's Quiet Revolution,* Melbourne: Longmans Cheshire, 1994, pp. 219–233. See also David Kelly, trans., 'Realistic Responses and Strategic Options: An Alternative CCP Ideology and its Critics', special issue *of Chinese Law and Government,* 29(2), Spring-Summer 1996. On new authoritarianism see Stanley Rosen and Gary Zou, 'The Chinese Debate on New Authoritarianism', *Chinese Sociology and Anthropology* 23, 2, 3, 4 and 5, December 1990; and Barry Sautman, 'Sirens of the Strongman: Neo-Authoritarianism in Recent Chinese Political Theory', *China Quarterly,* 129, March 1992, pp. 72–102.

48 Gan Yang, 'Minjian Shehui' [Civil society], *Zhongguo luntan* (Taibei), 1990.

49 Deng Zhenglai and Jing Yuejin, 'Jian'gou Zhongguode shimin shehui' (Constructing Chinese Civil Society), *Zhongguo shehui kexue jikan* (HK), 92, 1, November 1992, pp. 58–68. See also He Baogang, *The Democratic Implications of Civil Society in China*. New York: St. Martin's Press, 1997.

50 David Kelly, 'Chinese Intellectuals in the 1989 Democracy Movement', in George Hicks (ed.), *The Broken Mirror: China After Tiananmen*. Hong Kong: Oxford University Press, 1990, pp. 24–51.

51 Bao Zunxin, '"Ziyou" yihoude qiwang' [Hopes after 'freedom'], *Zheng ming* (HK), 2, February 1995, pp. 66–68.

The Chinese Debate on Asian Values and Human Rights: Some Reflections on Relativism, Nationalism and Orientalism

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The Asian values debate, which implies an open challenge of the universality of human rights, has several dimensions and touches upon a wide range of philosophical and political issues. It is, for example, obviously part of the old debate on cultural relativism versus universalism.[1] According to the advocates of cultural relativism, to judge a society by values exogenous to the society in question amounts to cultural imperialism.[2] Many adherents of cultural relativism mistakenly seem to believe that the idea of human rights is deeply embedded in the Western political tradition and therefore does not fit other cultures and societies—a view that also has been exploited by the advocates of so-called Asian values. Undermining the idea of cultural relativism is the fact that most societies tend to regard their own values as universal and thus applicable in other societies; this goes for China, too, as we shall see. Another problem with the cultural relativist approach is that it tends to preclude the existence of cross-cultural and universal values. There is much to warrant the conclusion that human rights, as defined in various UN conventions, are universal in character inasmuch as the majority of these rights has been universally accepted, although not yet implemented, in the contemporary world. Since human rights are rights which we have simply as human beings, they should apply to all people regardless of cultural and national identity, or, as the UN Charter proclaims: '…for all without distinction as to race, sex, language, or religion'.[3]

Cultural relativism is potentially very dangerous since it can be used in defence of, for example, the Holocaust, apartheid, ethnic cleansing, etc., on the grounds that one has to respect other cultures and societies. But to uphold cultural relativism in these cases actually shows an utter disrespect of the victims of these policies. It is not irrelevant who claims to be the 'true' bearer of a culture, and who dominates the debate on human rights. To respect cultural differences is applaudable, but cultural relativism can easily become a cover for all kinds of violations which are anything but culture-specific. When confronted with the argument that

what we as outsiders consider to be human rights violations are not considerd as such by a specific culture, we must ask ourselves if that really is the case and if there does not exist an internal critique as well.

It is interesting to note that erstwhile proponents of cultural relativism, such as Adamantia Pollis, who in 1979 disputed the universality of human rights and criticized the Universal Declaration for being a 'Western construct with limited applicability', by 1996 felt compelled to raise some warnings about the current fashion of cultural relativism.[4] Pollis warned that certain states, particularly some East Asian countries, had come to '…exploit the language of cultural relativism to justify and rationalize [their] own repressive actions…' which '…cannot be justified by claims of philosophic or cultural distinctiveness'.[5] She advocated the development of '…a conceptual framework within which to analyse whether a state's claims of cultural distinctiveness are consistent with that culture's conceptions of rights, dignity, and justice, or whether it is a wanton exercise of power by the elites'.[6] There are several other possible ways of challenging the cultural relativist approach. Following An-Na'im, one could, for example, investigate whether, to what extent, and which traditional values actually are in conflict with the International Bill of Rights.[7] A third approach, drawing on these two approaches, would be to identify other voices than that of the regime; people who may be at odds with the regime but not necessarily with tradition since all cultures, after all, both change over time and are contested at any given point of time.

In this chapter I shall thus focus on the internal debate on human rights in China. It is possible to distinguish three different voices in China: that of the government and its spokesmen; that of the establishment intellectuals, who, although they may put forward views slightly different from that of the regime, still belong to, and are dependent on the system; and that of the dissidents, who, when they venture to discuss or demand human rights, without fail, are being silenced by the regime, and therefore, in contrast to establishment intellectuals, neither have the resources nor the time to develop a counterdiscourse on human rights.[8]

THE WEAKNESSES OF THE ASIAN VALUES DEBATE

Human rights differences in Asia are being justified on the dual grounds of cultural and historical differences and the priority of economic development. Although Samuel Huntington's thesis of 'the clash of civilizations' and the re-emergence of culturally based international conflicts is highly debatable, it is interesting to note that in the human rights debate today the ideological conflicts characteristic of the cold war, at least partly and on the rhetorical level, now have been replaced with

arguments focusing on cultural distinctiveness. But as, for example, Kevin Y.L.Tan, has argued, the debate on Asian values has perhaps less to do with culture *per se* and more with 'Asian economic success and confidence and Asia's continuing reaction to colonialism'.[9] It was the increasing confidence which came with economic success that moved Asia to challenge the West over human rights.[10] One may therefore wonder then whether the Asian economic crisis which began in the autumn of 1997 will not serve to, if not silence, at least take the heat out of this debate. The crisis has not only shaken the self-confidence of the Asian countries most severely hit by the crisis, but it has also drawn attention to authoritarian policies as the root of their economic problems. Many of the Asian countries which were colonized or threatened by the West in the past, are particularly sensitive to the West's 'preaching' on human rights and democracy. In the case of China, it is evident that the government's stance on human rights is more a reaction to international human rights criticism and reflects China's new confidence and awakening nationalism in the wake of economic growth, than motivated by any genuine concern about traditional values and cultural distinctiveness. China as a socialist country relies more on the argument that different stages of economic development influence the realization of human rights than the argument that different cultural and historical conditions give rise to different views on human rights.

Several of the implicit and underlying assumptions behind the Asian values debate need to be clarified and scrutinized. Many scholars have thus rightly questioned the assumption that there exist any specific Asian values, given the rich diversity within Asia itself when it comes to religions, political systems, levels of economic development, and historical experiences, etc.[11] Asia is a much too heterogeneous area to be ascribed any common values. Since the Asian values debate to some extent has been dominated by Singapore, Asian values have often come to be identified with Confucian values. This also raises some interesting and intriguing questions, apart from the very obvious one that Confucian values by no means are the only or dominating Asian values. It is unclear what Confucian values actually are. An emphasis on consensus and harmony, on the collective over the individual, on stability and order over individual freedom, and on economic development over political democracy are vaguely said to be the constituent parts of a specific Confucian, or Asian, value system. But these values, however, are too vague and general to be identified as particularly Asian, and many of the Nordic countries could easily be mistaken as Confucian societies since they can be described as consensus-oriented and place a high value on the interest of the community. Furthermore, and despite their Confucian

pasts, it is very difficult to describe the Chinese societies in Asia today as particularly Confucian in character. The People's Republic of China, for example, is hardly a Confucian society any longer. The political upheavals on the mainland, especially after 1949, have also dramatically weakened traditional values.[12] And I cannot help but detect as much, if not more, of a Legalist as a Confucian influence in Singapore, where minor crimes are severely punished and the death penalty excessively used. Legalists, such as Shang Yang and Han Fei Zi, would probably feel more at home in Singapore than would Confucius!

In order to defend the compatibility of human rights with Chinese culture, some neo-Confucians and others have attempted to ascertain the common ground between Confucianism and human rights and seek parallels to the concept of human rights in Confucianism.[13] The question concerning the relationship between human rights and Confucianism should be analysed at two levels, however. It is important to distinguish the question of whether certain Confucian values are similar or equivalent, or congenial to the idea of human rights, from the question whether Confucianism is compatible with human rights. Not all those discussing Confucianism and human rights seem to be clear about this crucial distinction. Whereas Confucianism is compatible with the idea of human rights, to my mind, it is not only far-fetched and ahistorical to try to discover proto-human rights ideas within Confucianism, but unecessary as well. The absence of an indigenous human rights tradition does not preclude the contemporary realization of human rights in what once used to be Confucian societies. Perhaps for psychological reasons, however, it has been important for many Chinese to try to find proto-human rights ideas in Confucianism and traditional culture *(gu yi you zhi)* in order to ensure cultural legitimacy for the idea of human rights.[14] To proclaim a Chinese origin, or a convergence of ideas can, however, also serve to prevent attacks from xenophobics, since accusations of *quanpan Xihua* (wholesale Westernization) have been, and remain, a very powerful and demobilizing weapon in Chinese politics. It is of course true that Confucianism, as all cultures, contains ideas of justice and human dignity, but such ideas are not by them selves identical with a conception of human rights. As Rhoda E.Howard and Jack Donnelly, among others, have pointed out, one should not confuse ideas of human dignity with human rights, although the latter of course presupposes the former.[15] There is quite a difference between a language of benevolence and a language of rights, between being the beneficient of a duty and being able to claim something as one's right.

The advocates of Asian values also have a tendency to make an artificial dichotomy between Asia and the West. Not only should the

existence of specific Asian values be questioned in the light of the political and cultural diversity within the region, but, similarly, the existence of Western values must be considered an equally artificial and ahistorical construct. It is often claimed that the idea of human rights is deeply embedded in Western culture and tradition. But this is a fallacious and potentially dangerous assumption. The idea of human rights as we know it today is a post-WWII construct, which exhibits great differences with the idea of natural rights put forward during the seventeenth and eighteenth centuries. At that time human rights were not regarded as universal: they were denied women and slaves who were regarded as less than human; nor did human rights encompass economic and social rights to the same extent as today—to name but a few differences.[16] It is important to remember that not all Western philosophers have been, or are, favourably disposed towards the idea of human rights. Examples of the opposite include Bentham, Burke, Marx, and MacIntyre—without this making them any less Western. Communism, Legal Positivism, Fascism and Communitarianism, despite their differences, are quite negative to the idea of human rights and could also be described as deeply embedded in Western culture and tradition. Even though the idea of human rights was first formulated in the West, it does not mean that it reflects exclusively Western concerns and will not suit other societies. We must not commit the mistake of judging an idea by its historical origin. It is important to separate the historical origin of human rights from their theoretical justification and factual realization in the contemporary world. Many Asians have called, and continue to call for human rights and democracy and reject the notion that human rights are inapplicable to Asia. As Kim Dae Jung, the long-time democracy activists who in 1997 was elected president in South Korea, pointed out: The biggest obstacle [to democracy and human rights] is not [Asia's] cultural heritage but the resistance of authoritarian rulers and their apologists'.[17]

It is thus very misleading to juxtapose so-called Asian values with so-called Western values since this obscures the diversity within both Asia and the West.[18] There are probably as many different views on human rights within each region as there are between them. It should furthermore be remembered that the individual societies, or nation-states, which make up these geographical areas not are monolithic or homogenous, but exhibit differing and conflicting values even within their own boundaries. In short, we are dealing with a much more complex and heterogenous world than that described by the proponents in the Asian values debate.

ORIENTALISM VERSUS OCCIDENTALISM

It is interesting and helpful to relate the Asian values debate to Edward Said's discourse on Orientalism. Said used the term Orientalism when referring to the West's pejorative picture of the Orient, in particular the Middle East. According to Said, Orientalism describes the Orient as an unchanging homogenous entity. The Orient is also demonized and ascribed stereotype and negative characteristics. Even though cultural relativism is usually motivated by a respect for other cultures, it often tends to end up in very elitist, if not to say Orientalist, notions that human rights as advocated in the West are inappropriate and irrelevant for other societies (implicit in this argument is also the questionable assumption that the idea of human rights is deeply embedded in Western culture), as well as in an utter disrespect for those who are at odds with the cultural mainstream, and/or power holders, in their own societies. The notion that human rights are good for the West (or that certain human rights are only good for the West) but not for Asia, is quite Orientalist in character, despite the fact that it is now put forward by Asians themselves. Asians are not passive in, or victims of, the Orientalist discourse, but should be regarded as accomplices and advocates of Orientalism.[19]

The Orientalist approach to human rights is thus interestingly enough not only found among Westerners, but, *nota bene,* among Asians themselves. In this context it is interesting to note that some Asian regimes, which now criticize human rights for being a foreign idea imposed on their own societies, were not adverse to using the language of human rights when they themselves were struggling for power, either against Western colonial powers or against domestic adversaries. In the 1940s, the CCP, for example, used to criticize the GMD for violating human rights. Orientalism within Asia, as manifested in the elite's attitude towards the people, is not a contradiction in terms and nor is it necessarily a manifestation of self-orientalization, i.e. the uncritical acceptance of a foreign negative description of oneself and one's own people. It should rather be seen as a manifestation of a re pressive strategy or an elitist notion that people cannot handle freedom and are not mature enough for human rights and democracy, or, as the Chinese elite and intelligentsia are fond of saying, *renmin de suzhi tai di* [the quality of the people is too low]. There thus exists a form of internal Orientalism in Asia, not only with respect to the elite's attitude vis-à-vis the people in general, but also in the dominating nationality's attitude vis-à-vis minorities, for example the Han Chinese attitude towards other

minorities in China, which generally are described as uncivilized *(yeman)* and backward *(luohou)*.[20]

In the case of the debate on human rights and Asian values, it is Asians themselves who are putting forward an Orientalist view of an unchanging Asia where the idea of human rights is foreign and inappropriate. In this new Orientalist version, Asia, although still being described as a homogenous entity, is however ascribed positive characteristics such as a commitment to the common good, duty fulfilment, reverence of authority, stability and order, and economic vitality, etc. Rhoda E. Howard has described this as a 'right-side-up' Orientalism, which does not criticize but rather idealizes the Orient.[21] An interesting feature of the Asian values debate, which constitutes the complement to this new Orientalism, is that the West now is demonized as Asia's 'the Other', and ascribed negative characteristics, such as rampant individualism, lack of public morale, materialism, breakdown of civil society, and economic stagnation, etc.[22] This new rhetoric resembles the Orientalist rhetoric of old in the West, so that it is quite appropriate to speak about the emergence of Occidentalism in Asia. Chen Xiaomei has studied the use of an Occidentalist discourse in domestic Chinese politics, and although she does not discuss human rights and the Asian values debate, I think that her discussion is very helpful in order to understand this debate. Chen describes Occidentalism as 'a discursive practice that, by constructing its Western Other, has allowed the Orient to participate actively and with indigenous creativity in the process of self-appropriation'.[23] She identifies two different versions of Occidentalism in China: one an official version which uses representations of the West to justify political repression at home, and the other an anti-official version which serves as a counter-discourse and uses the Western Other as a positive image in the fight against oppression. It is the former, official Occidentalist discourse that is characteristic of the Asian values debate and the official Chinese discourse on human rights. One Chinese scholar, Li Yonghui, has tried to relate the debate on Asian values to an emerging Occidentalism. Li points out the ironical fact that whereas Westerners have come to reject the earlier generalizations of Asia characteristic of the Orientalist discourse, Asians themselves have now begun on a similar endeavour; although they have replaced the earlier negative stereotypes of Asia with more positive ones of stability, vitality, and economic growth, etc.[24] Li makes the reflection that in the same way as Orientalism *(Dongfang zhuyi)* simplifies and distorts reality, so does the emergent Occidentalism *(Xifang zhuyi)*. Like Chen, Li argues that this can take two forms, vilifying *(chouhua)* and embellishing *(meihua)* the Occident.

The Orientalist discourse has thus been taken over by Asia, the only difference being that the object now is the Occident, which, so to speak, is made to taste its own medicine. This rhetoric reflects both the increasing confidence of an economically stronger and more assertive Asia, the waning attraction of the West as a political and economic model, and a need for a new defence of the Asian human rights record. Since denial of political and civil rights, at least in some of these countries, no longer can be excused by a reference to economic underdevelopment, cultural differences are invoked instead.

The cultural aspect of human rights has also recently received a renewed interest in the West due to the communitarian critique of liberalism, including the idea of universal human rights.[25] There exists an interesting resemblance between Western communitarians and proponents of Asian values, in that both emphasize cultural differences over universal values and give precedence to the community over the individual. The communitarians and the proponents of Asian values give voice to a similar critique of liberalism and 'rugged individualism', and they share the same kind of 'romantic longing' for lost community.[26] Whereas the proponents of Asian values also seem to advocate, what has been called, 'soft authoritarianism', communitarianism could also easily lend itself to a totalitarian interpretation, even though none of its advocates seem to advocate such a version.[27]

THE HUMAN RIGHTS DISCOURSE IN CHINA: WHO ARE THE PARTICIPANTS?

It is important to be aware of the fact that there exist differing and conflicting understandings of human rights within Asia as well as within each country in the region. Thus there are many critics of the so-called Asian values debate within the Asian countries themselves, as, for example, manifested by the NGO's statement in Bangkok in 1993. It is therefore necessary to look at the internal debate on human rights in Asia and try to identify the wide range of voices within the area itself. In many of these countries this constitutes something of a problem, however, since the discussion on human rights is monopolized and controlled by the regime. This is also the case in China, where those who unauthorized attempt to demand or discuss human rights, without fail are harassed or imprisoned.

Since 1990–1991, the Chinese authorities have encouraged and supported extensive research on human rights in order to ward off Western criticism.[28] Apart from the more rhetorical self-defence found in official statements and the White Papers, more academic efforts have also

been made since 1989.[29] To this end, conferences on human rights were held, beginning in 1990–1991, and human rights research initiated at academic institutions and universities. Several of China's most prestigious research institutes and universities, such as the Chinese Academy of Social Sciences and the People's University, have set up research institutes or centres on human rights. A so-called Non-Governmental Organization (NGO) on human rights, the China Society for Human Rights Studies (CSHRS), was established in 1993. Several human rights delegations have been sent abroad to study human rights, and foreign delegations have also been invited to visit China. The output of work has been quite impressive, at least in quantity, if not always in quality.[30]

The fact that official China now affirms the idea of human rights, whereas it earlier was something of a taboo, and is willing to take part in international work on human rights is, of course, a welcome development. In the long run the new interest in, and research on, human rights could also prove difficult to control and guide, and the Chinese authorities may to their dismay discover that they have opened a veritable Pandora's box. People are after all capable to draw their own conclusions about the discrepancy between the official proud statements on human rights and the much bleaker reality. In this context it is also interesting to note that Chinese dissidents to a greater extent than before are willing to invoke human rights in their open letters and petitions to the leaders, and that there have also been some attempts to establish independent human rights organizations in China. There is also an increasing awareness of the idea of human rights among ordinary people.[31] So although one may be pessimistic in the short term, there is cause for optimism in the long term.

But in the short term, which might be quite long, things look quite bleak and worrying. Since it is the official view on human rights which is spread in the Chinese media, there is a danger that the government's view on human rights will be swallowed *in toto,* or, alternatively, that human rights will be stigmatized and rejected as a political buzz word of the same calibre as 'socialist spiritual civilization' and the like. Philip Alston has called attention to the new strategy of some dictatorial regimes to put up their own human rights commissions and portray themselves as the true defenders of human rights. This description fits China after 1990–1991 very well. The institutionalization of the Chinese human rights discourse and the rapid development of research on human rights is quite remarkable, especially when contrasted with the former Soviet Union. Alston warned that such a strategy of co-option could serve 'to immunize their citizens against the power of human rights rhetoric'.[32] Depending on how, and by whom, human rights are addressed, they risk losing their

meaning and significance. Since the debate in China is one-sided there is an obvious danger that the government's views will win the day. The government's criticism of the West's human rights diplomacy as constituting a conspiracy and threat to national sovereignty, for example, seems to be shared by many Chinese citizens. The failure in 1993 to get the Year 2000 Olympics was for many a turning point, and this disappointment coupled with a growing nationalism, which is encouraged by the government since communism no longer can hold the country together, has led some young scholars to refute human rights as a ploy used by the West against China. They detect a double-standard in the human rights policy of the West, and fear a conspiracy which attempts to contain China. The most notable example of such a line of thinking is the book *China Can Say No* and other works which have appeared of late.[33] Interestingly enough, one appendix in the book was written by Yu Quanyu, the vice-Chairman of China Society for Human Rights Studies.

The human rights work in China today is a predominantly top-down affair. Human rights is more of an issue between the Chinese government and foreign governments, than an issue between the government and the Chinese people. The government wants 'dialogue' with the West, but it is obviously less interested in dialogue with its own people. Since the actual violator of human rights generally is the state, the fact that it also is the sole agent in the debate on human rights as well as a self-proclaimed defender of human rights, gives cause for worry. The protection of human rights in any given country depends on the existence of a human-rights-conscious citizenry who are willing and capable to defend their own rights, and to this end are free to establish real NGOs to supervise the government and safeguard human rights. There is no lack of courageous Chinese trying to do precisely this, but when they do they are without fail arrested by their own government. A very revealing case is the case of Li Hai, who on 18 December 1996 was sentenced to nine years' imprisonment for having collected information on those arrested in 1989; information which the court declared to be state secrets.

CHINA AND THE ASIAN VALUES DEBATE

Although the Chinese authorities acknowledge that human rights are universal, in effect, they tend to see human rights as contingent upon each society's level of economic development and historical and cultural conditions. Generally speaking though, the Chinese human rights discourse has not been much preoccupied with the debate on Asian

values. In contrast to Singapore, China has been careful not to make too much of the Asian, or Confucian, values argument. At the UN World Conference on Human Rights in 1993, the head of the Chinese delegation, Liu Huaqiu, stated:

> The concept of human rights is a product of historical development. It is closely associated with specific social, political and economic conditions and the specific history, culture and values of a particular country. Different historical development stages have different human rights requirements. Countries at different development stages or with different historical traditions and cultural backgrounds also have different understanding and practice of human rights.[34]

Even though this statement is quite relativist in character, China does not rest its argument mainly on cultural differences, but argues that different levels of economic development give rise to different conceptions of human rights. Such a line of thinking is of course also more Marxist in character. And since the CCP after all came to power through repudiating traditional values it would be strange for it now to embrace them wholesale. For Singapore, which no longer can refer to economic underdevelopment as a reason to disparage of civil and political rights, the cultural argument is the only viable alternative left, whereas China still can refer to the fact that she is a developing country and therefore has to place priority on the right to subsistence. China thus tends to perceive the world as being divided into developed and developing countries, identifying itself with the latter, rather than see the world as divided into different civilizations or cultural spheres. At the 1997 meeting of the Human Rights Commission, for example, China thus expressed thanks to other developing countries for their support of a non-motion resolution; explaining that China identifies with, and sees itself as the defender of the interests of the Third World.

Samuel Huntington's view of 'the clash of civilizations' does not seem to be shared by official China, or by Chinese scholars.[35] When Chinese scholars discuss his thesis it is mostly done in a descriptive way without really endorsing it. In an article in *Beijing Review,* the author thus gave vent to the view that neither is there any clash of civilizations and nor is culture the only, or main variable behind the economic growth in Asia.[36] An article published in the *Peoples Daily* on 17 March 1997, also referred to Asian values in a round-about way without openly acknowledging them.[37] Interestingly enough, it only referred to the opinions of others, including Westerners, who credited the economic development in East

Asia to specific Asian values, without endorsing such a view itself or referring to any domestic debate. Likewise, when Xin Chunying, at the Law Institute of CASS, discussed the Asian values debate, she only presented the debate as it had developed abroad rather than took a stance herself, or reviewed any Chinese views on the topic.[38]

In the very interesting and controversial magazine *Dongfang,* i.e. Orient *(sic!),* which was closed down in 1996, two thoughtful articles on the Asian values debate appeared in late 1995. According to Li Shenzhi, the author of one of the articles, the concept of Asian values *(Yazhou jiazhi),* which, as he points out, is a direct translation from English and therefore a bit clumsy in Chinese, has not yet received much attention by Chinese scholars.[39] As the official media, the article only gave a summary of the non-Chinese debate on the topic but did not provide much detail of the Chinese views on the matter. Li Shenzhi himself, however, refuted the existence of any specific Asian values given the diversity within the region, and in this context also stressed that all cultures are changing and developing over time. The same observations were made by Li Yonghui, the author of the other article, who noted that most Asians actually know much more about the West than they know about each other, and thus are both ignorant of, and uniterested in any so-called Asian values.[40] Li Yonghui also questioned the tendency to credit Asian values and culture with the recent spectacular economic growth. Liu Junning is even more critical of so-called Asian values.[41] He blames Asian values both for the Asian crisis and the attacks on ethnic Chinese in Indonesia which took place in May 1998. He also offers a scathing critique of the view that democracy and human rights do not fit Asia, pointing out that this is only the view of the powerholders which is not shared by people in general.

Dissidents, such as Liu Xiaobo, are critical of the Chinese government's attempts to excuse human rights violations by referring to culture and national conditions *(guoqing),* which he believes is but a pretext. 'Having come under international pressure over the human rights issue, the Chinese government is particularly given to playing the big-market card, justifying its trampling of human rights on the grounds that China differs from the West in national conditions, tradition, and human rights standards, and condemning the West for its hegemonism.'[42] Wei Jingsheng, for his part, in a letter to Jiang Zemin and Li Peng written in 1991, describes the notion that different standards of human rights apply to different countries and cultural traditions as a dangerous fallacy which is used as an excuse to violate and disregard human rights.[43]

PARTICULARITY VERSUS UNIVERSALITY OF
HUMAN RIGHTS

The relativism versus universalism debate in China has undergone a significant development since the late 1970s. It is obvious that for an orthodox Marxist, who disputes the existence of a universal human nature and instead regards human nature as influenced by objective economic conditions, the universality of human rights poses something of a problem. Rights, according to the Marxist, reflect the class structure of a given society and thus differ between different societies, so that there do not exist the same kinds of rights in a socialist country as in a capitalist country. Marxists inevitably end up taking a relativist position on human rights. The fact that Chinese scholars have to use Marxist theories, or at least pay lip-service to them, when discussing human rights accounts for some of their difficulties in coming to terms with the universality of human rights. It is thus Marxism, rather than Chinese culture, which explains the official Chinese relativist position on human rights.

At the end of the 1970s, writers on human rights in the official media usually refuted the existence of any absolute *(juedui)* and natural *(ziran)* human rights, and often simply dismissed human rights as reflecting the interests of the bourgeoisie. During this period, human rights was still a sensitive and controversial issue. It was heatedly debated whether human rights was an exclusively Western and bourgeois idea, or whether it also could be incorporated within socialism.[44] Human rights remained more or less taboo for most of the 1980s, despite China's increasing involvement in the international human rights regime. Around 1988, several articles commemorating the 40th anniversary of the Universal Declaration of Human Rights (UDHR) were published which took a decidely positive view towards human rights and emphasized China's support of the UDHR. As a result of this official blessing, some more liberal articles stressing the universality of human rights were then published during early 1989. Xu Bing, for example, wrote an article in which he described human rights as indispensable for human civilization. He was also prepared to acknowledge that human rights have a supra-class character: 'To refute the supra-class character of human rights means to emphasize the class character of human rights. To give human rights only to the people and not to enemies results in the complete negation and violation of human rights'.[45] With the crackdown of the democracy movement this positive debate on human rights came to a premature halt.

Although the development of a socialist human rights system with Chinese characteristics *(you Zhongguo tese de shehui zhuyi renquan tixi)* began in the early 1990s, the universality of human rights has continued to pose a problem to the Chinese. As the preface to one recent book on human rights puts it,

> Marxism opposes the view of an idealist historical humanitarianism which [sees] human rights as absolute and abstract, and advocates [the view] that human rights are historical, concrete, and relative; in the final analysis they are conditioned by the socio-economic level of development. [Marxism] emphasizes that since every country's social system, economic conditions, cultural traditions, and values are different, there cannot exist any absolutely universal *(pubian)* human rights or completely identical human rights standards.[46]

But, as pointed out by Li Lin, Chinese scholars have now at least broken free from the earlier focus on the class character of human rights and started to acknowledge that human rights also have a universal dimension.[47] Xia Yong, for his part, writes that almost all scholars now acknowledge that human rights is a common standard *(gongtong biaozhun)* of mankind which has both an objective and a historical component. But at the same time he still stresses that human rights are not absolute, and that they should not be based on the West's human rights standard, but take into consideration different cultural backgrounds and different levels of economic development.[48] The general position in the contemporary debate is thus to argue that human rights are both universal *(pubianxing)* and particular *(teshuxing)* in character.[49]

One of the most eloquent proponents of this distinction is Li Buyun, a leading Marxist expert on human rights at the Law Institute of the Chinese Academy of Social Sciences (CASS). Li argues that human rights are both natural and social in character. According to him, human rights can be defined as 'the rights which one ought to enjoy by virtue of one's human nature *(benxing)*'.[50] Li divides rights into those which one ought to enjoy by virtue of one's humanity *(yingyou quanli);* those actual rights which are realized in society *(shiyou quanti);* and more narrowly defined legal rights *(fading quanli)*. Human rights, according to Li, are natural since Man lives together with other men in this world and thus share a common nature, seek the same kind of interests, and face the same kind of dangers, etc. This common nature of man gives rise to similar rights, such as the right to life. But since man in actuality lives in a particular society, he would therefore also have somewhat different interests and, as a consequence, rights. Li thus makes a distinction between those human

rights which are universal in character and transcend the political system, such as the right to life and the freedom from torture, and those which depend on national conditions *(guoqing)*. These national conditions are influenced by various factors, ranging from historical and cultural, to economic and social. Li also emphasizes that the rights which one actually enjoys often fall short of both the rights one ought to enjoy and one's legal rights. Li warns that a denial of the fact that some human rights transcend the political system imply a politicization of the human rights discourse. Whereas human rights to some extent thus are universal in character, as for example stipulated in the Universal Declaration, Li however argues that their actual content and implementation depend on the actual conditions in each particular society. But this proposition, however, also serves to undermine the universality of human rights and gives the Chinese authorities leeway to deny or restrict certain rights with the national condition as an excuse.

In the more official discussions on human rights it is also generally pointed out that whereas human rights have an international aspect *(guojixing)*, they are still primarily an issue under the jurisdiction of domestic law. The thesis that 'human rights have no boundaries' *(renquan wu guojie)* is strongly refuted, since it is perceived as a pretext for the West to interfere in China's internal affairs. Interestingly enough, given the fact that many scholars even in the West regard the UDHR as a Western construct, some Chinese scholars have argued against this notion and pointed out the fact that several non-Westerners, including one Chinese, actually participated in the drafting of the UDHR.[51]

There exist of course alternative voices in China on the universality of human rights. Wei Jingsheng and Fang Lizhi both argue that human rights are universal in character and refute the argument that human rights standards are relative.[52] According to Fang Lizhi, the argument that China has its own standards of human rights is similar to earlier pronouncements in Chinese history that 'China has its own astronomy', but in the same way as the laws of astronomy pertain everywhere so does the idea of human rights.[53] Several recent petitions and open letters from dissidents and relatives of those arrested also claim human rights to be universal in character and call on the Chinese government to respect the human rights stipulated in the UDHR. One petition on the occasion of the sixth anniversary of June Fourth, for example, read: 'Respecting individual freedom, equality and dignity, and guaranteeing indivisible, inalienable, inviolable human rights, are the marks of social progress, mutual concern and human dignity'.[54] It is thus obvious that Chinese dissidents see human rights as universal and applicable to China.

ECONOMIC AND SOCIAL RIGHTS VERSUS CIVIL
AND POLITICAL RIGHTS

The Chinese government argues that the right to subsistence is the most important of all human rights. As is the case with many other regimes in Asia, this argument seems to imply that civil and political rights disrupt political stability and hinder economic development. Underlying this view is the assumption that there exists a trade-off between the two generations of rights; an assumption which no empirical studies have been able to verify.[55] Yash Ghai has rightly pointed out that in the Asian values debate, 'the talk of economic and social rights is divisionary, [and serves as] an attack on civil and political rights'.[56] The fact that, in the case of China, human rights has become something of a Sino-American battleground, has exacerbated the polarization between economic and social rights, on the one hand, and civil and political rights, on the other hand, as the two countries promote one set of rights at the expense of the other, and criticize the other country for violating the rights which it itself holds the most dear. This polarization is further illustrated by the fact that whereas China recently signed the International Covenant on Economic, Social, and Cultural Rights, the US has not yet done so. This situation wrongly gives the impression that the West is not interested in economic and social rights at all. But, as Rhoda E.Howard has argued, 'the United States is not representative of the entire Western world. Indeed, it can be argued that the United States [when it comes to economic rights] is an anomalous Western country'.[57] But it should of course be noted that many Americans are favourably disposed towards economic and social rights. Some American China scholars have also recently voiced the opinion that in order for the American human rights policy to gain credibility in its dealings with China, it is necessary to adopt a broader definition on human rights which includes economic and social rights as well as civil and political rights.[58] Indifference, or outright ideological hostility, to economic and social rights on the part of the West tends to undermine its credibility on human rights in the Third World; it leaves countries such as China free to promote the 'half of the loaf' thesis which promises bread at the expense of freedom.

There are, however, many Chinese, both among the establishment and outside, who are critical of the juxtaposing of economic and social rights with civil and political rights. Sun Zhe, for example, has argued against this tendency and pointed out that: 'One must absolutely not take 'special national conditions' as a pretext for making questions regarding food and clothing the only human rights standard'.[59] He also argues against the notion that the Chinese would only be interested in material

things but not freedom, respect and self-development. Zhang Wenxian, for his part, has emphasized that civil and political rights are as important as social and economic rights, and he refuses to see any either-or choice between them. He prefers to talk about basic and non-basic rights, where the former includes both political and economic rights.[60] An interesting, albeit limited and flawed, survey conducted by the China Politics and Law University in 1992, showed that a mere 9.6 per cent of those asked understood human rights to be confined to the rights to food and subsistence, whereas 33.3 per cent defined human rights as political rights and freedoms which the government could not infringe upon, and 50.8 per cent defined human rights as those rights stipulated in the UN Charter and other human rights conventions which protect human dignity and common interests.[61] Chinese dissidents also refute the argument that economic rights are more important to the Chinese and that there exist a trade-off between civil and political rights, on the one hand, and the right to economic development, on the other hand. Wei Jingsheng, for example, has ridiculed the Chinese authorities' claim that the right to subsistence is the greatest human right. 'If feeding the people and keeping them from starving or freezing to death constitutes the greatest respect for human rights, then consider the feudal lords and slave owners. The fact that slaves and serfs were kept from starving or freezing to death could prove that the slave owners had protected "the greatest human right" as you have done.'[62] In fact, for many Chinese social and economic rights are still far from a reality.[63] Chinese dissidents have tried to protect the economic rights and interests of workers by establishing independent worker unions, but this work is routinely clamped down upon by the Chinese authorities. Chinese workers, facing increasing hardships in the form of unemployment and lay-offs in the wake of state enterprise reforms, have cleverly used the regime's human rights language against it. As a group of laid-off workers put it in a letter to Jiang Zemin in 1997: 'You said that human rights in China are the right to eat rice. This is an arbitrary justification for the sake of political agenda. This is not human rights, but rather animal rights. Anyway, according to your interpretation, when tens of millions of workers are deprived of their right to eat rice, doesn't this amount to their loss of their human rights?'[64]

NATIONALISM AND HUMAN RIGHTS

China sees the West's human rights diplomacy *(renquan waijiao)* as part and parcel of its strategy of peaceful evolution *(heping bianyan)* which attempts to subvert the socialist system of China, suppress its

economic development, and establish Western hegemonism *(baquan zhuyi)*.[65] China accuses the West of hypocrisy over human rights since it has itself long been engaged in violations of human rights. Historical injustices, which by no means can serve as an excuse for accepting contemporary ones, are often exploited by authoritarian regimes in order to divert attention from their own human rights violations. China, for example, is thus frequently referring to the imperialist past of many Western countries. When, for example, the Foreign Minister of the Netherlands, as a spokesman of the EU, criticized China at the UN Human Rights Commission's session in Geneva in March 1997, the *People's Daily* promptly carried an article criticizing the Netherlands' colonial past, as well as the EU for not putting its own 'backyard' in order.[66] Some modesty and self-criticism on the part of the West is obviously called for since the West in the past has grossly violated the very human rights of the Asian people which it now criticizes the Asian governments of violating. China, quite rightly, criticizes the hypocrisy, double-standard, and inconsistency characteristic of the West's human rights policy. In order to make its concern about human rights credible, it is thus imperative that the West treat human rights problems in all countries in an impartial, objective, and consistent manner. The 1997 annual meeting of the Human Rights Commission in Geneva resulted in what I would like to call the 'Balkanization of the West' with respect to human rights in China. Several Western governments decided not to sponsor a draft resolution critical of the Chinese human rights record, whereas the draft resolution sponsored by Denmark and supported by some other countries was defeated by a non-action motion. In 1998, the EU and the US both decided to abandon the attempt to put forward a draft resolution. Despite a worsening of the human rights situation in China towards the end of 1998, the EU did not change its policy, leaving the US and Poland alone to sponsor a draft resolution. This development has not only served to further excarberate the polarization between China and the US on human rights, but also undermined the credibility of the West's criticism of human rights violations taking place in smaller, and economically less important, countries such as Burma.

China emphasizes that it wants dialogue *(duihua)*, not confrontation *(duikang)* on human rights, but it seems as if any criticism and venting of differing opinions are defined as confrontational by the Chinese regime. Attempts at securing resolutions in the UN Human Rights Commission critical of the Chinese human rights record are thus routinely labelled anti-Chinese *(fan Hua)*. This choice of word consciously plays on nationalistic feelings and serves to give the Chinese people the

impression that human rights criticism per definition is anti-Chinese in character.[67]

Much of the politically charged discourse on human rights in China is taken up by attacks on the United States and its human rights record. The focus on the United States is understandable since it has taken the lead in the human rights debate with China, but it is unfortunate that human rights has become so much of a bilateral issue between the two superpowers. The most-favoured-nation issue and Sino-American battle over human rights has backfired and hurt the Chinese national pride. This is evident not only in the official rhetoric, but, even more alarming, in supposedly independent writings, such as the book *China Can Say No*.[68] It could thus unfortunately turn out to be the case that many Chinese become alienated from the idea of human rights because of the West's hypocritical policy which has hurt their national pride; a development which is being reinforced by the Chinese government's own ideological rhetoric and exploitation of the issue.

China's reactions to the US State Department's annual Human Rights Reports are quite revealing. On 6 February 1997, the *People's Daily* carried an article criticizing the new American report for distorting the facts.[69] The United States was accused of using human rights as a pretext for interfering in Chinese internal affairs in order to subvert the regime. This and other articles also accused the United States itself for violating human rights, particularly economic and social rights.[70] These articles also criticize the United States for not having signed some human rights conventions, such as for example, the covenant on economic and social rights, the one on the prohibition of torture, and the one preventing the discrimination of women. These references to international conventions when criticizing other countries' human rights records show that China has come to accept the international regime on human rights, at least when it serves its own purposes, and thus to accept their universal applications, which undermines her own relativist positition.[71] The Chinese human rights rhetoric seems at times more sophisticated than the American since China not only criticizes the United States of violating economic and social rights (applying the Chinese standard), but also of violating civil and political rights, and thus violating American standards. It is amusing to note that the Chinese criticize America for not living up to its own standard as put forward in, for example, the Declaration of Independence. But China's criticism of the American human rights record with respect to economic and social rights once again undermines its own relativist position, and China could thus be accused of 'imposing' its own human rights standard on the United States. And by issuing reports critizing the United States, China also undermines its own argument that

the publication of reports on other countries human rights records constitute an interference in their internal affairs. The American reaction to the Chinese report is also worth noting in this respect. Nicholas Burns, the State Department spokesman, said reportedly in 1997: 'I don't think… we need to listen to lectures from authoritarian countries about our human rights performance because we are the world's champion of human rights'. The chauvinstic posturing of both China and the United States shows that the debate on human rights unfortunately all too often is corrupted by self-serving political rhetoric and the employment of double-standards.

One should not underestimate the fact that human rights criticism by the West could be perceived as an affront to the Chinese national pride, and that Chinese citizens thus could become alienated from the human rights discourse. This danger is especially grave since the issue of human rights is monopolized by the regime. The clearest example of such a negative and nationalist reaction to, and rejection of, human rights is that put forward in the book *China Can Say No*. The authors, and many of their readers, seem to share the feeling that the failure to get the opportunity to arrange the Year 2000 Olympics, which many Chinese seem to have seen as rightfully theirs, was to be blamed on Western, and, in particular, American opposition. The annual reviews of most-favoured-nation trade status, the American criticism of the Chinese human rights record, and the United States naval presence in the Taiwan strait in March 1996, are other factors which have been referred to in order to explain the emergence of anti-American feelings of late. As one reviewer of the book argued: '[These] practices, which are simply aimed at containing China, have deeply hurt the feelings of most Chinese'.[72] Many Chinese also feel that it is unfair that the West now has begun to criticize its human rights record, since the human rights situation after all was much worse during the sixties and seventies.[73] This ironical fact, I believe, can partly be explained by the lack of information during the previous decades due to China's isolation; but it was also due to some ideological blindness on the part of China observers at the time. China's incorporation in, and commitment to the international community means that China now increasingly is being judged by international standards— whether she likes it or not. China is no longer, to speak with Roberta Cohen, 'the human rights exception' that it once was.

Xin Chunying has described the Chinese human rights discourse in a quite revealing way: '[T]oday, in contrast to the past, human rights is not perceived as a threat to China's cultural identity. Rather, engaging in the international human rights discourse is seen as a way of resisting foreign influence and keeping Chinese culture distinct.'[74] But, as a matter of fact,

one cannot help but notice that today, in contrast to the pre-1949 period, human rights are actually perceived as a threat to China's national sovereignty, something which has prompted it to consciously develop a socialist human rights theory with Chinese characteristics, in order, as Xin herself puts it, to 'resist foreign influence'.[75] It is difficult not to draw the conclusion that the Chinese government sees human rights as a threat to national sovereignty since it continues to regard human rights criticism as an 'interference in internal affairs'. Xin's own admission that the Chinese human rights dicourse has been more reactive than proactive in character also underlines such a conclusion.

ORIENTALISM VERSUS OCCIDENTALISM IN THE CHINESE DISCOURSE

The Chinese attitude to Western ideas and political institutions has over the years wavered between the two extremes of outright rejection and wholesale Westernization *(quanpan Xihua)*. This complex and ambivalent attitude to the West is partly due to the painful experiences of Western imperialism since the 1840s. In the late nineteenth century, many Chinese who had come to realize the West's military and technical superiority, advocated the use of Western methods while upholding Chinese cultural and political values and institutions, according to the slogan of *Zhong ti Xi yong,* i.e. Chinese learning as the essence and Western learning for the practice. As, for example, Li Shenzhi, has pointed out, this slogan can be said to have constituted an early version of the Asian values argument.[76] In this case, however, it was Chinese, not Asian, values which were defended as superior to the West, since China saw itself as the centre of the universe and not as a mere part of Asia. Another difference is that China at that time was weak, so that the slogan then was more of a defensive reaction to the West's strength, than sprung from self-assurance based on economic growth as is the case today.

The defeat in the Sino-Japanese War in 1895 showed the ineffectiveness of this partial approach to reform, and the majority of Chinese, both reformers and revolutionaries, then went one step further and advocated the introduction of Western political and legal institutions. During this time, several radicals, such as Zou Rong, lashed out against the dependence, obedience, servility, and placidity which they detected in their countrymen, contrasting these unfavourable traits with the strong sense of public morality, independence, and ability to rule themselves, which they ascribed to Westerners. Later still, during the May Fourth Movement, several Chinese, such as Chen Duxiu, launched an all-out attack on Confucianism and rejected their own tradition for being at odds

with modernity, democracy, and human rights. The radicals' critique of their countrymen in the beginning of the century was not regarded as unpatriotic, as caving in to the Westerners, or, if they had known the term, self-orientalization, but was part and parcel of their struggle for national salvation. Their cutting critique was a conscious way to encourage self-reflection and inspire patriotism among their fellowmen in order to save the nation from extinction. It is interesting to note that the Chinese at the time regarded ideas of nationalism, human rights, and democracy as applicable, not to say necessary, for China if it was to survive.[77] The Chinese advocating human rights in the beginning of the century saw them as universal values characteristic of all civilized societies. They were not embarrassed by the acknowledged Western historical origin of human rights, and nor did they feel these values to have been imposed on them by the West. Generally speaking, they did not try to find proto-human rights ideas in the Chinese past in order to make the idea of human rights more palatable. But those who criticized their own countrymen and advocated Western ideas have not escaped charges of being too favourably disposed towards the West and therefore un-Chinese and unpatriotic.

The Chinese who criticized certain traits among their countrymen and extolled those of the Westerners were not necessarily victims of the Orientalist discourse, but, as Chen Xiaomei has argued with respect to the controversial TV-series *He Shang*, broadcast in 1988, deployed Occidentalism as a counterdiscourse.[78] The Occidentalism which Chen identifies in *He Shang* depicts the Occident in positive terms and juxtaposes it with the stagnant and backward China. The series, and early writers such as Zou Rong and Chen Duxiu, thus extolled the democratic and scientific spirit which they found, or believed existed in the West. This version of Occidentalism has been put forward in order to criticize both the Chinese tradition and the official ideology. But, as already discussed above, in contemporary China and Asia there exists another version of Occidentalism which reverses the picture and instead tends to describe the West (mainly represented by the United States) in very negative terms. It is this form of negative Occidentalism which seems to be the dominant in China today, and has replaced the earlier, often widely exaggerated, praise of the West among Chinese intellectuals. To judge by the work *China Can Say No,* the Occidentalism among Chinese intellectuals as represented by *He Shang* is a thing of the past. As Liu Xiaobo has described it: 'Many an advocate of Westernization who clamoured for 'democracy' and 'freedom' on or before 4 June have in an instant become nationalists rejecting Western hegemony.'[79]

CONCLUSION

There are not many references to Asian values in the Chinese discourse on human rights, and neither are there much of really articulated references to specific Chinese, or Confucian, values. China bases its claims to distinctive ness more on economic and political factors than on cultural factors. Its relativist position on human rights is undermined by its own willingness to criticize other countries, notably the United States, for neither living up to its own values (which would have been the right approach of a relativist) nor to Chinese values (something which a good relativist never should do). The Chinese human rights discourse is dominated and monopolized by the regime, which raises the problem of representativity. It is significant that the Chinese government is advocating a government-to-government dialogue, whereas it does not seem interested in entering into a dialogue with its own people. The fact that criticism of the Chinese human rights record is presented as anti-Chinese is deeply disturbing since nationalism is on the rise, which once again underlines the need for a genuinely pluralistic discourse and dialogue on human rights. Some soul-searching on the part of the West, however, is also needed in order to make its human rights work more credible. To this end it is, for example, imperative that the US also focus on economic and social rights and not only civil and political rights. It is also crucial that human rights problems are treated in an impartial, objective, and consistent manner regardless of where they occur. To apply different standards to different countries serve to undermine the very idea of the universality of human rights, of which the West has always prided itself to be such a staunch defender.

NOTES

1 The issue of relativism was raised already before the adoption of the Universal Declaration of Human Rights (UDHR) in 1948. The American Anthropological Association expressed concern on how to draw up a genuinely universal declaration of human rights which would not reflect Western values. See the American Anthropology Association's statement to the UN Commission on Human Rights, reprinted in Philip Alston (ed.), *Human Rights Law*. Aldershot, England: Dartmouth Publishing Company Ltd, 1995, pp. 111–115.

2 Cultural relativism and human rights is discussed by, *inter alia,* Alison Dundes Renteln, *International Human Rights. Universalism versus Relativism*. Newbury Park, California: Sage Publications, 1990, especially pp. 61–87; Jack Donnelly, *Universal Human Rights in Theory and Practice*. Ithaca: Cornell University Press, 1989, pp. 109–124; and Fernando R.Tesón, 'International Human Rights and Cultural Relativism', *Virginia Journal of International Law,*

25, 4, 1985, reprinted in Pierre Claude and Burns H.Weston ed., *Human Rights in the World Community. Issues and Action.* Philadelphia: University of Pennsylvania Press, 1992, pp. 42–51.

3   UN Charter, Art. 1, para. 3.

4   See Admantia Pollis and Peter Schwab, 'Human Rights: A Western Construct with Limited Applicability', in their *Human Rights: Cultural and Ideological Perspectives.* New York: Praeger, 1979.

5   Admantia Pollis, 'Cultural Relativism Revisited: Through a State Prism', *Human Rights Quarterly,* 18, 2, May 1996, p. 320.

6   Pollis, 'Cultural Relativism Revisited', p. 323.

7   See Abdullahi Ahmed An-Na'im, 'Introduction', and 'Toward a Cross-Cultural Approach to Defining International Standards of Human Rights. The Meaning of Cruel, Inhuman, or Degrading Treatment or Punishment', in *Human Rights in Cross-Cultural Perspectives. A Quest for Consensus.* Philadelphia: University of Pennsylvania Press, 1995, pp. 2–6, and pp. 20–43, respectively.

8   For a discussion on establishment intellectuals in China, see Carol Lee Hamrin and Timothy Cheek (ed.), *China's Establishment Intellectuals.* Armonk, New York: M.E.Sharpe, 1986.

9   Kevin Y.L.Tan, 'What Asians Think about the West's Response to the Human Rights Debate', in *Human Rights Dialogue,* Vol. 4, March 1996, p. 3; Garry Rodan and Kevin Hewison, 'A "clash of cultures" or the convergence of political ideology?' in Richard Robison (ed.), *Pathways to Asia. The Politics of Engagement.* St. Leonards: Allen & Unwin, 1996, p. 33.

10 See, for example, Kishore Mahbuubani, 'The Pacific Way', in *Foreign Affairs,* 74, 1, January/February 1995, p. 103.

11 See for example, Donald K.Emmerson, 'Singapore and the 'Asian Values' *Debate', Journal of Democracy,* 6 (October 1995), pp. 95–105; Yash Ghai; 'Asian Perspectives on Human Rights', in James T.H.Tang (ed.) *Human Rights and International Relations in the Asia-Pacific Region.* London and New York: Pinter, 1995; and Li Shenzhi 'Yazhou jiazhi yu quan qiu jiazhi' [Asian values and global values], *Dongfang,* 4, 1995, p. 4.

12 For a survey of cultural changes in China, see Godwin C.Chu and Yanan Ju, *The Great Wall in Ruins. Communication and Cultural Change in China.* Albany, NY: State University of New York Press, 1993.

13 See for example Du Gangjian and Song Gang, 'Relating Human Rights to Chinese Culture: The Four Paths of the Confucian Analects and the Four Principles of a New Theory of Benevolence', in Michael C.Davis (ed.), *Human Rights and Chinese Values. Legal, Philosophical, and Political Perspectives.* Hong Kong: Oxford University Press, 1995, pp. 35–56; Theodore de Bary, 'Human Rites: An Essay on Confucianism and Human Rights', in Irene Eber ed., *Confucianism. The Dynamics of Tradition.* New York: Macmillan Publishing Company, 1986, 109–132; Du Weiming, 'A Confucian Perspective on Human Rights', unpublished paper presented at a conference on Confucianism and Human Rights at the East-West Centre in Honolulu, August 1995; and Joseph Chan, 'A Confucian Perspective on Human Rights', paper presented at the workshop on 'The Growth of East Asia and Its Impact on Human Rights', Bangkok, March 24–27, 1996.

14 This strategy is nothing new, but has also been applied to the idea of democracy at the turn of the nineteenth century. See Yü Ying-shih, 'The Radicalization of China in the Twentieth Century', in Tu Wei-ming (ed.) *China in Transformation*. Cambridge, Mass.: Harvard University Press, 1994, p. 128, and pp. 138–139.

15 Jack Donnelly, *Universal Human Rights in Theory and Practice*. Ithaca and London: Cornell University Press, 1989, Chapters 3 and 4 in particular.

16 For a useful reminder of how contended and disputed the idea of human rights has been in the West, see the collection of writings from the French Revolution edited by Lynn Hunt, *The French Revolution and Human Rights. A Brief Documentary History.* Boston: Bedford Books of St. Martin's Press, 1996.

17 Kim Dae Jung 'Is Culture Destiny? The Myth of Asia's Anti-Democratic Values', *Foreign Affairs*, 73, 6, November/December 1994, p. 194.

18 See Edward Friedman, Chapter 1, this volume.

19 See Arif Dirlik, 'Chinese History and the Question of Orientalism', *History and Theory*, 35, 4, December 1996, p. 100.

20 On the case of internal orientalism in China with respect to the Chinese elite's attitude towards minorities, see Louisa Schein, 'Gender and Internal Orientalism', *Modern China*, 23, 1, January 1997, pp. 69–98.

21 Rhoda E.Howard, *Human Rights and the Search for Community*. Boulder, Colorado: Westview Press, 1995, p. 69.

22 Denny Roy makes the observation that Asia has 'turned the tables' by making the West its Other, see 'Singapore, China and the 'Soft Authoritarian' Challenge', *Asian Survey*, XXXIV, 3, March 1994, p. 232.

23 Xiaomei Chen, *Occidentalism. A Theory of Counter-Discourse in Post-Mao China*. New York, Oxford University Press, 1995, p. 4ff.

24 Li Yonghui 'Zhe difang. Zen yige Yaxhou liaode' [This place. What Asia], *Dongfang*, 4, 1995.

25 For a thoughtful analysis of the Communitarians' view on human rights, see Carlos Santiago Nino, 'Positivism and Communitarianism: Between Human Rights and Democracy', *Ratio Juris*, 7, 1, March 1994, reprinted in Philip Alston (ed.), *Human Rights Law*, pp. 357–383. Alisdair MacIntyre has gone the furthest in rejecting human rights, which he put on a par with a belief in witches and unicorns, see Alisdair MacIntyre, *After Virtue*. Notre Dame: University of Notre Dame Press, 1981.

26 For a critique of cultural relativism and 'romantic communitarianism' in the West, see Rhoda E.Howard, *Human Rights and the Search for Community*.

27 On 'soft authoritarianism' see Denny Roy 'Singapore, China and the 'Soft Authoritarian' Challenge', *Asian Survey*, XXXIV, 3, March 1994; and on the totalitarian potentialities of Communitarianism, see Carlos Santiago Nino, 'Positivism and Communitarianism, pp. 368–371. For a communitarian defence of democracy, see however Daniel A.Bell, 'A Communitarian Critique of Authoritarianism', *Political Theory*, 25, 1, February 1997, pp. 6–32.

28 For information on the 'countermeasures' discussed by the Chinese authorities to ward-off Western human rights criticism, see the confidential report published in *Dangdai*, a Chinese magazine in Hong Kong, and

reprinted in FBIS-CHI-91–121, 23 June 1992, and FBIS-CHI-91–177, 11 September 1992, pp. 32–36 and pp. 26–29, respectively.

29 For overviews of the Chinese research on human rights, see Li Lin and Zhu Xiaoqing 'Shiyi jie san zhong quanhui yilai renquan wenti taolun gaiyao', (An outline of the discussions on human rights since the Third Plenum of the 11th Central Committe) in Legal Institute of CASS ed., *Dangdai renquan* [Contemporary human rights], Beijing, 1991, pp. 377–379; and Zhou Wei, 'The Study of Human Rights in the People's Republic of China', in James D.Tang (ed.), *Human Rights and International Relations in the Asia Pacific*. London: Pinter, 1995, pp. 83–96.

30 It is claimed that more than one hundred books and compilations on human rights have been published, See Zou Sicheng, 'Series on Human Rights Studies Published', *Beijing Review,* 38, 46, November 13–19, 1995, pp. 36–37.

31 See, for example, Gao Hongjun 'Zhongguo gongmin quanli yishi de yanjin' [The awakening of consciousness of rights among Chinese citizens], in Xia Yong (ed.), *Zou xiang quanli de shidai* [Toward a time of rights], Beijing: Zhongguo zhengfa daxue chubanshe, 1995, pp. 3–68.

32 Philip Alston, 'The Fortieth Anniversary of the Universal Declaration of Human Rights: A Time More for Reflection than for Celebration', in Jan Berting (ed.), *Human Rights in a Pluralist World. Individuals and Collectivities*. Westport and London: Meckler, 1990, p. 6.

33 See Song Qiang *et al., Zhongguo keyi shuo bu* [China can say no], Beijing: Zhonghua gongshang lianhe chubanshe, 1996, pp. 216–218, pp. 345– 355; Peng Qian *et al., Zhongguo wei sheme shuo bu* [Why do China say no?], Beijing: Xin shijie chubanshe, 1996, pp. 67–91; He Xin, *Zhonghua fuxing yu shijie weilai* [The resurgence of China and the future of the world], Chengdu: Sichuan renmin chubanshe, 1996, Vol. 1, pp. 310–324.

34 The statement is reprinted in James D.Tang (ed.), *Human Rights and International Relations in the Asia Pacific*. London: Pinter, 1995, p. 214.

35 Liu Jinghua, 'History as Antagonism', *Far Eastern Economic Review,* 1 May 1997, p. 37.

36 Wang Jisi, 'Civilizations: Clash or Fusion?' *Beijing Review,* 15–21 January 1996, pp. 8–12.

37 'Ping renquan lingyu de Nan-Bei jiaoliang' [Commenting on the South-North dispute over human rights], *Renmin ribao,* 17 March 1997.

38 Xin Chunying, 'Yazhou guojia de renquan guan' [The human rights view of Asian countries], in Li Lin (ed.), *Dangdai renquan lilun yu shixian* [The theories and practice of human rights in our time], Changchun: Jilin daxue chubanshe, 1996, pp. 340–354.

39 Li Shenzhi, 'Yazhou jiaozhi yu quan qiu jiazhi' [Asian values and global values], *Dongfang,* 4, 1995, p. 4.

40 Li Yonghui, 'Zhe difang, Zen yige Yazhou liaode' [This place. What Asia], *Dongfang,* 4, 1995, p. 10–13.

41 Liu Junning, 'Shen me shi "Yazhou jiazhi guan"?' [What are Asian values?], *Aogang xinxi ribao,* 29/8–4/9 1998.

42 'Chinese Patriotism Driven by Inferiority Complex', published in the magazine *Kaifang and* reprinted in FBIS-CHI-95–041, 2 March 1995, p. 18.

43   Wei Jingsheng, *The Courage to Stand Alone. letters from Prison and Other Writings*. New York: Viking, 1997, pp. 166–168.

44   For a contemporary summary of this debate, see for example 'Guonei baokan guanyu renquan wenti de taolun zongshu' [A summary of the debate on the issue of human rights in domestic magazines], *Shehui kexue,* 3, 1979, pp. 76–78.

45   Xu Bing, 'Renquan lilun de chansheng he lishi fazhan' [The origin and historical development of the theory of human rights], *Faxue yanjiu,* 3, 1989, pp. 1–10.

46   Liu Nanlai (ed.), *Fazhan zhong guojia yu renquan* [Developing countries and human rights], Chengdu: Sichuan renmin chubanshe, 1994, p. 2.

47   Li Lin, 'Renquan yanjiu shuping' [An analysis of research on human rights], in *Zhongguo faxue yanjiu nianjian 1991* [1991 year book of Chinese legal research], Beijing: Zhongguo zhengfa daxue chubanshe, 1993, p. 229.

48   *Zhongguo falü nianjian 1994* [China legal yearbook 1994], Beijing: Zhongguo falü nianjian chubanshe, 1994, pp. 918–919.

49   Liu Nanlai (ed.), *Fazhan zhong guojia yu renquan,* pp. 6–15; Sun Jicheng, *Renquan chulun* [A rudimentary discussion on human rights], Kunming: Yunnan renmin chubanshe, 1993, pp. 55–64.

50   On Li Buyun's views on human rights, see 'Lun renquan de san zhong cunzai xingtai' [On the three modes of existence of human rights], in the Legal Institute of CASS (ed.), *Dangdai renquan* [Contemporary human rights], pp. 3–15.

51   Liu Nanlai, *Fazhan zhong guojia yu renquan,* p. 5.

52   Wei Jingsheng, *The Courage to Stand Alone,* pp. 164–176.

53   *Guoji renquan biaozhun yu Zhongguo renquan zhuangkuang. Guoji yantao hui lunwenji* [Proceedings from an international conference on the international standard of human rights and the situation of human rights in China], New York: Human Rights in China, 1992, p. 1.

54   Reprinted in *China Rights Forum,* Summer 1995, p. 13.

55   David P.Forsythe (ed.), *Human Rights and Development. International Views*. London: The Macmillan Press, 1989; and Human Rights Watch, *Indivisible Human Rights. The Relationship of Political and Civil Rights to Survival, Subsistence and Poverty.* New York, 1993.

56   Yash Ghai, 'Human Rights and Governance: The Asia Debate', reprinted in Philip Alston, *Human Rights Law,* p. 238.

57   Rhoda E.Howard, *Human Rights and the Search for Community,* p. 165.

58   See Harry Harding, 'Breaking the Impasse over Human Rights', in Ezra F.Vogel (ed.), *Living with China. U.S.-China Relations in the Twenty-first Century.* New York: W.W.Norton & Company, 1997, pp. 174–175. Andrew A.Nathan has argued that the United States should join the international human rights regime more fully than hitherto, and, for example, accede to the International Covenant on Economic, Social and Cultural Rights. See 'China: Getting Human Rights Right', *The Washington Quarterly,* 20, 2 (Spring 1997), p. 145.

59   Sun Zhe, *Xin renquan lun* [A new theory of human rights], Zhengzhou: Henan renmin chubanshe, 1992, p. 219.

60 Zhang Wenxian, 'Lun renquan de zhuti yu zhuti de renquan' [On the subject of human rights and human rights subjects], in the Legal Institute of CASS (ed.), *Dangdai renquan* [Contemporary human rights], pp. 35– 48.

61 See Gong Xiangrui (ed.), *Fazhi de lixiang yu xianshi* [The ideal and reality of the rule of law], Beijing: Zhongguo zhengfa daxue chubanshe, 1993, p. 282.

62 Wei Jingsheng, *The Courage to Stand Alone,* p. 171.

63 For a critique of China's performance when it comes to economic and social rights, see Ann Kent, *Between Freedom and Subsistence. China and Human Rights.* Hong Kong: Oxford University Press, 1993.

64 Quoted in Trini W.Y.Leung, 'Labour Unrest in China in the 1990s. Labour Fights for Its Rights', *China Perspectives,* 19, September/October 1998, p. 12.

65 This is evident of many articles in the more political discourse, for a recent article see, 'Ping renquan lingyu de Nan-Bei jiaoliang' [A comment on the South-North dispute on human rights], *Renmin ribao,* 17 March 1997.

66 'Dui Helan fu shouxiang wuli gongji Zhongguo renquan zhuangkuang. Wo daibiao jinxing yanli bochi' [Our delegate strongly refutes the groundless attack on China's human rights situation by the vice-Premier of the Netherlands], *Renmin ribao,* 14 March 1997.

67 For a discussion on Chinese nationalism, see Suisheng Zhao, *In Search of a Right Place? Chinese Nationalism in the Post-Cold War World.* Hong Kong: Hong Kong Institute of Asia-Pacific Studies, 1997.

68 For some opinions on the book and anti-American feelings, see Ming Zhang, 'The New Thinking of Sino-US Relations—An Interview Note'; Hongshan Li, 'China Talks Back: Anti-Americanism or Nationalism? A Review of recent "Anti-American" Books in China'; Fei-Ling Wang, 'Ignorance, Arrogance, and Radical Nationalism: A Review of *China Can Say No*', all *in Journal of Contemporary China,* 6, 14, 1997, pp. 117–123, pp. 153–165.

69 'Meiguo 'Renquan baogao' chongchi bu shi zhi ci' [The American 'Human Rights Report' is full of unsubstantial words], *Renmin ribao,* 6 February 1997.

70 'Liyong renquan zhizao duikang de you yi biaoxian—Ping Meiguo guowuyuan "Renquan baogao" Zhongguo bufen' [Another example of using human rights to create confrontation—Criticizing the Chinese section in the Human Rights Report of the American State Department], *Renmin ribao,* 14 March 1997.

71 Yu Quanyu, for example, advocates the use of UN standards when judging other countries human rights records. He also criticizes America for not having signed some UN convenants, see Song Qiang *et al., Zhongguo keyi shuo bu,* p. 347, and p. 354.

72 Si Cheng, 'Chinese Say "No" to the United States', *Beijing Review,* 21–27 October 1996, p. 13.

73 'Meiguo "Renquan baogao" chongchi bu shi zhi ci' [The American 'Human Rights Report' is full of unsubstantial words].

74 Xin Chunying, 'A Brief History of the Modern Human Rights Discourse in China', *Human Rights Dialogue,* 3, December 1995, p. 5.

75 During the early twentieth century, nationalism, which often took the form of anti-Manchu sentiments, and human rights seem to have gone hand in hand, see Marina Svensson, *The Chinese Conception of Human Rights. The*

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76 Li Shenzhi, 'Yazhou jiazhi yu quan qiu jiazhi' [Asian values and global values], *Dongfang,* 4, 1995, p. 4. *See also Wang Jisi, 'Civilizations: Clash or* Fusion?' *Beijing Review,* 15–21 January 1996, p. 8.

77 Marina Svensson, *The Chinese Conception of Human Rights.*

78 Xiaomei Chen, 'Occidentalism as a Counter-discourse: He shang Controversy', in her *Occidentalism. A Theory of Counter-Discourse in Post-Mao China.* New York: Oxford University Press, 1995, pp. 27–48.

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11
Universal Human Rights and Chinese Liberalism

Mab Huang

For some years a confusing and many-sided discourse concerning 'Asian values' and human rights has been raging, both in Asia and elsewhere. As early as the mid-1980s, Deng Xiaoping began to assert that China, given its different cultural background and stage of economic development, had a different perspective from that of the Western world.[1] This position was given an elaborated exposition in a White Paper on Human Rights issued by the State Council in 1991. In it the government did its utmost to put the human rights situation in the best light, arguing that the Chinese people had enjoyed not only the right to live and political rights, but also economic and social rights, including the right to development. Any criticism and comments from other governments and non-government organizations were to be condemned as interference in the internal affairs of China.[2] Lee Kuan Yew of Singapore was not far behind in his assertion of 'Asian values' and his attacks on the United States. He was agitated by what he saw happening in the West: 'guns, drugs, violent crime, vagrancy, unbecoming behaviour in public—in sum, the breakdown of civil society'. Convinced that civil and political rights hinder economic development and growth, he was prepared to chart a new course for Asia.[3] Indeed this confrontation reached its height in the World Conference on Human Rights convened by the United Nations in Vienna in the summer of 1993, where government officials from China, Singapore and several other countries got into a tug of words with their counterparts from the US and Europe regarding the universality, inseparability and interdependence of civil and political rights on the one hand, and economic, social and cultural rights on the other.[4] Although the position of the Western nations prevailed at the conference, the debate has not abated.[5]

Plainly, the positions taken by government officials from China, Singapore, Malaysia and other nations critical of the international standards of human rights, or as they saw it, of the Western world, could be explained, in part, as a rationalization for their poor records in the

protection of human rights, especially that of civil and political rights. Nevertheless, the impact of this dispute on both governments and academic communities in the West could not be underestimated. Definitely it has contributed to a sense of urgency in the academic community to face up to what is referred to as a debate between human rights and 'Asian values'. Many an international conference has been convened and countless learned articles have been published. It is too early to judge what would be the outcome of this discourse. Would it lead to a deadly confrontation between the Western nations and Asian states? A sort of clash of civilizations?[6] Or is an unforced consensus thinkable?[7] Many thoughtful persons, both theorists and activists, have dedicated themselves to the search for a consensus.

In this effort to think seriously about 'Asian values' and universal human rights, a pattern is easily discerned: 'Asian values' tend only to refer to traditional values. In the case of China, two types of papers have been predominant in international conferences, namely papers dealing with traditional values, especially Confucian ideas and doctrines, and papers on human rights theory and practice under Communist rule. There is indeed a logic to this choice. It could be argued that to contrast Confucian values with the idea of human rights accentuates the conflict between the East and the West, whereas to discuss communist human rights theory and practice serves as a dialogue between the past and present.

Persuasive as it may be, this line of reasoning is subject to countervailing arguments. To begin with, this approach seems to be narrow: papers on Confucian ethics and Communist ideology and policy could not exhaust the possibility of a dialogue between East and West. In more practical terms, many papers on Confucian ethics tend to be nostalgic. They tend to succumb to the hope that the honourable traditions could somehow be adapted to the needs of our time. In the hands of some scholars, Confucian values would not only play a part in the life of contemporary China, they would save the whole world from the brink of disaster. As for papers on Communist theory and practice, it is fashionable on the part of some scholars to defend the present government, either due to a sense of national pride, or sympathy with the Communist Party. A few of them simply repeat what the government has to say on the subject, using some academic jargons to masquerade their desertion of professional commitment.

The arguments adduced above, however, are merely negative. From a positive perspective, it could be shown, as this chapter will attempt to do, that a fruitful dialogue between Chinese liberalism and universal human rights has been going on for some time. And it is still going on. It is a

gallant effort that could possibly change the face of the world. Two points will be made. First, by definition, Chinese liberalism must be visionary. It must aspire to a better future without surrendering to fantasy. It must be clear-headed about the obstacles presented by traditional culture and prevailing political structure without giving up hope. Similarly, the idea of universal human rights is a future-oriented and expansive force. Whatever successes it can claim had been achieved through a long and drawn-out struggle against the states, multinational corporations as well as traditional cultures in many parts of the world. The end is far from being near.

Second, through the decades, Chinese liberalism has always drawn upon the human rights movement abroad for support and encouragement. International organizations, including both the League of Nations and the United Nations, have helped provide universal human rights standards to which the Chinese liberals aspired, while governments and non-governmental organizations of the Western nations gave moral and material aid when the liberals were faced with persecution and suppression by the government. The role of international non-governmental organizations deserves to be emphasized. Compared with Western governments, they were and still are, more disinterested and genuine in their commitment to the cause of human rights in China.

For the purposes of this chapter, a few episodes from the struggle for liberty and human rights have been selected for illustration: the Xinyue group and the China League for Civil Rights in the late 1920s and early 1930s, the Free China group and the embryonic Chinese Democratic Party in Taiwan in the 1950s, and the Exploration and Democracy Wall Movement in the 1970s.

THE RISE OF CHINESE LIBERALISM

It is notoriously difficult to define liberalism. In the case of China, the lingering influence of the traditional political and social order, the memory of revolutionary struggle as well as the reality of dictatorial regimes must be kept in mind so that the significance and the possible role of liberalism in shaping the future of China could be better appreciated. If liberalism is defined only as opposition to an oppressive government and seeking an alternative developmental model, Liang Shu-ming and his Rural Reconstruction Movement would certainly qualify.[8] So would thinkers of socialist and/or communist persuasion. It would be much better to take the defence of individual rights as the litmus test of liberalism—or to be more precise, defence of individual

rights through the rule of law in an increasingly democratic society. Surely such a formula could not be ambiguity-proof. Many a scholar seems to be walking a tight rope, balancing defence of individual rights with partiality to traditional values, valiantly making efforts to draw upon the past for resources for a better future. But this is to be expected. It is an indication of the powerful hold of tradition and the dilemma faced by many intellectuals in the twentieth century.

Convention has it that Chinese liberalism began in the early twentieth century in Beida (Peking National University) and its fortune was closely related to the academic community.[9] At that time, many a Chinese liberal thinker was still deeply influenced by the Confucian ideals of personal integrity and social responsibility. As for practical measures, they chose almost always to emphasize civil and political rights, especially the freedom of expression and association. The Xinyue group and the China League for Civil Rights in the late 1920s and early 1930s were cases in point.

The early decades of the twentieth century were an poignant time: China was politically weak and divided, yet intellectually stimulating. As the Dean of Letters of Beida, Chen Duxiu (Ch'en Tu-hsiu) played a most significant role in the New Culture Movement. He was a zealous advocate of individual freedom and condemned Confucian values as incompatible with modernity. To build a new China, the society must be reconstructed from the foundation up, with new belief in equality and human rights.[10]

This attack on Confucian values and traditional political structure as well as family system was to be a red thread that ran through Chinese liberalism up to our time. It is ironic that Chen Duxiu was soon converted to communism and social revolution, serving as the first secretary general of the new party. Yet the legacy of the May Fourth Movement was never obliterated.

In these decades nationalism was in the ascent. The Nationalist Party was making a serious effort to consolidate power and work out a political ideological system. Hu Shi (Hu Shih), Luo Longji and their colleagues in the *Crescent (Xinyue)* rose to challenge the triumphant party. Hu wrote many pieces. Two of them are particularly relevant. In the article on human rights, Hu took the Nationalist Party and government to task for their vague commitment to the protection of basic rights and liberties. Referring to an ordinance promulgated on 20 April 1929, he complained that it did not make clear what specific freedoms and properties were protected and against whom. He argued that to secure the foundation of the rule of law, a constitution must be adopted. At the very minimum, a constitution for the Tutelage Period would

definitely be needed. In the article on democracy, Hu took the position that democratic rule is by itself an educational experience. When people participate for the first time in the political process, they inevitably make mistakes; but they should not be denied the right to take part because they make mistakes. Tutelage without a constitution or a provisional constitution, Hu concluded, could only be tyranny; it could not lead the people to democratic rule.[11]

Luo was less well known than Hu. Nevertheless, his contribution to the discussion of human rights was equal to that of Hu. Educated in the United States and England, with a Ph.D. in Political Science from Columbia University, he returned to China in 1928 and was very active as a professor and editor of the *Crescent*. His long article on human rights published in *Crescent* no. 2 in July 1929 was no doubt one of the most thorough, systematic and clear expositions of the theory of human rights at that time.

Boldly Luo defined human rights as the right to live the full life of a human being. He began with life itself, with the need to maintain life, e.g. the basic needs, clothing, food and shelter, etc. But soon enough, the right to work must be recognized, Luo argued. Then come physical security and the need to fully develop individual personality, or as Luo put it, in English in the text, to 'be myself at my best'. Plainly, the development of the individual personality requires freedom of speech and thought. Luo declared, and only when all these conditions are met, will people live meaningful and happy lives.

Moreover, it should be recognized, Luo asserted, that 'every individual is only a member of the group. His existence as well as his happiness is closely tied to the existence and happiness of the group. Thus, the individual must not be concerned only with himself, he must contribute to the well-being of the group, to achieve the greatest happiness of the greatest number'.

Luo insisted on a functionalist approach to human rights, and could not be more clear about his utilitarian leanings. But he was equally prepared to cite the Magna Carta of 1215, the Declaration of the Rights of Man and Citizen and other important human rights documents through the ages to make his point.

From this premise, it was not difficult for Luo to argue that the state is not omnipotent and all controlling; it is only one of many organiza tions of a society, and its function is the protection of human rights. Here the writings of M.MacIver and Harold Laski were very useful to him indeed. And if more support was needed, Article 2 of the Declaration of the Rights of Man and Citizens had made the position emphatically clear: the end of every political institution is the preservation of the natural and

imprescriptible rights of man. These rights are those of liberty, property security and resistance to oppression.

For the preservation of these natural rights of man, the rule of law was obviously the first priority, and constitution and laws were indispensable. Citing MacIver, Luo asserted that the constitution was not only concerned with the protection of rights of the people, but more importantly with the regulation of the power of the different units of the government, so that they could not violate the rights of the people. From Laski, Luo took the idea of human rights as the condition to 'be myself at my best', and that of judging the state by its performance in the protection of human rights. If the government failed in this task, the people had the right of revolt, as John Locke had so persuasively argued. Moreover, as human rights were not static but dynamic, its scope and domains changed to meet the needs of the changing society. Human rights in the twentieth century are different from those of the seventeenth century; likewise, human rights in China need not be the same as in America. Luo ended up proposing a bill of rights of 35 articles, some of which dealt with the needs of China in that particular era, and others of basic principles.[12]

Moving from words to deeds, the China League for Civil Rights came close to the liberal model.[13] This judgement is based primarily on the actions taken by the League, and less so on the backgrounds of the participants. The prime movers of this short-lived effort were Cai Yuanpei, the well-known Nationalist Party elder statesman and former Chancellor of Beijing University, Song Qingling (Soong Ch'ing-ling), the widow of Sun Yet-sen, and Yang Chuan (Yang Ch'uan), Cai's long-time assistant and the secretary-general of the Academia Sinica. Many other prominent scholars and writers also joined the organization, including Lu Xun, Lin Yutang and Hu Shi. Hu also served as the president of its Beijing branch. Among the foreign journalists living and working in China, Harold R.Issacs and Agnes Smedley seem to have played a fairly important role in the League's activities. Smedley served as Song's English language secretary.

Prior to the organization of the League, Cai had been active in the defence of Chen Duxiu and Yang Kaihui, the first wife of Mao Zedong, among others. Song was, by that time, very critical of the government of Chiang Kai-shek. Hu Shi, Lin Yutang and Liang Shiqiu, among others, could be assumed to be more sympathetic to the position of the civil rights organizations in the West, especially the efforts of well-known social notables such as Bertrand Russell and John Dewey in the defence of rights and freedoms. In its charter, the League was dedicated to three tasks: (1) to seek the release of political prisoners and the abolition of

arbitrary arrest, torture and executions in China, with emphasis on helping those nameless prisoners to whom the society has not paid much attention; (2) to provide legal and other assistance to political prisoners, and to investigate the conditions in the prisons and detention centers as well as to arouse public opinion concerning suppression of civil liberties; and (3) to assist in any effort in promoting freedom of speech, press and association.[14]

In a press conference held on 30 December 1932 in Shanghai to announce the formation of the League, Song was unable to attend due to illness, and Cai and Yang presided. In her written statement, Song dwelled on the freedom of speech, press and association and stressed the defence of political prisoners. Cai cited J.J.Rousseau in his remarks and the idea of natural rights. He asserted that the League would not be partial to any political party or faction, but would come to the aid of all political prisoners. He was committed to universal human rights.

In the few short months of its existence, the League was as energetic as it was hopeful. It was busy holding press conferences, issuing statements, sending telegrams and visiting government officials on behalf of political prisoners. All together, it was involved in about half a dozen well-publicized cases, mostly of Communist Party leaders living and working underground in the cities or university professors and students suspected of being Communist Party members. In some of these efforts the League was successful; in others it could not do much.[15]

Next to defending political prisoners, the League was very much concerned with conditions in the prisons and detention centres and the treatment of prisoners and detainees. As soon as the Beijing branch was established, Yang Chuan, Hu Shi and Chen Shewu undertook an investigation of the conditions in prisons and detention centres in the cities under the control of the military authorities. However, a dispute soon developed between Hu Shi and the League headquarters in Shanghai concerning the use of torture in one of the detention centres, as well as the demand for the unconditional release of all political prisoners. In this controversy, Smedley apparently played an ambiguous but crucial role. Suffice it to say that Hu was sceptical of the use of torture at that detention centre; nor did he approve of making such a blanket demand on the government concerning political prisoners. Plainly he remained a moderate reformer. For this he was condemned for betraying the League. As a result, he was expelled.

It is difficult to judge if the League had posed a serious threat to the authorities. Nevertheless, it was a daring challenge. By drawing upon the appeal of universal human rights, it was an affront to the rising tide of Fascist tendency in the government and could not be tolerated. On the

morning of 16 June 1933, Yang Chuan was assassinated. It was widely rumoured that he was killed because of his work with the League. With his death, the League disintegrated.

LIBERALISM AND THE FIFTH MODERNIZATION

Fifty years later, it was again a time of political upheaval in China. Mao Zedong had died in 1976, and Deng Xiaoping was manoeuvring to consolidate his power in the Chinese Communist Party and government. During late 1978 and early 1979, tens of thousands of peasants and 'sent-down youth' came to Beijing to petition the government and seek justice for wrongs they had suffered at the hands of the local authorities. In what became known as the Democracy Wall movement, a group of young intellectuals and workers agitated for a more democratic political process and basic human rights. They attracted huge crowds. At first, Deng gave support to the Democracy Wall activists, if only to secure his position against his rivals in the Party, but soon he turned on them.

Wei Jingsheng, at the age of 29, emerged from obscurity to become the most militant spokesman of the movement and later the best-known victim of Deng's suppression, all in the span of less than a year. For his efforts, he was sentenced to fifteen years' imprisonment. The Party and government had obviously seen him as a threat and insisted that he must pay a high price for what he had done.

In September 1993, Wei was released from prison half a year ahead of the completion of his sentence. But within a few short months, after his meeting with Assistant Secretary of State John Shattuck in Beijing prior to the visit by the then Secretary of State Warren Christopher, Wei was taken into custody by several carloads of plainclothes police when he returned from Tianjin to Beijing. In December 1995, Wei was convicted of 'conspiracy to subvert the government' and sentenced to fourteen years in prison. He appealed against the conviction, but his petition was summarily denied by the court. After the visit of Jiang Zemin's visit to the US in 1997, Wei was finally released from jail and exiled to New York.

Wei Jingsheng is a man of ideas and of action.[16] His class and family background, as well as his early education did not necessarily prepare him for his role in the Democracy Wall movement in Beijing. Although Wei did not attend university, the articles he published during the Democracy Wall movement displayed a marvellous grasp of the situation confronting China. Indeed Wei had been a devoted communist and an admirer of Mao for many years. His metamorphosis only began with his encounter with the realities of China during the Cultural Revolution.

Slowly but perceptibly, Wei had left his class and family backgrounds behind and spoke as dictated by his conscience.

China was poor and backward, and 30 years of communist rule had not improved the living conditions of its people, Wei argued. The reforms proposed by Deng were severely flawed and could not be expected to work. Furthermore, Deng, just like any other ruler, could still become a dictator. The people must be on guard. Only democratic rule promises dignity and happiness. Wei's arguments were quite simple and direct. His first article, which turned out to be the most famous piece of the Democracy Wall movement, was posted on 5 December 1978 and published in the first issue of *Exploration*. It was a proposal of the fifth modernization, to supplement Deng's Four Modernizations, or more precisely, to serve as an overarching concept of the whole enterprise. The Chinese people did not enjoy democratic rule, Wei declared, but they deserved it as something rightly belonging to them. By true democracy was meant the right of the labouring classes to hold power, of the people electing their representatives to work according to their will and in their interest, and dismissing them if they failed to serve the interest of the people.[17]

As Wei defined it, democracy was indispensable for modernization efforts. Only through economic development and prosperity, making all kinds of goods and services available, would the people have the 'full opportunity to pursue their first goal of happiness, namely freedom'. In this sense, 'democracy is not a goal in actual life. Instead, it is a social condition insuring that all have equal opportunities to attain their goals in life. Thus democracy is a social system'. In opposition to the Maoist dictatorship, 'democracy must be a social system that protects freedom'. While this 'freedom can only be obtained if it is enjoyed by all mankind and can only be realized under conditions of mutual protection', it takes the 'rule of law' as practised in the Western nations 'to sustain the kind of democracy based on the co-operation of all the people'. To put it differently, democracy, rights, and the rule of law are an inseparable social web.

In discussing human rights, Wei came close to adopting the idea of natural rights of the Western liberal tradition. In the third part of his article on the Fifth Modernization, Wei had this to say about human rights:

> Human rights is a term used to denote the rights of an individual as a human being. What rights does a person have? He has the right to live, to live a meaningful life… We all know that every human being occupies some position in life. If he can not establish an

independent and autonomous position through his own strength and inherent rights, he will be forced by virtue of others to occupy a subservient position. We call such a position servitude…

From the moment he is born, a human being has the right to live and the right to strive for a better life. These are what people call heaven-given [natural] human rights. For they are not bestowed by any external thing. Just like the right of any object to exist, they are bestowed by the fact of existence itself. This is like the case of a stone: since it occupies a bit of space by virtue of its existence, it has its right of existence relative to the things around it. No external thing has to give it this right. It has it most naturally.[18]

As to the relation between the individual and his community, Wei apparently gave greater weight to individuality than to the social nature of man. Wei argued that because human beings exist in society, they are all social beings. Yet the need for centralized management of social interests need not lead to a totalitarian government. For society is, after all, composed of individuals, and their individuality should enjoy priority over their sociality, although both are important constituents of human nature.

In Wei's thinking, finally, human rights must be enjoyed equally by all human beings. 'Without equality, human rights must lose their real meaning; while without the protection of human rights, equality can only be an empty slogan'. Human rights are limited and relative rather than unlimited and absolute. This limitation constantly grows and changes with the development of the history of mankind and with man's quest to tame and control his surroundings. This explains why the main points of the concept of human rights constantly change and are constantly being improved. Nevertheless, by guaranteeing the rights of speech, assembly, association, the press and other liberties, democracy is a type of government that recognizes the equal human rights of the citizens, guaranteeing their right to live and strive for a meaningful life.[19]

From the above there can be no doubt that Wei's ideas incorporated natural rights thinking on the one hand, and humanistic Marxism on the other. He apparently had retained a vaguely Marxist perspective on the historical development of the society of man. It was an optimistic perspective, which he reiterated as much in self-defence during his trial in October 1979. Revolution, for Wei, meant moving with the current of historical development and purging all that was old and blocked the onward flow of history. And,

the present historical trend or current is a democratic one. At this stage in the development of Chinese society, her population is confronted with the following problem: unless there is reform of the social system accompanied by the eradication of the social origins of the dictatorial fascist autocracy, together with a thorough implementation of democracy and a guarantee of the people's democratic rights, Chinese society will be unable to advance and the socialist modernization of the country be incapable of achievement.[20]

It is not difficult to take him to task. Andrew Nathan is quite right in pointing out that in using the idea of human rights, Wei 'suffered from the lack of a strong Chinese tradition of natural-rights thinking', which certainly made his endeavour more difficult. The analogy of a stone occupying a space and thus acquiring a right to exist also poses the question: 'Does a stone have rights?' And it seems, argues Nathan, that in the end Wei concedes that human rights can only be limited and not absolute, making his position difficult to differentiate from that of the Chinese Communist Party.[21]

   This criticism is hardly fair: Wei was, after all, making a great effort to articulate a more systematic theory of rights. He was as clear-headed as any one has a right to demand of him. He was unsparing in his condemnation of autocracy and dictatorship of any kind, and spoke eloquently on behalf of the individuals. Like Luo Longji before him, Wei is not the only Chinese intellectual in our time to have incorporated apparently conflicting ideas in his thinking, and the difficulty he faced in arguing his case is not unique to him.

   Also in another sense it is interesting to compare Wei with Luo. Luo drew inspiration from utilitarian principles, yet he was equally passionate about the natural rights arguments. Could it be that, in his mind, the two approaches are compatible, not contradictory? Similarly, Wei was not troubled by any conflict between the idea of natural rights and that of a vaguely Marxist interpretation of history. It would seem that those thinkers who had managed to break from the traditional perspectives and were sympathetic with the doctrines of natural rights nevertheless found it easy to embrace some theory based on the good of the society. The greatest happiness of the greatest number simply proved to be irresistible for Luo, while Marxism in a humanistic hue was preferred by Wei.

   The Democracy Wall movement in which Wei and *Exploration* played a prominant role was soon leading a nation-wide struggle for rights and

democracy, albeit in a very different setting from that of the China League for Civil Rights 50 years before.[22]

Reference has been made to the support given to the Democracy Movement by Deng Xiaoping. Indeed, when it started, on 16 November 1978. Deng and Hu Yaobang went to view the posters at Beijing University and Qinghua University and urged party leaders to encourage their posting. Hu even invited several of the activists to his home and debated with them for four hours.[23] Apparently Deng and Hu were using them in their struggle with their Maoist opponents in the Party. As for most of the Democracy Movement activists, they hailed Deng and Hu as 'honest servants of the people', and harboured the hope for a modern and democratic China. Wei Jingsheng and his *Exploration*, by contrast, were radical and uncompromising in their criticism of Deng.

By the end of the year, there emerged numerous autonomous organizations dedicated to the promotion of democracy and human rights. Each group usually had its own journal—often poorly printed and irregular in frequency. While centred in Beijing, the democracy movement quickly spread to other cities throughout the nation, and posters appeared in Shanghai, Guangzhou, Hangzhou, Guiyang, and as far as Lhasa in Tibet. At the height of the movement, the leading organizations and publications included *Exploration,* by far the most militant group Beijing Spring, April Fifth Forum, the Enlightenment Society, the Thaw Society, Today, the Masses' Reference News, and the Chinese Human Rights League. The statement from the Enlightenment Society, a group of youths from Guiyang in southwest China, was most suggestive of the atmosphere and mood of the movement: highly emotive and appealing to the love of motherland as well as fighting for truth.[24]

The Chinese Human Rights League, which was an umbrella organization encompassing several groups, was initiated by Ren Wanding. One bitterly cold night in December, Ren put up a poster demanding respect for human rights, including the right to emigrate. He also gave a time and place for a meeting to discuss the future organization of the Chinese Human Rights League. The League was formally established on 1 January 1979. and it issued a Nineteen-Point Declaration on 17 January. Its demands ranged from freedom of thought and expression to the right to criticize Party and state leaders to the freedom to talk to foreign correspondents.[25] It also called on President Carter to intervene and help promote human rights in China.[26] Reportedly, Deng was infuriated.

A week later, on 8 January, Fu Yuehua, a kindhearted and dedicated member of the League, led several thousand peasants from the provinces on a march through Beijing. It presented a moving scene—as grim and

solemn as earlier demonstrations by the youths had been festive. Their banners read: 'We don't want hunger', 'We don't want to suffer any more', and 'We want human rights and democracy'. But the authorities responded with the arrest of their leaders, including Fu. In anger, the peasants at one point attempted to enter Zhong-nan-hai, the residential compound of high officials of the Party. They were turned back.[27]

With the arrest of Fu on 18 January, the movement was confronted with a difficult choice: either to compromise or to press on. The League and Wei Jingsheng argued that the time had come to draw a line and chose to defend Fu. Some other dissidents were more sympathetic to Deng and his policies, refusing to entertain the idea that Deng would turn to dictatorship. When Wei was arrested in March, it was the beginning of the end for the movement. The Democracy Wall Movement, in the end, suffered a similar fate as its predecessors. It was destroyed by Deng Xiaoping just as the China League for Civil Rights was suppressed by Chiang Kai-shek.

THE TAIWANESE EXPERIENCE

In the 1950s in Taiwan, Lei Chen and his Free China group were no doubt the embodiment of Chinese liberalism.[28] *Free China* was the only journal that discussed politics critically. It survived for eleven years. Framed for harbouring a communist spy, and sentenced to serve a ten-year term in prison in 1960, Lei acheived the status of a martyr. For many years to come, he and the journal were to exercise a great influence on the opposition movement.

When the Nationalist Party was suffering defeat after defeat and the civil war was coming to an end, a group of well-known intellectuals and government officials, including Lei Chen, Hu Shih, Hung Liwu and others decided that the time had come to initiate a 'Free China Movement'. According to the recollections of Lei Chen, Hu Shi had argued forcefully that the intellectuals should be engaged in propaganda work against communism, explaining to the people the real essence of communism. Under communist rule, Hu insisted, people would not only be deprived of freedom of speech; they would not have the freedom of keep silent. Therefore, the task should be the propagation of freedom and democracy, and to bring about the democratic way of life.[29] Hu also gave the journal its name, apparently imitating De Gaulle's Free France in World War II.[30] In the 'declaration of purposes' drafted by Hu and printed in every issue of the journal, he listed four tasks: First, to propagate the true value of freedom and democracy, and to supervise the government in political and economic reforms so as to create a free and

democratic society; second, to support and supervise the government in resisting the Communist regime and oppose its expansion; third, to do our utmost in helping the people under Chinese communist rule to regain their freedom; and lastly, to help make the Republic of China a free China.[31] In their inaugural editorial Lei Chen and two colleagues went further to argue that Free China was committed to freedom and democracy because they meet the basic needs of man, and that only a state which meets these needs qualifies as a humane political order.[32]

Later it was again reiterated that Free China has two meanings. First, it means a free country, not controlled by another country internationally. Second, it means that domestically, the people enjoy all the rights and freedoms stipulated in the Constitution or in the Universal Declaration of Human Rights.[33] The commitment of the Free China group was simple and clear: to fight communism and create a free and democratic society.

At the begining, this effort of the intellectuals had the support of Chiang Kai-shek and his government. However, a split soon emerged. Many observers attributed it to the outbreak of the Korean War and the protection of Taiwan promised by the US. According to this reasoning, Chiang felt secure enough and began to concentrate power in his own hands. The political reforms that the liberal intellectuals and government officials within the KMT had hoped that Chiang would implement were abandoned.[34] It seems clear that as Free China moved from theoretical discourse to more practical issues, the conflict was inevitable. As early as 1951, an editorial in *Free China* criticizing the government for trapping people into violating laws severely provoked the intelligence units. Rumours had it that the Headquarters of the Garrison Command were moving to arrest Lei Chen. Hu Shih wrote a piece protesting against the government, yet at the same time he resigned from his nominal position as the publisher of the journal.[35]

More confrontations followed. But it was not until 1954 when Professor Chang Fo-chuan published his collection of essays entitled *Liberty and Human Rights,* that the Free China group turned to the issue of protection of human rights in a concrete sense. Chang argued forcefully that it is not meaningful to ask about the essence of liberty. To define liberty, one must use scientific methods. One must ask about the liberties. Or what the people in the democratic nations are referring to when they speak of liberty. He insisted that we should return to the usage that liberties are nothing else than rights. And states and governments are set up for the implementation of human rights and fundamental freedoms. This position, significantly, had clearly exerted an influence on the thinking of the group, and was adopted by *Free China* half a year later. The journal

began to champion rights and freedoms as guaranteed by the Constitution.[36]

It would seem that with vol. 15, no. 9 published on 31 October 1956, *Free China* and the government completely parted their ways. In that particular issue, supposedly to celebrate Chiang Kai-shek's birthday and in response to his solicitation for advice and recommendations, *Free China* urged three points. First, Chiang should not run for the third time for the presidency of the Republic; second, a responsible cabinet system should be established, and third, the military should be nationalized, and party branches of the Nationalist Party within the military should be abolished.[37]

Since then the relationship between the journal and the Party deteriorated rapidly. The Party and government, especially the intelligence units, were quick to put pressures on the journal. At the same time, *Free China* took up many sensitive issues with tenacity, especially opposition to Chiang's revision of the Constitution to make it possible to run for the Presidency for the third time, and the need for an opposition party.

Begining in 1957, the discussion on the need for an opposition party became more assertive. Yet it was far from being a consensus. Many people involved in the journal still retained the idea that the primary function of an opposition party was to supervise the Nationalist Party, while Hu Shih chose to return to his earlier idea that the best way to do so was for the Nationalist Party to divide into two.[38] However, the idea that under the prevailing circumstances an opposition party was necessary for democratic rule and the enjoyment of rights soon prevailed. What is more crucial, the idea of an opposition party was linked up with local elections. Many native Taiwanese elites had been angry of KMT's manipulations and control of local elections. They began to write for and support the journal. With these two groups coming together, a new party was clearly in the making.[39]

On 18 May 1960, Lei Chen convened a meeting on local elections, and reached the conclusion to immediately initiate the organization of an opposition party. At the end of August, the new party was given the name of Chinese Democratic Party, and its inauguration was planned for the next month. By this time, the confrontation could not be delayed any longer. The results were the framing of Lei Chen and his trial. *Free China* was banned.

A final comment. When challenged with violation of human rights in framing Lei Chen and banning *Free China*, Chiang Kai-shek was indignant. He accused his detractors of betraying the government and

supporting foreign interference in the domestic affairs.[40] In this, he was hardly different from Deng and his successors in China.

AN EXPANSIVE FORCE

Universal human rights are the idea of our time. Yet it is an idea that has bedevilled Western legal and political philosophers for centuries.[41] Luo Longji's definition of human rights has been referred to above. In our time, Cranston defined it as 'universal moral rights', and Henkin as 'claims asserted and recognized "as of right", not claims upon love, or grace, or brotherhood, or charity'.[42]

No matter how they are defined, there is no doubt that human rights are a powerful and expansive force that helps shape the world. It is not necessary to trace its begining to ancient Greece or Rome; suffice it to say that in a span of two hundred years, e.g. from the eighteenth century to the twentieth century, human rights have been enshrined in many constitutions and became internationalized since World War I. The scope of human rights has expanded almost beyond recognition. And its influence has been deepening. In the eighteenth century, the concerns were fairly definite. Against authoritarian governments and hierarchical societies, they meant primarily religious freedom, freedom of speech and press, as well as the rights to due process of law and participation in the political affairs. They are in our time called civil and political rights, to be distinguished from the economic, social and cultural rights.[43] They are negative in the sense that the government needs not do anything to make their enjoyment possible. The assumptions were clear: given civil and political rights, every citizen would be in a position to live a meaningful life as well as taking care of his or her economic needs.

With the coming of the French Revolution, the reasoning and assumptions described above began to face challenge. Industrialization and the exploitation of the working class made it difficult to completely neglect the material needs of man. Thus the idea of the rights to education and gainful employment, etc. which in our time were further expanded to include the right to unionize and strike, the right to enjoy periodic holidays with pay as well as enjoyment of scientific and cultural achievements.[44]

There was more to it. World War I brought with it the concern for national self-determination which was elevated into a cardinal principle in the post-World-War-II era due to the demise of colonial empires and the rise of national liberation movements. When the time came to write the two international human rights covenants, control and use of natural resources without outside interference were also given high priority by

the Third World countries. It is not difficult to imagine that the Western nations were deeply opposed to both the right to self-determination and that of control of natural resources. Nevertheless, they were simply outvoted.

Finally in the 1970s, the United Nations turned out to be a fertile soil for new ideas of human rights. Many a new or not so new kind of right was proposed, such as the right to peace, to a clean environment and to development.[45] The idea of a third generation of human rights has definitely achieved a certain degree of fame, or, depending on the position of the reader, notoriety. In his inaugural lecture to the Tenth Study Session of the International Institute of Human Rights in July 1979, Karel Vasak argued that

> 'the new rights of our time' are new in the aspirations they express, are new from the point of view of human rights in that they seek to infuse the human dimension into areas where it has all too often been missing, have been left to the State, or States… They are new in that they may both be invoked against the State and demanded of it; but above all (and herein lies their essential characteristics) they can be realized only through the concerted efforts of all the actors on the social scenes: the individual, the State, public and private bodies and the international community.[46]

He further asserted that the three generations of human rights could be said to be corresponding successively to each of the three components of the banner of the French revolution: liberty, equality and fraternity. The third generation of human rights he called 'solidarity rights'. Along this line, and citing Vasak, Louis Sohn, and Georges AbiSaab, among others, Stephen Marks was prepared to argue that 'international human rights are those human needs that have recieved formal recognition as rights through the sources of international law'. As he saw it,

> the General Assembly of the U.N. has played a most important role in creating new human rights, and rightly so… As long as these new rights were not so unrealistic or trivial as to be treated with mockery, their recognition does serve the advancement of the cause of human rights without endangering the rights of earlier generations.[47]

This conception of new human rights, however, was severely taken to task. It was argued that procedures for creating new rights were so haphazard that the values of human rights could not but be debased.

Control was absolutely necessary. Perhaps the French system of appellation contrôlées applied to wine should be adopted, and 'the General Assembly should consider mandating a precise modus operandi to be followed when the proclamation of a new human right should be proposed'.[48] This delightful comparison notwithstanding, it is plain that international human rights law is dynamic and expanding. Whatever achievements it can claim in the protection of individual and group rights have been secured through a struggle against the traditional society and the sovereign State, or for the developing nations, the colonial powers and multinational corporations as well. The imple mentation of international human rights law, of course, is far from being effective, and the need for improving the mechanism for implementation is urgent. Nevertheless, there is no turning back.

VISIONARY CHINESE LIBERALISM

That Chinese liberalism in the twentieth century and universal human rights are both visionary and dynamic, fighting against great odds for a better world can not be denied. What Richard Falk has to say about the Grotian quest in his discussion of a new world order, it seems, is an apt description of their situation:

> If, however, the purposes of our endeavors is to create a better world, then fantasy, whether self-deceived or self-aware, is of little help. We require instead a special sort of creativity that blends thought and imagination without neglecting obstacles to change. We require, in effect, an understanding of those elements of structure that resist change, as well as a feel for the possibilities of innovations that lie within the shadow land cast backward by emergent potential structures of power. Only within this shadow land, if at all, is it possible to discern 'openings' that contain significant potential for reform, including the possibility of exerting an impact on the character of the emergent political realities.[49]

On this basis of both being visionary and dynamic, a genuine dialogue between Chinese liberalism and universal human rights has been as productive as it is promising. Two points deserve to be underlined. To begin with, Chinese liberalism was and still is, a response to the needs and aspirations of the society and people in a specific period of time. The accusation by the authoritarian governments that concerns for human rights in China were merely a tool of foreign powers was definitely a distortion. It is true that old values and habits died hard, and that both

nationalism and communism were inimical to individual rights. Under these circumstances, it should not be surprising that genuine liberals were few and far between in China and, for that matter, in Taiwan. However, this situation only points to the obstacles for human rights ideas to play a predominant role in Chinese national life; it hardly proves that human rights ideas will never be accepted into China.

Compared with international human rights standards, which are the heritage of mankind, aimed at meeting the needs of every person on earth, Chinese liberalism is a partial effort, drawing from them inspirations and support. Yet they exist in a symbiotic relationship. It is clear that if the challenge to the universality and indivisibility of human rights sponsored by the Chinese government, among others, in recent years were successful, Chinese liberalism would be again dealt a severe blow. By the same token, if liberalism succeeds in shaping the future of China, universal human rights would definitely be so much more secure around the globe.

Second, having fought against the authoritarian governments through the decades, Chinese liberalism tended to emphasize civil and political rights, while universal human rights have expanded its scope and come to encompass not only economic and social rights, but many new rights of global concerns. Indeed, the rights to national self-determination, racial equality as well as the right to development have been given priority in the international society of late. This difference in emphasis is not absolute; many a Chinese thinker has dwelt on economic and social rights or, for that matter, on group rights. Luo Longji's concern with meeting the material needs of the people, and Wei Jingsheng's defence of the rights of the Tibetan people are cases in point.[50] Nevertheless, on the whole, the Chinese liberals have been negligent of the nitty-gritty of day-to-day life. They were especially deficient in their appreciation of women's rights and rights of minorities. Traditional male chauvinism and Great Han ideology clearly pose serious problems for achieving a just society. In this sense, human rights movement in China is no less a revolutionay movement than the KMT or the Communist revolutions. It strikes at the hard core of traditional values and prevailing political structure.

To reiterate, Chinese liberalism naturally appealed to international human rights movement for support. Indeed the governments, both in Beijing and Taipei, have been taken to task for their human rights records, and still are. The disputes and quarrels between the United States and the People's Republic of China over the repressive measures against political dissidents and the most-favoured-nation clause are too well-known to warrant detailed discussion. Plainly, human rights concerns are now

deeply embedded in the reality of international politics, and pressures are used in part to serve other foreign policy goals. However, it should be realized that for some Chinese liberal thinkers and activists, human rights politics is politics of a higher kind. They were prepared to face accusations of being 'national traitors' and the 'running dogs of imperialism and they need international support'. During the height of the Democratic Wall Movement in 1978–1979, Deng Xiaoping was greatly offended when he heard that some political dissidents were calling for President Carter to intervene to help promote human rights in China. Similarly, through the decades of 1970s and 1980s, before the opposition in Taiwan was permitted to come together in the Democratic Progressive Party, the opposition leaders sought and were given much support by international non-government organizations, and less directly so by the expression of concern of the US government.

In summing up, a genuine dialogue between Chinese liberalism and universal human rights has been going on for some time, and it is gaing momentum. Based on a vision of a better world and commitment to bring it about, it must be a dynamic process of give and take. It is, and will be, direct, simple and straightforward, without the deadly burdens of nostalgia or apology.

NOTES

1 For Deng Xiaoping's position on human rights, see his speech to the Sixth Plenary Meeting of the Twelveth Central Committee of the Chinese Communist party, 28 September 1986. See also his comments, 'Upholding' Bourgeiose Liberties is the Equivalent of Taking the Capatalist Road, May and June, 1985. Both items are reprinted in 'Reference Materials Concerning China's White Paper on Human Rights', Beijing: Hong-qi Publishing Company, November 1991. pp. 38–39.

2 See 'Reference Materials Concerning China's White Paper', pp. 6–14.

3 For the position of Lee Kuan Yew on human rights and his condemnation of the Western nations, see Fareed Zakaria, 'Culture is Destiny: A Conversation with Lee Kuan Yew', *Foreign Affairs,* 73, March/April, 1994, pp. 109–126.

4 For China's position at that conference, see statement by Ambassader Liu Hiaqui, 15 June 1993. For the position of the Singaporean government, see the statement by Foreign Minister K.S.Wong, Vienna, June 1993.

5 See for examples, Joseph Chan, 'The Asian Challenge to Universal Human Rights: A Philosophical Appraisal', University of Hongkong, March 1994. Chandra Muzaffar, 'From Human Rights to Human Dignity', Paper presented at JUST international Conference, 'Rethinking Human Rights', Kuala Lampur, 1994.

6 See Samuel Huntington, 'The Clash of Civilizations?' *Foreign Affairs,* 72, 3, 1993.

7 Charles Taylor, 'Conditions of an Unforced Consensus on Human Rights', a paper delivered at the second workshop in Bangkok, March 24–27, sponsored by The Carnegie Council on Ethics and International Affairs.

8 See Guy Alitto, 'The Conservative as Sage: Liang Shu-ming', in Charlotte Furth (ed.), *The Limits of Chang: Essays on Conservative Alternative in Republic China,* Harvard University Press, 1967; Guy Alitto, *The Last Confucian: Liang Shu-ming and the Chinese Delimma of Modernity.* Berkeley: University of California Press, 1979.

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13 This brief discussion primarily draws on the following sources: Jerome B. Grieder, *Hu Shih and the Chinese Renaissance,* pp. 277–279; Soong Qingling, *The Struggle for New China.* Beijing, 1952; Zhou Tiendu, *The Biography of Cai Yuanpei.* Beijing: People's Publishing Company, 1984; Gao Pingshu, *A Collection of Cai Yuanpei's Political Works.* Hebei Publishing Company, 1985; *Selections from Hu Shi's Letters,* vol. 2, pp. 158–163, pp. 168–203, Beijing, 1970. Also consult Chen Shu-yu and Tao Hsin (eds), *The China League for Civil Rights: Collection of Historical Materials of the Republic of China.* Beijing: Chinese Academy for Social Sciences, 1979; Chen Shu-yu, *The China league for the Protection of Civil Rights.* Beijing Publishing Company, 1985.

14 *Sheng Pao,* Shanghai, 31 December 1932. Also consult Chen Shuyu, *The China League for Civil Rights,* pp. 3–5.

15 Chen Shu-yu, *The China League for Civil Rights,* pp. 36–104. Zhou Tiendu, *The Biography of Cai Yuanpei,* pp. 318–330.

16 For Wei's writings, see James D.Seymour (ed.), with an introduction by Mab Huang and James D.Seymour, *The Fifth Modernization: China's Human Rights Movement, 1978–1979.* Human Rights Publishing Group, Earl M. Coleman Enterprises, 1980. For Wei's self-defence at the trial, see *Spearhead,* 10, summer 1981, and 11, autumn 1981, New York City. Also Wei Jingsheng, *The Courage to Stand Alone: letter from Prison and Other Writings,* edited and translated by Kristina M.Torgeson, New York: Viking, 1997.

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17 Wei Jingsheng, 'The Fifth Modernization—Democracy', in James Seymour, *The Fifth Modernization,* pp. 47–70.

18 Ibid.

19 Wei Jingsheng, 'Human Rights, Equality and Democracy—A Sequel to the Fifth Modernization', in James Seymour, *The Fifth Modernization,* pp. 141–147.

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23 Merle Goodman, *Sowing the Seeds of Democracy in China,* p. 42.

24 James Seymour, *The Fifth Modernization,* p. 29.

25 Ibid., pp. 83–86.

26 See Gong Min, 'Letter to President Carter', in Seymour, *The Fifth Modernization,* pp. 227–239.

27 James Seymour, *The Fifth Modernization,* p. 19.

28 For this brief discussion of the Free China Movement, see Fu Chen (ed.), *The Collected Works of Lei Chen*. Taipei, 1989; Chang Chung-tung, *Five Essays on Hu Shi*. Taipei, 1987; Chen Jui-chung, *A Historical Analysis of Constitutional Discourses in the Free China Semi-Monthly*. Taipei, 1994; *The Tortuous Path to Freedom and Democratic Rule in Taiwan: A Collection of Essays in Commemoration of the Thirtieth Anniversary of the Lei Chen Case*. Taipei: Chen Society, 1992.

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30 Ibid., Vol. 11, p. 59.

31 *Free China,* 1, 1, Cited in Chen Jui-chung, *A Historical Analysis,* p. 88.

32 Chen Jui-chung, *A Historical Analysis,* p. 89.

33 Ibid., pp. 56–57.

34 Fu Chen, cited in Chen Jui-chung, 'The Discourse on Constitutionism', *Free China,* Taipei, 1994. p. 62.

35 Chen Jui-chung, *A Historical Analysis,* p. 67.

36 For Chang Fo-chuan's ideas on liberties and rights, consult his 'Freedom and International Peace', *Free China,* 8, 9, and 'The True Meaning of Liberty', *Free China,* 8, 10.

37 In Fu Chen (ed.), *The Collected Works of Lei Chen,* Vol. 11, pp. 106–107, cited in Chen Jui-chung, *A Historical Analysis,* p. 68.

38 See Hu Shih's speech, 'From the Quest of Freedom of Speech to the Discussion of (Creating) a New Party', in *Free China,* 18, 11.

39 For a discussion of the formation of the new political party, consult, Chang Chung-tung, 'Lei Chen and the Opposition Party', in *The Tortuous Path,* pp. 55–72.

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41 Louis Henkin, *The Rights of Man Today*. Boulder: Westview Press, 1978, p. 1.

42 Maurice Cranston, *What Are Human Rights?* New York: Taplinger Publishing Co., 1973, p. 6; Louis Henkin, *The Rights of Man Today,* pp. 1–2.

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Practice to Theory: States of Emergency and Human Rights Protection in Asia

Colm Campbell and Avril McDonald

States of emergency tend to be nasty, brutish and long. Nasty, because they typically entail the suspension of constitutional guarantees; brutish, because they are almost always associated with significant human rights violations;[1] and long, because governments, having once equipped themselves with wide-ranging powers, are loath to see them lapse. Not surprisingly, therefore, the phenomenon of emergency has attracted considerable interest in recent years, with a number of studies by intergovernmental and non-governmental organizations and academic works focusing on the link between human rights abuses and such declarations.

These studies have developed a variety of analytical frameworks for probing this link. As these frameworks are, without exception, non-country-specific, their application to states of emergency in Asia might be expected to be unproblematic. In practice, there has been a radical contestation in some quarters of the applicability to the region of analyses based on 'universal' human rights standards. The core objection has centred on the question of 'Asian values'. Proponents of the Asian values thesis argue that it is inappropriate to attempt to apply to Asian countries some human rights standards that are viewed within the West/North as being universal. The standards in question, it is claimed, conflict with communitarian Asian values which tend to emphasize duties rather than rights. These arguments were articulated with a particular stridency during the ascendancy of the Asian 'tiger economies'; the impact of the more recent economic downturn on the mindset upon which these claims are founded remains to be seen.

But irrespective of the economic vagaries, the validity of such claims must be tested. Does examination of the record of Asian emergencies reveal a typical pattern of human rights violations? Should practice under states of emergency in the region be viewed in the context of the individual's duty to the collective? What relationship does the 'Asian values' debate bear to attempts by local non-governmental organizations

(NGOs) to articulate human rights standards in a voice that is appropriate to the region? What strategies are available for an amelioration of the situation?

This paper attempts to address these questions, first by examining practice in three Asian countries that have experienced emergencies in recent years. The initial question to be addressed is the empirical one: does practice under states of emergency in Asia correspond with that in other parts of the world? What, if anything, is unique to Asia in this regard, and how do recently developed analytical frameworks fit the Asian experience? Inevitably, this leads to the question of the appropriateness or otherwise of human rights standards which are claimed to be universal and thus to an engagement with the 'Asian values' debate in the context of emergencies.

ASIAN EMERGENCIES

Provision for resort to emergency powers in exceptional circumstances is the norm in the world's constitutions. Most envisage the formal declaration of a state of emergency or a state of exception or siege. Some make additional or exclusive provision for the imposition of martial law, whether expressly in a written constitution, or, in the case of some common law countries, by virtue of judge-made precedent. But the broad outlines are similar: where a serious threat is deemed to exist, normal constitutional safeguards can, to a greater or lesser degree, be suspended, and sweeping powers placed in the hands of the executive.

In addressing the question whether this pattern is followed in Asia, this chapter examines a sample of recent emergencies in Asia. The countries chosen—China (1989–1990), India (1962–1990) and Malaysia (1964-present)—represent a mixture of political and economic systems and ethnic and religious groups. The dates in question have been selected in order to highlight points of particular importance, and should not be taken to indicate that the emergencies in question ended at the chosen cut-off point.

The pattern of constitutional provision in relation to emergencies in these countries follows that found in other parts of the world. This is scarcely surprising in view of the widespread colonization of Asian countries by European powers from the eighteenth century onwards. The former rulers, particularly when facing twentieth century nationalist agitation, tended to rely increasingly on emergency provisions of one sort or another. The outlines of such provisions then tended to be carried through in post-independence constitutions. Both India and Malaysia were formally part of the British Empire, with legal systems

that bear the imprint of a shared historical legacy. The exception, China, has a legal system very much its own, drawing on principles of 'socialist legality'.[2] But despite marked political and economic differences, China corresponds to the global model in that it provides for emergency powers in the shape of martial law.

The current (fourth) Constitution of China explicitly provides for military intervention in that it gives the Standing Committee of the National People's Congress the power 'to decide on the enforcement of martial law throughout the country or in particular provinces, autonomous regions or municipalities directly under the Central Government'.[3] But it does not define the circumstances in which resort may be had to the power.

The Indian constitution, which has been in force since 1947, provides both for the imposition of martial law,[4] and for the proclamation by the President of a state of emergency.[5] While the Malaysian constitution does not expressly provide for martial law, it does contain formal provisions for the imposition of emergencies by the King (the Yang di-Pertuan Agong).[6]

Examination of constitutional standards in the abstract can, of course, be notoriously misleading. Of more importance is their practical application. Specifically, to what use have emergency provisions in Asian countries been put? The first issue to be addressed is that of the circumstances that have been taken to justify resort to emergency powers.

Malaysia had four emergencies in the period in question: the first (declared in September 1964) was in response to serious Indonesian aggression. Despite the removal of the threat, the emergency was never formally revoked, though none of the special powers introduced have been invoked in recent years, and jurists consider the emergency to have lapsed through passage of time.[7] The basis of the second Malaysian emergency (declared in September 1966), which was confined to the state of Sarawak, lay less in a threat to the life of the nation than in a relatively peaceful power struggle between the Federal Government and the Chief Minister of the state. As with the first emergency, it has never been formally revoked, though it also is generally considered to have lapsed. Race riots in which at least 200 people lost their lives provided the justification for the third emergency (declared in May 1969). But despite the removal of the circumstances giving rise to the threat, the emergency has not been revoked, and emergency laws adopted on foot of the proclamation are still applied. The fourth emergency (declared in November 1977) bore notable resemblances to the second, in that it was limited to one state (Kelantan) and arose out of a power struggle,

conducted without overt disorder, between political parties, one of which formed the government at the federal level and the other which dominated at the state level. Once the federally dominant party had achieved its objectives, the emergency was brought to an end.

Some parallels to the Malaysian experience can be found in India during the period in question. The first Indian emergency (declared in October 1962) was introduced in response to external aggression in the shape of an attack by China on India's northeastern border. But despite the fact that a cease-fire came into effect in the month following the proclamation, the emergency was not revoked. A fresh external threat emerged when hostilities broke out between India and Pakistan in April 1965. Although a peace agreement was signed in January 1966, the emergency was not revoked for a further two years.

A further outbreak of hostilities between India and Pakistan led to the second emergency (declared in December 1971). The pattern of previous emergencies soon reappeared; hostilities ceased within a matter of weeks, but emergency powers remained in place, shading into the third emergency which began in 1975. In the latter case, the justification offered was not external aggression but an internal threat arising from protests, strikes and a degree of political violence. Many saw the emergency as necessitated less by a threat to the life of the nation than as a means of preserving the then government of Mrs Indira Gandhi which stood accused of incompetence and corruption. Following a general election in March 1977 in which Mrs Gandhi's party was heavily outpolled, both the 1975 and the 1971 emergencies were terminated.

Martial law, as provided for in the Chinese constitution, was imposed in Lhasa in March 1989 in response to Tibetan protest marches, and remained in force until May 1990. But these events were largely eclipsed by the proclamation of martial law in eight central districts of Beijing, including Tiananmen Square, in May 1989. In the following months there was a parallel proclamation in Chengdu. Resort to emergency powers represented the government's response to a peaceful student-led pro-democracy movement which emerged in the spring of 1989. Student discontent found echoes amongst the intelligentsia and amongst workers in state-run enterprises who had gained relatively little from China's rapid, though uneven, economic development. The crackdown which followed came to a formal end only with the ending of martial law in January 1990.

The focus thus far has been on resort to emergency powers in the strict sense, whether labelled as such or as 'martial law'. But the statute books of many states, including those in the survey, frequently include powers which are equivalent to emergency powers in at least some respects, but

which bear the 'security' or 'anti-terrorist' labels. A clear example can be found in the Malaysian Internal Security Act 1960 which permits extended detention without trial. The Act is provided for under Article 149 of the Malaysian Constitution which exempts such legislation from the requirement of conformity with certain fundamental rights provisions. Originally introduced to coincide with the ending of an emergency proclaimed to cope with communist insurgency, its powers have remained available to the government ever since. The Indian Constitution likewise provides for 'preventative detention' in parallel to its formal emergency provisions, thus mandating the Maintenance of Internal Security Act 1971 (MISA), which was in force until 1978, and other similar legislation. China employs a somewhat different device to achieve a similar effect in relation to administrative detention. Under its *laojiao* system, persons may be sent for 're-education' without the need, in many cases, for a formal charging and sentencing process. Such detainees may then be held indefinitely, subject only to 'successful re-education'.

A number of thematic threads link experience in these states. The first is that, despite constitutional provisions which permit emergencies only where there is a serious threat to the life of the nation, it is by no means the case that emergency powers were only invoked where such a threat could be shown objectively to exist. Instances where this standard was met include those proclamations of emergency issued following the outbreak of hostilities with, or armed intervention by, a neighbouring state (Malaysia 1964, India 1962 and 1971), and those which followed the outbreak of serious political violence (Malaysia 1969). But even where the initial proclamation of an emergency was justified, there was a tendency to keep the emergency in place long after the immediate threat had disappeared. Lack of use of the powers might lead jurists to assert that the emergency in question had lapsed (as in relation to the 1964 Malaysian emergency), but, in others cases, the emergency powers put in place remained, and in the case of the 1969 Malaysian emergency, remain in use.

A constant theme running through this area is the uneasy relationship between emergency and democracy or democratization. In general, three broad scenarios of conflict can be sketched: those in which the existence of emergency powers tempts democratically elected governments to behave undemocratically; those in which non-democratically elected governments resort to emergency powers in order to resist claims for democratization; and those situations, typically military coups, where emergency powers are used to topple democratically elected governments.

Malaysia and India provide examples from the first category. As regards the 1966 and 1977 Malaysian emergencies, there was little overt disorder in Kelantan, and such turmoil as existed in Sarawak seems to have been created by groups aligned with the federal government which imposed the emergency. The suspicion exists that, in these instances, emergency was used less in response to a real threat to the security of the state than as a weapon in a political battle fought on the terrain of the constitution.

In neither of those instances was there a threat to the existence of the central government. Where such a threat is perceived to exist, a key question to be asked in addressing its validity is whether the purpose of the emergency was to safeguard the security of the nation, or merely to preserve the government of the day? Preservation of her government seemed the dominant consideration of Mrs Gandhi in putting in place the 1975–1977 Indian emergency. To a significant extent, resort to emergency powers therefore represented a means of buttressing a domestic political position rather than dealing with an objective threat. An example of a non-democratically elected government using emergency powers to resist claims for democracy can be found in China (1989–1990). There, the activities of the student-led protest movement prior to the clampdown were almost entirely peaceful; such actions amounted to a 'threat' to the state only because that state was so constructed as to be incapable of accommodating significant dissent.

These country-descriptions may paint a misleading picture in that they suggest a number of discrete emergencies in particular jurisdictions, whereas the true picture typically involved a series of emergencies, with one shading into the other. Typically, an emergency declared in response to an external threat (India 1975 or the 1964 Malaysian emergencies) was kept in place after that threat was removed, and the emergency powers which were put in place were then deployed against a perceived internal threat (as in the 1975 Indian emergency), or the proclamation was used to buttress a fresh proclamation of emergency in response to such a 'threat' (as in the 1966 Malaysian emergency).

In examining the specificity of the Asian experience in relation to emergency, a key question to be addressed is how well that experience fits with global analytical frameworks. International law attempts to deal with emergencies principally through the mechanism of derogation clauses in human rights treaties. Such clauses view emergencies as temporary phenomena, to be dealt with in accordance with what is referred to in the report of the first United Nations Special Rapporteur on States of Emergency (the 'Questiaux Report')[8] as the derogation 'reference model'. Under this, emergencies would be formally

proclaimed ('the principle of proclamation') in response to an actual or imminent grave threat to the life of the nation ('the principle of exceptional threat'). The appropriate intergovernmental body would be informed ('the principle of notification'), and only measures proportionate to the threat would be taken ('the principle of proportionality'). While many rights can potentially be limited, others are non-derogable ('the principle of inalienability of certain fundamental rights'), and, in any case, there can be no discrimination on grounds such as race, colour or sex ('the principle of non-discrimination'). In accordance with the principle of proclamation, the powers invoked would be formally designated as emergency powers, or as martial law powers, it being envisaged that constitutional safeguards in relation to their use would be kept in place.

Recognizing the realities of state practice, the Questiaux Report identified five deviations from the reference model: states of emergency not notified; *de facto* states of emergency (powers equivalent to emergency powers are taken without proclamation of emergency); permanent states of emergency (where over time, less and less account is taken of the imminence of the danger, and the principle of proportionality is no longer considered to be fundamental); complex states of emergency (involving parallel or overlapping states of emergency and a 'piling up'[9] of emergency provisions); and institutionalization of emergency regimes (when, following an emergency of some kind, there is a partial dismantling of the emergency apparatus, with the stated aim of an eventual return to normality). As the report notes, in many of these situations states also adopt provisions which are similar to their formal emergency powers, but such additional powers are permanently available as 'state security' or 'anti-terrorist' legislation or are incorporated into the ordinary criminal law.

The other analytical framework frequently employed in relation to emergencies is the Fitzpatrick/ILA model, which develops the distinction which the Questiaux Report drew between *de jure* and *de facto* emergencies, but which places additional focus on whether the objective circumstances justifying resort to emergency powers actually exist. This provides four basic divisions: good *de jure* (objective threat exists), bad *de jure* (no objective threat), classic *de facto* (objective threat exists) and ambiguous or potential [bad] *de facto* (no objective threat). In addition, two further categories are identified: the institutionalized emergency (where emergency powers are incorporated into ordinary law) and regimes of ordinary repression (where extreme restrictions on human rights are the norm).

If these two models could be said to have particular strengths, it is that the Fitzpatrick/ILA framework is most effective in categorizing discrete emergencies, while the Questiaux model is most useful in dealing with situations of overlapping emergencies. There is little difficulty is fitting Asian examples into either model.

The 1964 and 1969 Malaysian emergencies could, for instance, at the time of their proclamation be considered good *de jure* emergencies, while those of 1966 and 1977 fell into the bad *de jure* category. Intensive, if sporadic, use of the Internal Security Act, without the existence of any real threat (for instance during 'Operation Lallang' in 1987 when over 100 non-violent critics of the government were detained), could be considered to amount to a bad *de facto* state of emergency. Overall, the picture which emerges is that of a complex state of emergency, with layers of overlapping emergency powers of one sort or other amounting to a permanent state of emergency.

The complex emergency phenomenon can also be observed in India with the merging of the 1971 emergency (initially good *de jure*), and that of 1975 (bad *de jure*). Thereafter, *de facto* emergencies could be observed in Assam, the Punjab, Kashmir and other areas.

In the case of China, many would argue that the 'problem' posed by non-violent pro-democracy demonstrators could not be considered a sufficient threat to warrant a proclamation of emergency, and resort to martial law in Beijing in 1989 should fall into the bad *de jure* category. A similar assessment could be made about the imposition of martial law in Tibet in the same year.

Because emergencies typically remove normal constitutional constraints to a greater or lesser degree, the legal strategies available to states are many and various. The model of state response frequently presented by governments is that of the clinical removal of a particular threat, but this suggests a degree of precision and proportionality that is not always apparent. Identification of the 'threat' in very broad terms can lead to a seepage of emergency powers into a wide variety of social spheres, resulting in restrictions on political opposition and on economic actors. And even where the threat is narrowly defined, the response can be entirely disproportionate.

The result-orientated nature of emergency powers, with its focus on threat-removal, necessarily entails a shift from due process models to crime-control models of law enforcement. This shift is clearly illustrated by resort to special courts of one sort or another in which normal safeguards are removed or lessened, thus permitting convictions in situations where, ordinarily, none would be secured. Frequently this is

accompanied by an attempt to minimize the role of the judiciary, with a resultant concentration of power in the hands of the Executive.

The power and independence of the judiciary came under attack during the third Indian emergency (1975–77), when, by a series of constitutional and legal amendments, the courts' jurisdiction to decide disputes relating to the election of the Prime Minister and others was withdrawn,[10] an attempt was made to put several controversial pieces of legislation beyond constitutional review, and the criteria for the appointment of superior judges were diluted. Subsequently, concerns emerged about the fairness of trials conducted before the 'Designated Courts' provided for in the *de facto* emergency powers contained in the Terrorist and Disruptive Activities (Prevention) Act 1985 (TADA). Before such courts, rules of evidence were changed to place the burden of proof on the accused and confessions were made admissible in circumstances in which they ordinarily would not be. During the Malaysian emergencies, no direct attempt was made to interfere with the independence of the judiciary, but fairness of trial in relation to 'security offences' (under the Internal Security Act) was vitiated by the provisions of the Essential (Security Cases) (Amendment) Regulations 1975 ('ESCAR'), under which such offences were tried by a judge sitting alone in proceedings in which special rules of evidence applied.

In China, following the Tiananmen Square crackdown, a large number of suspects were tried before ordinary People's Courts following instructions from the Supreme People's Procurate telling public security agencies not to be 'hamstrung by details' in prosecuting 'counterrevolutionary crimes'. Though not depending on the (geographically limited) proclamation of martial law for their validity, the trials can best be considered as examples of the *de facto* emergency phenomenon. In a move which gave the proceedings the air of show trials, the hearings were sometimes televized, and the possibility of acquittal was greatly diminished by the vague nature of many of the charges. The senior Chinese judiciary displayed little inclination to curb such behaviour. Indeed the opposite seemed to be the case, when, a few weeks after the proclamation of martial law, members of the Supreme Court issued a statement demanding 'swift and severe punishment' for protesters.

In some of the instances surveyed above, problems in relation to the fairness of judicial proceedings arose during the trial phase proper, but in many cases, difficulties could also be identified in the pre-trial phase, when interrogations conducted in abusive circumstances yielded confessions upon which convictions were subsequently based. The pattern world-wide is for emergency legislation to grant wide-ranging

powers of arrest and extended detention to the security forces; powers which have a tendency to be used in an arbitrary fashion, and which frequently generate claims of torture and abusive treatment of detainees. In many instances, the purpose of such interrogations is less to assemble evidence upon which criminal charges can be laid than to obtain operational intelligence on 'subversive' activities. These interrogation-oriented provisions are frequently complemented by powers of extended or indefinite preventative detention, under which suspects can be imprisoned without trial.

The Asian countries surveyed above follow this general pattern both in respect of formal emergency provisions and of *de facto* emergency powers. Some examples from the later category are listed above in the discussion of powers of prolonged or indefinite detention without trial. A good example of arbitrariness in the use of detention powers is provided by the third Indian emergency when over 100,000 people were detained under the MISA and under the Defence and Security of India Rules. During this period, allegations of torture and abuse of detainees were relatively common. In the *de facto* situation of emergency which arose in several regions in the 1980s and 1990s, similar concerns have been voiced about the use of arrest and detention powers under the National Security Act 1980 (particularly as applied in Punjab and Chandigarh), the Armed Forces (Special Powers) Act 1958, and the Terrorist and Disruptive Activities (Prevention) Act 1985.

Following the proclamation of martial law in Beijing, members of the Army were given special arrest powers[11] along the lines of those already provided under martial law in Tibet.[12] Although detention remained governed by the ordinary law (under which a period of two to three months prior to charging was permissible), it seems that some of those arrested following the crackdown were held for periods that were substantially longer than normal. Predictably, allegations surfaced in Beijing and particularly in Tibet that some of those detained had been subjected to torture and abuse.

The focus here on issues surrounding detention and trial is intended to give a general flavour of the operation of Asian emergency powers rather than provide an exhaustive list of 'problems' in this area. Similar analyses could be presented of the use of powers of political censorship, arbitrary deprivation of life and restrictions on freedom of association, all of which loom large in the operation of emergency powers on the continent.

But if some features of these powers tend to reappear with depressing regularity, it is by no means the case that they do so to the same degree in all of the countries in the region. There have been clear differences for instance, between the record of India and Malaysia and that of such

countries as China. Amongst the factors which may help to explain this difference is the degree to which democratic processes are rooted in the country in question, and the related question of the clout of the judiciary. The Indian and Malaysian judiciaries were much more successful in placing limits on the use of emergency powers; a democratic context (however distorted during emergencies), seems much more likely to facilitate judicial independence than an undemocratic one.

While the intensity of the abuse of emergency powers in Asia has therefore been quite variable, the overall pattern that emerges from this survey is one replicated in examples from all parts of the globe. Northern Ireland from the foundation of the state in 1922 to the present day has seen a seemingly endless series of Civil Authorities (Special Powers) Acts, Northern Ireland (Emergency Provisions) Acts and Prevention of Terrorism (Temporary Provisions) Acts, accompanied by a catalogue of abuses. In Canada there was significant abuse of First World War emergency legislation (the War Measures Act 1914) as late as the 1970s, while Latin America in the 1970s and 1980s provides a multiplicity of examples of resort to martial law and other forms of emergency powers. The African continent presents a similar picture. If one salient fact emerges, it is that there is little unique in the use of emergency powers in Asia.

HUMAN RIGHTS AND 'ASIAN VALUES'

As in other parts of the globe, practices such as arbitrary deprivation of life or liberty, unfair trials and political censorship have been categorized in Asia by reputable national and international non-governmental organizations (NGOs) as human rights violations. This claim has not gone unchallenged. The contestation has proceeded at a number of levels, none of which are mutually exclusive. The first has been to deny the factual basis of the NGO claims. The battleground then becomes the accuracy of NGO fact-finding methods. Formally this argument proceeds irrespective of how the alleged violations are categorized. Implicitly, though, there is a recognition that the events complained of are in some sense unacceptable, or at least that they are viewed by the international community as unacceptable. No government in the region claims or is willing to admit that its security forces systematically engage in torture or in extra-judicial killings. The fact that the allegations relating to the countries which are the subject of the present chapter have, in the main, been articulated by reputable national, regional and international organizations tends to undermine the credibility of this governmental strategy.

The second response of governments is to rely on national sovereignty arguments. Under traditional doctrines of national sovereignty, a state's behaviour towards its own people was a matter for that state alone and not for the international community. But this view has increasingly been brought into question in the contemporary world. Mechanisms have been developed, for instance, under the UN Charter whereby under what is known as the '1503 procedure' allegations of gross and persistent human rights violations against a particular country can be investigated by the UN Commission on Human Rights and its Sub-Commission, irrespective of the state's treaty commitments.[13] Similarly, the International Tribunals for the Former Yugoslavia and Rwanda, currently established by the UN Security Council in the Hague and Arusha, have jurisdiction over violations committed by state officials against their own people not only during internal armed conflicts,[14] but in certain other situations as well.[15] National sovereignty arguments are therefore losing much of their force, at least where the most serious human rights violations are alleged.[16]

The third argument which is often invoked questions the universality of the human rights standards invoked by NGOs. While it might appear easy to dismiss such challenges as evasions by repressive regimes, some commentators who could not be considered apologists for such governments, have pointed to the specificity of Asian insights in this sphere. But one point which is often missed, should be stated at the outset. While the compatibility of the philosophical underpinning of international human rights discourse with Asian values has been frequently questioned, none of the authorities seem to suggest that the grosser violations identified above (including torture and extra-judicial executions) accord with current Asian values.

The relativist attack on universalist claims for human rights proceeds along a familiar route: human rights standards, indeed, the whole concept of human rights, are developed by particular cultures at particular times; they are therefore relative to that culture, and (in some variants of the argument) are dependent of particular levels of economic development being reached. Correspondingly, claims that human rights standards are globally applicable and should be uniformly applied are misplaced.[17] Universalism, it is claimed, would result in cultural homogenization, and, as the standards in question were developed in the West/North, this would mean Westernization. In a more recent variant of this critique, the claim for universality in human rights standards is seen as a device to permit Western/Northern governments, or intergovernmental organizations which they control, to interfere in the affairs of the developing world from a supposedly neutral perspective. The West can therefore continue in its longestablished strategies of domination—only

the language has changed. That this is the West's real motivation (rather than altruistic concern about human welfare), is taken to be proven by the prevalence of human rights violations in the West/North, and by the extreme selectivity of condemnations by Western governments.[18]

The edge of the latter argument is somewhat blunted by the fact that those loudest in the invocation of universal human rights standards in the developing world have been grassroots NGOs in the countries in question. These organizations tend to see international human rights standards as sources of empowerment for the marginalized rather than as instruments of Western hegemony. Hypocritical statements by Western governments are seen as just that, and invocation of international standards is seen as a means of exposing this hypocrisy.

Examination of international legal practice which claims to be an expression of universalism suggests that international standards are much more flexible and can accommodate much more variation than relativist critique typically recognizes. Relativists or particularists tend to present an either/or approach, whereas the reality is more complex. For a start, it is clear that human rights standards change over time. New norms are constantly developing, indeed the corpus of international human rights law has only developed since the Second World War, though of course its roots go back much further.

Nor does the application of internationally adopted standards produce the same results in all cultures at the same or at different times. For example, rights of freedom of expression typically contain a limitation clause permitting restrictions on the exercise of the rights in order to protect 'public order and morality'. This set of exceptions permits, for instance, the banning of pornography. But conceptions of morality differ from society to society, and what might be considered obscene in one society might not be so viewed in another. Thus application of universal standards can produce different results in different societies.

Regionalism has been a feature of human rights norm-setting for the last four decades. While the foundation stone of the contemporary human rights movement is the Universal Declaration of Human Rights (1948), many of the rights which the Declaration sets out have been cast in legal form with somewhat different emphases in the European Convention on Human Rights (1950)[19] and the American Convention on Human Rights (1969).[20] The most recent example of this trend is the African Charter on Human and People's Rights (1981),[21] an instrument which some have suggested as a model for Asia.

In the current context, the debate has tended to concretize around the issue of 'Asian Values' though other, more traditional forms of cultural relativism are also apparent. The arguments tend to be articulated at two

levels. The radical thesis is that the concept of human rights as such is incompatible with Asian values. The alternative view is that, while Asian values do not necessitate the rejection of human rights as such, the rights which would be appropriate for Asia do not necessarily conform to those that people in the West would regard as 'universal' (thus displaying their Eurocentric perspective).[22] The West, it is said, places greater emphasis on political and civil rights while non-Western cultures tend to attribute more value to economic and social rights. This is the prime explanation offered for the relatively low levels of ratification of international human rights instruments by Asian states.

The values which both arguments draw upon tend to be those which prioritize the duties of the individuals to society rather than their rights. Obligations take centre-stage, and consensus rather than confrontation is seen as the decision-making paradigm. In variants of the argument benevolent or paternalistic authoritarianism is seen as being more appropriate to Asian conditions than liberal democracy, either in general, or at least until a certain level of economic development is achieved.

At its most basic, the clash is presented as one between an atomised reductive Western view of humanity founded upon Cartesian dualism, and a holistic or integrated Eastern perspective.[23] It is difficult to identify precisely the differentiating core of what are presented as Asian values, but insofar as it is possible to do so, it seems to have to do with notions of connectedness which are to be contrasted with Western individualism.

The debt that the 'Asian values' debate owes to traditional Asian worldviews is at best unclear. Most commentators seem to relate 'Asian values' to the current social practices of contemporary Asia rather than to the continent's spiritual heritage, but some have drawn attention to the religious and philosophical legacy, the express or implied message being that it informs contemporary Asian perspectives, whether this contribution is explicitly recognized or not. Thus Confucianism, with its doctrine of humanity *(ren)* expressed in the statement 'all men are brothers' is taken to emphasize the need for experience to fit into the larger cosmological scheme permeated by *Dao* [the way]. Similarly, Buddhism is presented as employing *sunnata* [the void] as a unifying principle, with *karuna* [compassion] as a leading moral concept. And Hinduism envisages a transformation of the ordinary occluded self *(atman)* grounded in an awareness of a larger reality, with the importance of duty *(dharma)* being emphasized.

But mainstream 'Asian values' arguments tend to be economically or politically rather than philosophically rooted. In recent years, a variant of argument emerged in which the clash was seen as less of a universalist-relativist one, than as being between two competing universalisms, one

Western, the other Asian, at least in the economic sphere.[24] The implication of this universalist variant of the Asian values argument was that the viability of such values was not limited to Asia, but might for instance, be applied in Jamaica. As Wee has pointed out, this coincided with the rise of the 'tiger economies' of the Pacific rim.[25] Whether relativist or universalist in tone, this economically driven view of Asian values tends to draw heavily on modernization theory with an implicit debt to Max Weber. Sometimes described as 'neo-Confucian', this new progress-based ideological construct casts Malaysia's Mahatir and Singapore's Lee Kuan Yew as its leading lights. The prosperity which the region enjoyed until recently tends to be attributed to thrift, hard work and a family-oriented communitarianism, which is to be contrasted with deracinated Western individualism.[26] Sometimes, rather than being presented as being pan-Asian, the underpinning of this development is said to lie in 'ASEAN values', i.e. values which typify the ASEAN countries.

There is, of course, a significant element of caricature in all of this. Western countries display marked differences in the prioritization of rights, and the pan-Asian quality of what are presented as 'Asian values' is questionable. Economically based arguments now look decidedly shaky in view of the significant economic downturn which much of Asia has experienced. If the 'economic miracle' was due to Asian values, is the economic setback also attributable to these values? If so, have the values changed? Surely both the economic successes and failures of recent years can be largely explained in terms of the vagaries of capitalist economics? Even during the good years, economic develop ment was extremely patchy and uneven; does this mean that many countries in the continent were insufficiently Asian?

In any event, the economically based arguments tend to be fairly disingenuous as they present a choice between the full enjoyment of human rights and development, with the latter presented as a prerequisite for the former.[27] But it is distinctly questionable that over coming poverty and developing a country's economy must entail a certain amount of human rights abuses or suspension (mainly of civil and political rights). Universalists would argue that human rights, in fact, are indivisible, and economic and social rights cannot be gained at the expense of civil and political rights.[28]

Nor can reliance on Asia's philosophical and religious heritage provide much support for pan-Asian values. Any attempt (such as that above) to draw out threads common to Confucianism, Buddhism and Hinduism would need to operate at a very high level of abstraction indeed, since each presents quite a different worldview, Hinduism, in particular, having

little in common with Confucianism and Buddhism. The notion of connectedness has been alluded to, but cast in juridical terms; this could perhaps be expressed in terms of rights of solidarity (a 'third generation' right),[29] rather than necessarily leading to authoritarianism.

While Confucianism, Buddhism and Hinduism are East and South Asian in origin, Islam, the dominant religion in Indonesia (the world's most populous Muslim country), Pakistan, and Bangladesh, sprang from the Middle East, and employs theological concepts which are perhaps closer to Christianity (the majority religion in the Philippines).

In any case, not all Asian governments which challenge universalist notions of human rights rely on 'Asian values' arguments. China, for instance, appears to base its rejection of criticisms of its human rights record on relativist arguments based on levels of economic development rather than on a culturally determined work-ethic or its Confucian heritage. This is perhaps not surprising given the state's formal commitment to Marxist-Leninist principles.[30]

It is therefore difficult to see how there can be any pan-Asian values common to all societies in the region which are not simply human values. There is also the danger that if the 'Asian values' debate contributes to a construction of the 'East' (Asia) as an ideological or quasi-ideological bloc defined, partly at least, by its difference from the 'West' (Europe and North America), this could feed into the kind of 'clash of civilizations' argument, most forcefully put in recent years by Samuel Huntington.[31] In his view, the end of the cold war could see the emergence of new 'civilization'-based conflicts on the East-West divide. Were his prescription for Western preparedness to be taken seriously, his theory could easily become a self-fulfilling prophecy.

The rejection of pan-Asian values does not mean that there are not distinctive elements to the human rights debate in Asia. Given the extent of the continent and the uniqueness of the traditional value-systems to be found there, it would be surprising if there were not: Asia, ultimately, is half the world. Perhaps it might be more useful to speak not in terms of values (the phrase has become redundant in this context through overuse or misuse), but of 'perspectives' and 'emphases', and to conceptualize the issue not in unitary terms but as partly overlapping sets. There may be no [pan-]Asian values, but there clearly are distinctive sets of perspectives within Asia. In philosophical and religious terms, some such perspectives can be found in the various traditional value-systems mentioned above. In terms of institutional advocacy, the rather self-interested contribution of some Asian governments has already been noted; a more worthwhile contribution may be that from Asian NGOs from which a number of important initiatives have sprung in recent years.

When the question of the compatibility of perspectives flowing from traditional value systems with international human rights law is raised, the issue is sometimes addressed in terms of the difficulty (or impossibility) of deducing notions of human rights from such systems, although some make what is arguably a contradictory claim, locating the origins of international humanitarian law in ancient Asia, and suggesting that the outlines of public international law can be identified in India in the Vedic period (4000–1000 BC).[32] Rather than getting bogged down in this debate, a more productive way of looking at the question may be to ask whether international human rights norms which claim to be universal can accommodate imperatives which flow from Asian perspectives?

Take the question of the duties of the individual, an important issue in at least some of the value systems in the continent, a question which Asian NGOs have been careful to address, and a fixation for some Asian governments. It is scarcely true to suggest, as some commentators seem to, that international human rights law ignores the concept. Traditionally, duty has been recognized by implication rather than explicitly. The issue of limitation clauses has already been discussed. Such clauses permit limitation of rights on grounds such as 'public order', thus recognizing a duty to society in the exercise of the right. Similarly, under the principle of *Drittwirkung* or third party effect, a state is under a duty to prevent those under its jurisdiction from interfering with the exercise of rights by others, with obvious implications for the exercise of rights by individuals.

These could be considered negative obligations—obligations to refrain from doing something. Positive obligations have traditionally been viewed as more problematic, though not in every instance. In some cases, concepts of rights and duties have become conflated, at least where internationally recognized rights have been transposed at national level. Thus the right to elementary education has become an obligation to submit to such schooling, and the right to democratic participation has sometimes become an obligation to vote. The main problem that international lawyers have encountered with the idea of creating duties on individuals by international instrument is that the state, and not the individual has been seen as the subject of public international law.[33] This neat divide, though, is increasingly redundant in a world where individuals are recognized as limited subjects of international law, and the objects of both rights and duties under international law. Parallel issues arose when the African Charter of Human and Peoples Rights was being drafted. The Charter is the product of compromise between the rights of individuals as individuals, and their duties (as individual members of the

larger collective) to society as a whole.[34] Indeed, the preamble states that 'the enjoyment of rights and freedoms also implies the performance of duties on the part of everyone'. Some other recent initiatives have followed this trend.[35]

This would seem to suggest that the concept of duty as such is not incompatible with international human rights law. The 'problem' may only arise when exercise of rights is made conditional on performance of duties, or where duties are listed to the exclusion of meaningful rights. Many lawyers would argue that the concept of a duty is only meaningful if its non-performance could result in the imposition of a sanction, for which the various human rights instruments do not provide. But international human rights law would insist that the sanction itself be not incompatible with the standards it upholds, and that the procedures utilized to impose the sanction be fair by the same standards.

It might still be argued that the view of rights which universalism embodies maintains dualisms which sit uncomfortably with some Asian perspectives. Universalism, it could be said, conceptualizes both the individual-society relationship and the individual-individual relationship in terms of competing or potentially competing interests. While it is undoubtedly true that this dualism is maintained, it is not true to suggest that the international human rights corpus has not been capable of transcending it in certain instances. The best example is the right to self-determination which is granted to peoples in the ICCPR and the International Covenant on Economic Social and Cultural Rights. Conceptualization of the 'people' which is the repository of the right is difficult in traditional human rights terms. It is not a question of amalgamating numbers of individual rights. Individuals cannot invoke the right, or if they do, it has not been taken to present a justiciable issue. On the other hand, the concept of a people is meaningless without the individuals who make it up. The formulation is perhaps closer to some Asian conceptions of the relationship between the individual and the collective than to that portrayed in traditional human rights theory, and it is no coincidence that the modern push for the recognition of peoples' rights has come from the South rather than the West.

PROTECTING HUMAN RIGHTS: STRATEGIES FOR IMPROVEMENT

The recognition of the viability of the application of international human rights standards to Asia is only a first step towards addressing the problems identified earlier in this chapter. There remains the difficulty of actualizing these standards in a meaningful way. Clearly, there can be no

single 'solution', partly because the human condition and political realities are too complex to permit such an approach, and partly because engaging meaningfully with the issue will generate new questions, presenting new problems. But the impossibility of a neat solution need not and should not prevent the elaboration of strategies for change. All problems are not of equal magnitude, and the kinds of human rights violations outlined above demand a response.

The situation can be viewed as a matrix in which law is merely one element alongside such others as limited democratization and uneven economic development. The economic, political and social profiles of the countries comprising the region cannot wholly be separated from their positions vis-à-vis human rights. This paper is concerned solely with the legal dimension, but evidence from many parts of the world suggests the extreme difficulty of rendering human rights standards meaningful in the absence of democratization or where a country is extremely under-or unevenly developed. While a strong economy or trappings of democracy do not necessarily make for a sound human rights record, progress on these fronts bolsters efforts to strengthen human rights protections.

But to wait for all the elements of a solution to fall into place is a recipe for inertia. Work can proceed now on the development of strategies in the fields of standard-setting and enforcement which will be useful in itself and can contribute to an environment conducive to democratization and pluralization. The identification of elements of a successful strategy will require the examination of possible regional, sub-regional, and national approaches, which can be pursued simultaneously and which can be mutually reinforcing.

It should be recognized, however, that even assuming success in terms of standard-setting and/or enforcement of some or all of the various possible approaches which will be discussed, the protection of human rights in Asia during states of emergency can only be assured if derogation provisions are tightly drawn and are not regarded as an easy opt-out of the rights which may be guaranteed.

Regional Initiatives

The trend towards regionalism in human rights standard-setting,[36] which, as noted above, generated the European Convention on Human Rights, the American Convention on Human Rights and the African Charter on Human and Peoples' Rights, bypassed Asia.[37] While many Asian States have appeared untroubled by this situation, and have employed the arguments discussed above to legitimize their position, many NGOs and jurists in the region have long sought to bring Asia into line with the rest

of the world. As far back as 1965, proposals for an Asia Charter and Commission on Human Rights were mooted. In that year, a conference of 105 jurists from 16 countries of the Southeast Asian and Pacific region, assembled under the auspices of the International Commission of Jurists, adopted a declaration which affirmed that 'the conclusion of a Regional Convention on Human Rights among States in the Region should be considered as a means of making an important contribution to individual human rights and to the solution of national, racial, religious and other minority issues…'. The absence at that time of an Asian intergovernmental organization equivalent to the Council of Europe or the later Organization of African States and Organization of American States meant, however, that no forum existed within which the idea could take root, and this, combined with a lack of interest from states in the region meant that little progress was made.

The broad outline of the idea was revived in 1979 during the Sixth LAWASIA Conference in Colombo, Sri Lanka, with the establishment of LAWASIA's Human Rights Standing Committee (LHRC) which was tasked to 'initiate, as a matter of priority, steps towards the ultimate establishment of an Asian Commission and/or a Court for Human Rights in the LAWASIA region' and to 'urge ratification of the international conventions relating to human rights by governments within the LAWASIA region'.[38] The establishment of an Asia-Pacific Human Rights Commission was, however, considered to be a 'very long-term goal',[39] and LHRC has thus pursued an incremental and multipronged approach, which has included the dissemination of information concerning human rights and the promotion of awareness of human rights throughout the region; the establishment of a coalition of human rights NGOs in the region (ACHRO: the Asian Coalition of Human Rights Organizations); the establishment of national human rights institutions or centres; and the taking of steps to ensure the independence of the judiciary and jurists.

In furtherance of these short-term aims, it has been responsible for, *inter alia,* the translation of the Universal Declaration of Human Rights into several languages, including Thai, Filipino, Hindi, Malay and Burmese; for organizing a series of conferences and workshops devoted to human rights issues; and for initiating meetings with senior officials in the regions with the aim of pushing for the establishment of national human rights centres and increased regional co-operation on human rights. Implicit in this approach is a negation of the wellrehearsed government-sponsored arguments rejecting universal human rights standards because of their alleged incompatibility with 'Asian values'.

Although NGOs have been in the forefront of a critique of 'Asian values' arguments, they have also taken a leading role in attempts to articulate universal human rights standards in a manner most appropriate to the continent. In that regard, an important initiative was the development of 'Our Common Humanity—A Charter of Asian Human Rights',[40] which was developed out of a consultation process beginning in 1994 and involving over 100 Asian NGOs. In an explanatory note, its sponsors explicitly locate the document as a response to claims from some Asian governments that 'human rights is a western concept and has no relevance to Asia'. Rather than simply replicate well-worn formulae for the expression of rights, the draft charter seeks to locate sets of civil, political, and especially social, economic and cultural rights around groups of rights-bearers. Thus there are sections on the rights of students, rights of human rights defenders, women's rights and the rights of older persons, to name but a few. The draft envisages a wide variety of strategies at the national level for enforcement of remedies for rights-breaches. Its immediate thrust is less to propel states into a new legally binding convention than to create an Asian NGO consensus on an appropriate formulation of rights for the region, and thereby to raise consciousness of human rights issues generally. While it also calls for regional and sub-regional formal mechanisms, its prescriptions in this regard are somewhat sketchy.[41]

These efforts, combined with continued pressure on Asian states by the international community and some investor states, have borne some fruit. Asian states have recently shown a greater willingness to engage at least with the rhetoric of human rights, as evidenced by the 'Bangkok Declaration', adopted in 1993 by representatives of a number of Asian countries in the run-up to the World Conference on Human Rights; by the commitment made by many states in the region to further human rights with their endorsement of the Vienna Declaration; by the establishment of national human rights institutions in a number of countries; and by the initiatives taken under the auspices of ASEAN.

These initiatives have not been unproblematic. The Bangkok Declaration neatly encapsulates some of the complex politics surrounding human rights in the region: Asian governments appear, in theory at least, to be willing to make a commitment to international human rights but reject what they perceive as the use of human rights rhetoric by the West to promote what they regard as a self-interested Western agenda and to interfere in what they consider to be their sovereign affairs. In addition, Asian states are keen to be seen to be setting their own agenda and formulating their own responses to human rights concerns,[42] and not responding to Western imperatives.

If, as Tan suggests, Asia's confidence in standing up to and challenging the West on the question of human rights is largely attributable to its economic success,[43] it will be interesting to see what effect the recent economic downturn has on the debate. The faltering economies of Asia could, in one scenario, become more susceptible to Western influence and pressure (the linkage of loans to human rights records, for example); alternatively, the economic crisis could see Asian countries digging their heels in still further and asserting 'Asian values' ever more strongly in response to what may be regarded as yet further Western encroachment.[44] The economic downturn also impacts on the debate in another way—by deflating Asia's argument that its economic success was somehow attributable to its social and political model.

It is clear that even before the recent economic implosion, statements on priorities of rights and non-interference have had a clear critical sub-text, as discussed above. The states welcome progress in the codification of human rights instruments 'while expressing concern that these mechanisms relate mainly to one category of rights', that is, civil and political.[45] And, just as 'the interdependence and indivisibility of economic, social, cultural, civil and political rights' are reiterated, so, too, is the need 'to avoid the application of double standards in the implementation of human rights and its politicization'.[46] The rights to be recognized include 'the right to development, as established in the Declaration on the Right to Development, as a universal and inalienable right and an integral part of human rights…'.[47]

While many scholars are now drawing a link between human rights and development, a divide on the issue, which follows predictable lines is evident. Some see development as a prerequisite for the adoption of human rights standards, while others tend to argue that the develop ment debate be informed by human rights concerns, and that development and human rights should be seen as interdependent and as goals which must be pursued simultaneously.

Although one can take some encouragement from some of the sentiments expressed in the Bangkok Declaration, the acid test of good faith is less a willingness to employ ringing tones than a commitment to meaningful enforcement. On this point, the Declaration 'reiterates the need to explore the possibilities of establishing regional arrangements for the promotion and protection of human rights in Asia',[48] while recognizing 'that States have the primary responsibility for the promotion and protection of human rights through appropriate infrastructure and mechanisms…',[49] and recognizing 'that remedies must be sought and provided primarily through such mechanisms and procedures'.[50] Unfortunately, one effect of this approach is to displace responsibility

from the region as a whole back to States, creating a sort of chicken-and-egg scenario.

One could argue, however, that the Bangkok Declaration and Asian states' endorsement of the Vienna Declaration are at least evidence that the question of human rights has entered the governmental debate and is developing some momentum in Asia. If the foundations for an Asian Human Rights charter have not being laid, some obstacles, at least, appear to have been removed. Such a charter, if well crafted and if provided with effective enforcement machinery, could well be seen as the optimal solution, or at least as providing the best possible signpost on the route to a solution of the problems identified above. The charter could articulate a wide variety of universal human rights, including civil, political, social, economic, cultural and group rights, and rights to development in a way that was appropriate to the region. Included amongst these would be the right to freedom from torture and from arbitrary arrest, the right to a fair trial, the right to freedom of expression, and the rights of minorities. Recognition of the validity of Asian perspectives in this sphere could sound the death knell of the old 'Asian values' arguments. Participation in the negotiation of the charter by Asian states which have gained their independence since the Universal Declaration of Human Rights was first promulgated (1948) could give those states a greater sense of ownership of the new instrument than they may have of the old. Enforcement mechanisms could be devised which could build upon experience gained in the working of regional systems in other parts of the globe, thus ensuring their enhanced effectiveness. Provided derogation and limitation clauses were tightly drafted and adequately policed, the all-too-common abuses during states of emergency in Asia outlined earlier in this paper could be greatly reduced, though it is unlikely that they could be completely eliminated.

In practice, any such hopes may prove illusory, or at least premature. There still exists no pan-Asian intergovernmental organization equivalent to those responsible for generating regional human rights instruments in other parts of the globe (though arguably the UN might be able to play such a role). Antagonisms between some states in the region (for instance, between North and South Korea) are so intense as to make it hard to imagine their agreeing to negotiate on so fundamental an instrument as a human rights charter (although not every state in the continent would need to be involved in negotiations). And cultural differences within Asia are so marked that it might prove difficult to develop Asia-specific formulations of universal rights in a manner which would be regarded as culturally appropriate throughout the continent.

Finally, the danger exists that given the human rights record of some states in the region, any agreed formulation of rights would be so diluted and hedged with limitations, and any agreed enforcement mechanisms would be so ineffectual, as to render the charter virtually useless in terms of meaningful human rights advocacy.[51] In such circumstances, the charter might even be seen to legitimate human rights abuses in that refractory signatory states might be able to continue with abusive human rights practices and to use the inability or failure to hold them accountable under a diluted charter as a shield against criticism.[52] In such circumstances, a variant of the 'Asian values' argument might rise from the dead to be articulated by governments in the region in the following form: '[S]ince our record by reference to our own Asian charter is unimpeachable, any criticism of our practices in relation to human rights issues must be by reference to alien standards, and therefore an invalid exercise in Western/Northern hegemony'. If there is to be an Asian charter on human rights, and there are very many good arguments for suggesting that there should be one, it is vital for it to have teeth.

Sub-Regional Initiatives

The manifest difficulties with the rapid generation of a legally binding, Asia-wide Human Rights Charter, has led some to suggest that the immediate way forward lies at the sub-regional level. In this regard, the ASEAN area, where significant inter-governmental mechanisms already exist, appears particularly promising, at least in the short term. Currently, several national working groups have been formed—in Thailand, Indonesia, Malaysia and the Philippines—with the aim of supporting the goal of creating an ASEAN Human Rights Mechanism. Together, these national working groups constitute the Working Group for an ASEAN Human Rights Mechanism.

It is envisaged that the ASEAN Human Rights Mechanism would be an umbrella for a number of national and regional initiatives within the ASEAN bloc. These would include education and training initiatives; an ASEAN Declaration on Human Rights, to be based on the Universal Declaration of Human Rights, the Vienna Declaration and Programme of Action and the Bangkok Declaration; and an ASEAN Consultative Committee on Human Rights, which would serve as a forum for the study of the specific rights, mechanisms and other aspect of the ASEAN Human Rights Mechanism. The Working Group for an ASEAN Human Rights Mechanism believes that the ASEAN Consultative Committee on Human Rights should include a mechanism for NGO participation and should, in particular, explore the establishment of an ASEAN

Commission on Human Rights. More radically, the Working Group, at a workshop on the feasibility of an ASEAN Human Rights Mechanism, held in June 1997, recommended the drafting of an ASEAN Convention on Human Rights.

Although these developments may represent progress of a sort, the difficulties of setting up a Human Rights Mechanism within ASEAN should not be underestimated. During the meeting between the Working Group and ASEAN foreign ministers in July 1996, the Foreign Minister of Indonesia Ali Alatas explained that while setting up an ASEAN Human Rights Mechanism was good and to be welcomed, such a regional mechanism must be preceded by the establishment of national human rights commissions within each and every member state. However, this prerequisite could not be forced upon member states.

When one considers that a sound human rights record is neither a prerequisite for becoming nor remaining a member of ASEAN, the circularity of this approach becomes clear. By this reckoning, the decision to admit Cambodia, Burma and Laos as members to ASEAN (though no date has been set for their admission) must surely have postponed by some considerable time the day when an organization-wide consensus on human rights is achieved and an ASEAN Human Rights Mechanism established.[53]

One commentator has noted that ASEAN's failure to move beyond rhetoric 'suggests that they had little intention to set-up a regional human rights mechanism, but were merely trying to get some favourable publicity at a time when the world's publicity was focused on human rights. Indeed, privately, several senior officials of ASEAN countries admitted that the 1993 declaration had been made largely to make ASEAN look good.'[54] Whether this viewpoint is fair or overly cynical, it may be too early to assess. But actions speak louder than words, and the sincerity of ASEAN's intentions can only be judged according to the seriousness with which they pursue them. It is, thus, mildly encouraging that, during a meeting between the Working Group for an ASEAN Human Rights Mechanism and ASEAN Senior Officials, held in Malaysia on 22 July 1997, the organization seemed to retreat slightly from its earlier position. In response to a request for clarification by the Working Group of the statement in 1996 by the foreign ministers that the setting up of national human rights mechanisms in each of the ASEAN states is a prerequisite to the setting up of a regional human rights mechanism, the senior officials responded that what is needed is the organization of national focal points for human rights in each ASEAN state and not necessarily the setting up of national human rights institutions. National focal points would be necessary for any initiative on the regional

mechanism to move, as it will be through these bodies that the initiative could relate to ASEAN states. The national focal point could be a body connected with the foreign ministry or parliament, and would not necessarily have to be a separate national human rights institution like those in Indonesia and the Philippines.[55] This clarification seemed to ease the concerns of the Working Group, and may represent a softening of the ministers' position.

Thus, while ASEAN may represent one focal point for the establishment of a human rights mechanism in Asia, it may be unrealistic to harbour too high hopes at this stage. More generally, such moves may generate human rights initiatives and raise consciousness both within member states and sub-regionally. Indeed, a more likely and promising and less compromised approach to the promotion of human rights in Asia may yet emerge elsewhere at the sub-regional level. While space does not permit a discussion of the various initiatives that are occurring sub-regionally, by and large, under the umbrella of LAWASIA, these efforts may well bear fruit in the form of sub-regional charters. It seems possible, for example, that before any ASEAN human rights charter emerges, a charter for the Pacific region could become a reality.

What is clear is that in the absence of a region-wide consensus around the need to promote human rights in Asia and restrict their abuse during emergencies, a multipronged approach is desirable and necessary. If a group of like-minded states, such as those in the Pacific region, can agree on a geographically-restricted instrument, this could serve as a model for other sub-regional charters, and eventually for a region-wide instrument. Its symbolic value should not be underestimated. By introducing the concept of rights to Asia in the form of a treaty, it would put paid once and for all to the notion that human rights are by definition alien to Asian culture. Moreover, it would help substantially to develop the concept of human rights in an Asian context.

As seen above however, rights on paper can be rendered meaningless in practice without the ability to restrict resort to emergency powers and to monitor closely the exercise of such powers in order to ensure that proportionality is respected and non-derogable rights are not affected. Indeed, one could almost say that the utility of a charter could turn on its derogation provisions, since inappropriately drafted or policed derogation provisions could easily undermine the instrument, serving to legitimize human rights abuses under the colour of law rather than eliminate them. Thus, any sub-regional or regional charters will be of limited value unless declarations of emergency and derogations from human rights obligations are regarded first and foremost as a means of

protecting and safeguarding human rights and not as a means of facilitating rights-abuses.

CONCLUSIONS

Examination of states of emergency in Asia discloses a clear link between states of emergency (whether *de jure* or *de facto*), and human rights abuses. These types of abuses tend to be committed regardless of how the emergency is characterized. Tackling them will require a multi-layered strategy operating at the regional, sub-regional and national levels. There is a need to articulate human rights norms in a way, which is culturally appropriate to the region, while recognizing their universal character. In the longer term, an Asian charter could assist in this. The drafting of, and ratification by, a significant number of states of a regional human rights charter would contribute significantly to improving human rights in Asia, both generally and during states of emergency, provided that such a Charter does not inherently limit and compromise the rights it grants. It seems preferable to regulate resort to emergency, rather than making no specific provision for derogations, although any such derogations would need to be tightly controlled.

Formal guarantees however are likely to prove of limited value in the absence of democratization in the region, and may even serve a counter effect, by legitimizing abuses. Tackling poverty and the causes of social injustice will help improve the human rights and dignity of persons living in Asia, although the furthering of economic and social rights should not be seen as an alternative or substitute for civil and political rights.

For the immediate future, the best hope in standard-setting seems to lie at the sub-regional level. Both legal and non-legal initiatives can usefully be pursued. The adoption of a human rights charter for the Pacific region would seem to be a realizable goal, and the efforts of regional human rights and democracy organizations, and legal groups, such as LAWASIA, to achieve it should be supported, politically, diplomatically, and financially. Assistance can also be extended in disseminating human rights information sub-regionally. A more robust role for states in the region with reasonably clean human rights records in promoting human rights and responding to violations should be encouraged. Existing mechanisms for monitoring human rights abuses during states of emergency need to be more forcefully employed. Finally, Western actors need to develop a greater understanding of, and empathy with, legitimate perspectives within Asia on appropriate formulations of universal human rights standards.

NOTES

1 For a study of the relationship between human rights and states of emergency, see the Annual Reports of the UN Sub-commission's Special Rapporteur, Mr Leandro Despouy, from 1985 onwards and most recently, The Administration of Justice and the Human Rights of Detainees: Questions of Human Rights and States of Emergency', E/CN.4/Sub.2/ 1996/19 (18 June 1996), and Tenth Annual Report, E/CN.4/Sub.2/1997/ 19 and E/CN.4/Sub.2/1997/19/Add. 1.

2 For some insights into the Chinese version of socialist legality and of parallel concepts in North Korea and Vietnam, see H.Oda, 'The Procuracy and the Regular Courts as Enforcers of the Constitutional Rule of Law: The Experience of East Asia States', *Tulane Law Review,* 61, 1987, p. 1339.

3 Art. 67(20). See also arts. 80 and 89(16).

4 Art. 34.

5 Arts. 352 and 353.

6 Art. 150.

7 See C.Das, *Governments and Crisis Powers: A Legal Study On the Use of Emergency Powers*. Kuala Lumpur, 1996.

8 'Study of the implications for human rights of recent developments concerning situations known as states of siege or emergency', E/CN.4/Sub. 2/ 1982/15.

9 'Study of the implications for human rights', p. 29.

10 The Constitution (Thirty-ninth Amendment) Act 1975.

11 Urgent Notice of the People's Government of Beijing Municipality and the Headquarters of the Martial Military (No. 8), issued on 6 June 1989.

12 Order of the People's Government of the Tibet Autonomous Region (No. 2), 7 March 1989.

13 See Bruno Simma (ed.), *The Charter of the United Nations: A Commentary*. Oxford: Oxford University Press, 1994, pp. 888–892; F.Newman and D. Weissbrodt, *International Human Rights: Law, Policy and Process*. Anderson Publishing, 1990, p. 123; Christian Strohal, 'The United Nations Responses to Human Rights Violations', in Kathleen E.Mahoney and Paul Mahoney (eds), *Human Rights in the Twenty-First Century: A Global Challenge*. Martinus Nijhoff, 1993; Philip Alston, *The United Nations and Human Rights: A Critical Appraisal*. Oxford: Clarendon Press, 1992, pp. 144–181 regarding the 1503 and 1235 procedures.

14 See, for example, Theodor Meron, 'War Crimes in Yugoslavia and the Development of International Law', *AJIL,* 88, 1994, p. 78; Jordan J.Paust, 'Applicability of International Criminal Laws to Events in the Former Yugoslavia', *Am. U.J. Int'L Law and Policy,* 9, 1994, p. 499.

15 Article 3 of the Statute of the ICTR gives it jurisdiction over crimes against humanity committed in situations which may not amount to formal 'armed conflicts'. S/RES/955 (1994), 8 November 1994.

16 '[P] resent international practice clearly shows that states no longer refrain from intervening abroad when human rights are violated, irrespective of the nationality of the people concerned', Joe Verhoeven, 'Human Rights,

Intervention and Universality', in Proceedings of the International Law Association First Asian-Pacific Regional Conference, May 27–30, 1995, p. 98 at 99 (published by the Chinese Society of International Law-Chinese (Taiwan) Branch of the ILA, 1996. See also generally, Louis B.Sohn, The New International Law: Protection of the Rights of Individuals Rather than States', *Am. U.L.R.,* 32 (Fall 1992), p. 1.

17 The universalist-relativist debate has spawned a vast literature. See generally, D.L.Donoho, 'Relativism Versus Universalism in Human Rights: The Search for Meaningful Standards', *Stanford Journal of International Law,* 27, 1991, p. 345; Alison Dundes Rentlen, *International Human Rights: Universalism versus Relativism.* Basingstoke: Sage 1990; Jack Donnelly, *Human Rights in Theory and Practice.* London: Cornell University Press, 1989.

18 For a recent discussion of some of these issues, see Onuma Yasuaki, 'In Quest of Intercivilizational Human Rights: Universal vs. Relative Human Rights Viewed From an Asian Perspective', in Daniel Warner (ed.), *Human Rights and Humanitarian Law: The Quest for Universality.* The Hague: Martinus Nijhoff, 1997, pp. 43–78.

19 See James Fawcett, *The Application of the European Convention on Human Rights.* Oxford: Clarendon Press, 1969.

20 See W.Michael Reisman, 'Practical Matters for Consideration in the Establishment of a Regional Human Rights Mechanism: Lessons from the Inter-American Experience'. *St. Louis-Warsaw Transatlantic Law Journal,* 1995, p. 89.

21 See for example U.O.Umozurike, 'The African Charter on Human and Peoples' Rights', AJIL, 77 (October 1983), p. 902; B.Obinna Okere The Protection of Human Rights in Africa and the African Charter on Human and Peoples' Rights: A Comparative Analysis with the European and American Systems', *Human Rights Quarterly,* 6, 1984, pp. 141–159; Fatsah Ouguergouz, *Le Charte Africaine des Droits de l'Homme et des Peuples,* Paris: Presses Universitaires de France, 1993; Matar Diop, 'The African Charter on Human and Peoples' Rights and the inviolability of the fundamental rights', in Daniel Prémont, *et al.* (eds), *Non-Derogable Rights and States of Emergency.* Organisation Internationale et Relations Internationales 36. Brussels: Établissements Émile Bruylant, 1996, p. 421.

22 For Asian perspectives on human rights see Claude E.Welch Jr. and Virginia A.Leary, *Asian Perspectives on Human Rights.* Boulder: Westview Press, 1990.

23 This section draws upon, K.K.Inada, 'A Buddhist Response to the Nature of Human Rights', in C.E.Welsh and V.A.Leary, *Asian Perspectives on Human Rights,* 1990.

24 See CJW-L.Wee, 'The "Clash of Civilizations? or an Emerging "East Asian Modernity"', *Sojourn,* 11, 2, 1996, pp. 211–230.

25 CJW-L.Wee, 'The "Clash of Civilizations?"'

26 See, for example, F.Zakaria, 'Culture is Destiny—A Conversation with Lee Kuan Yew', *Foreign Affairs,* 73, 2, 1994, p. 109.

27 See, for example, Yasuaki, 'In Quest of Intercivilizational Human Rights', p. 51. On human rights and development generally, see Philip Alston, 'Peace,

Human Rights and Development: Their Interrelationship', *Bulletin of Peace Proposals,* 4, pp. 315–318; Jack Donnelly, 'The Right to Development: How not to Link Human Rights and Development', in Claude E.Welch Jr. and Ronald I.Meltzer (eds), *Human Rights and Development in Africa,* pp. 261–283.

28 The Inter-American Commission has consistently rejected the view that human rights can only be implemented when a state reaches a certain level of economic development. See Reisman, 'Practical Matters for Con sideration in the Establishment of a Regional Human Rights Mechanism'.

29 On third-generation rights see P.H.Kooijmans, 'Human Rights: Universal Panacea? Some reflections on the so-called human rights of a third generation', *Netherlands International Law Review,* XXXII, 3, 1990, p. 315.

30 For Chinese views on human rights, see Michael Davis, *Human Rights and Chinese Value.* Oxford: Oxford University Press, 1997; Jacqueline Smith (ed.), *Human Rights: Chinese and Dutch Perspectives.* The Hague: Martinus Nijhoff, 1996.

31 Samuel Huntington, 'The Clash of Civilizations?' *Foreign Affairs,* 72, 3, 1993, pp. 22–49. For a critique see Wee, 'The "Clash of Civilizations?" or an Emerging "East Asian Modernity"'.

32 For a discussion of some of these issues see J.A.Thomas, 'International Law in Asia: An Initial Review', *Dalhousie Law Journal,* 13, 683, 1990.

33 See Sohn, 'The New International Law'.

34 For a discussion of individualism versus collectivism, see Marlies Galenkamp, *Individualism versus collectivism: The concept of Collective Rights.* Rotterdam: RFS, 1993; J.Berting, *Human Rights in Pluralist World: Individuals and Collectivities.* London: Westport, 1990.

35 See the 'Universal Declaration of Human Responsibilities', put forward by the InterAction Council in September 1997. The Council was founded by Takeo Fukuda, a former prime minister of Japan, in 1983 and is supported by a formidable array of former world leaders.

36 Professor Joe Verhoeven, in 'Human Rights, Intervention and Universality', makes the point that while this trend 'should be encouraged so as to deepen or increase, between regional contracting parties, the protection given to rights established at a universal level. It is however objectionable when regionalization is an overt or covert way of correcting, modifying or mitigating what has been decided or agreed upon with the UN. Possible inconsistencies between international instruments cannot but facilitate such a purpose' (p. 101). In other words, regional human rights agreements, such as an Asian Charter for Human Rights, are not a substitute for universal human rights; they are merely a means of giving local effect to international, universal human rights.

37 This was acknowledged by the vice-chairman of Indonesia's National Committee on Human Rights, Marzuki Darusman, who observed: 'Asia stands out as an area that lags behind'. Quoted in *Far Eastern Economic Review,* 22 August 1996.

38 See 'Report on a Proposed Pacific Charter of Human Rights Prepared under the Auspices of LAWASIA', May 1989.

39 'Report on a Proposed Pacific Charter', p. 169.

40 The draft is published in the Asian Legal Resource Center and the Asian Human Rights Commission, 'Towards an Asian Human Rights Charter: The Draft of the Charter of Asian Human Rights'. The publication is undated, but appears to have been issued in 1994.

41 See 'Our Common Humanity', pp. 26–27.

42 For example, the Cairo Declaration on Human Rights, which was proclaimed on 5 August 1990 at the end of the Nineteenth Islamic Conference of Foreign Ministers of the Organization of the Islamic Conference 49/ 19-P. For a discussion, see Osman El-Hajje, 'The Cairo Declaration on Human Rights', in Daniel Prémont, *et al.* (eds), *Non-Derogable Rights and States of Emergency,* p. 441.

43 In the view of Kevin L.T.Tan, 'the real interests underpinning the debate have nothing at all to do with questions of culture, or indeed, even human rights. Rather, they are related to Asian economic success and confidence and confidence and Asia's continuing reaction to colonialism.' *Human Rights Dialogue,* 4, March 1996.

44 Consider, for example, the accusations by the Malaysian Premier Mahatir that the economic crisis in that country was partly attributable to Western speculators such as George Soros.

45 Bangkok Declaration, preamble.

46 Ibid.

47 Bangkok Declaration, para. 17.

48 Ibid., para. 26.

49 Ibid., para. 9.

50 Ibid., para. 9.

51 Prof. Yash Ghai has stated that '…it would be a disaster if the governments of Asian countries got together and adopted a convention. The reason I say that, it seems to me, is that such a convention would fall well below the international standards in human rights and the machinery would be ineffective… The time is not right for an inter-governmental convention in Asia'. 'The Need for an Asian Human Rights Charter, *Human Rights Solidarity,* 12, 1996.

52 See Verhoeven, 'Human Rights, Intervention and Universality'.

53 See the report of Carlos P.Medina, Jr., Secretary-General of the Working Group for an ASEAN Human Rights Mechanism, in *LAWASIA Human Rights Newsletter,* 7, 1, January-February 1997.

54 See, Frank Ching, 'ASEAN's Unkept Promises: 1993 Pledge on Human Rights seems to have been forgotten'. *Far Eastern Economic Review,* 22 August 1996, reprinted in *LAWASIA Human Rights Newsletter,* 7, 1, supra, at p. 2.

55 Minutes of the Meeting of the Working Group for an ASEAN Human Rights mechanism with ASEAN Senior Officials, 22 July 1997, Sunway Lagoon Resort Hotel, Malaysia, prepared by Carlos Medina, Secretary General of the Working Group.

Human Rights Education in Asia: The Case of the Philippines and Beyond

Richard Pierre Claude

The aim of this chapter is twofold. In the first part it will present the justifications for human rights education in international law and trace the development of human rights education in Asia, focusing on its constitutional origins in 1986 in the Philippines. From this domestic legal foundation, human rights values have been gradually infused into programmes of formal education as well as into Philippine military and police training. In the second part, the chapter will portray the expansion of non-formal human rights education under non-governmental (NGO) auspices, showing them to be dynamic agents actively engaged in promoting values changes. Five cases are given, profiling NGO educational programmes to illustrate the proliferation of human rights education in Asia beyond the Philippines, but under varying conditions of government support, tolerance and hostility. In the concluding section the conditions for acitive NGO support to processes of value change in the field of human rights will be discussed.

HUMAN RIGHTS EDUCATION IN LAW AND POLICY

Endorsements for human rights education have been proclaimed in various global and regional legal instruments ever since 1945 when the Charter of the United Nations called for co-operation 'in promoting and encouraging respect for human rights and fundamental freedoms'.[1] Thus, the Charter's references to 'promoting and encouraging' create state responsibilities for educating and teaching human rights. More over, various international and regional organizations have strongly endorsed this goal. In the 1990s, as civil societies re-emerge in Asia and elsewhere, and as voluntary associations proliferate in developing countries, vitality and initiative are evident among non-governmental groups concerned with human rights and human rights education. In re-emerging democracies such as The Philippines and other emerging democracies, such as Thailand, NGOs may be expected to increase their educational

work, viewed as a strategy to prevent human rights violations and as a technique to empower people to meet their needs based upon their knowing and using their rights.

The United Nations Charter's references to the promotion and encouragement of human rights were clarified in 1948 when the General Assembly, with no dissenting votes, adopted the Universal Declaration of Human Rights. It was proclaimed as 'a common standard of achievement for all peoples and all nations', who were directed to 'strive by teaching and education to promote respect for these rights and freedoms'.[2] Thus education is identified as instrumentally connected to the Charter task of promoting human rights. Additionally, the preambular language of the Declaration announces that 'teaching and education' are not simply new post-World-War-II state functions— among the governmental duties attending membership in the UN. Rather, as if to acknowledge popular action at the grassroots level and the work of NGOs, 'teaching and education' are announced as the obligation of 'every individual and every organ of society'.

The Right to Education

Education is not only a means to promote human rights. It is an end in itself. In positing a human right to education, the framers of the Universal Declaration relied on the notion that education is not value-neutral. Education always relates to and supports values. But we must be aware of what values are being promoted through education. In this spirit, Article 30 states that one of the goals of education should be 'the strengthening of respect for human rights and fundamental freedoms' (Section 2). The human rights covenants (later developed by the UN and coming into effect in 1976 to formalize the basis in international law of the rights declared in 1948) also elaborated on the right to education and the values such education should promote. Thus, the Covenant on Economic, Social and Cultural Rights placed the educational objective of strengthening respect for human rights in a cluster of related learning objectives.[3] For example, Article 13 of the Covenant says that 'education shall be directed to the 'full development of the human personality' and to the person's own 'sense of dignity' (Section 1). The Covenant also says the State Parties:

> further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious

groups, and further the activities of the United Nations for the maintenance of peace (Article 13, Section 1).

Complementing these positive formulations of the objectives of education are the negative proscriptions of the Civil and Political Rights Covenant.[4] It tells us that once a state adopts the system of international human rights, it may not stand in the way of people learning about them. Everyone has 'the right to hold opinions without interference', the Covenant says in Article 19, Section 1. Insomuch as education is a process involving the sharing and dissemination of ideas, the enterprise is bolstered by the International Covenant on Civil and Political Rights which sets forth the proposition that

> [e]veryone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his (or her) choice (Article 19, Section 2).

The Right to Know Our Rights

The International Bill of Rights, consisting of the Universal Declaration of Human Rights and the two Covenants, gave prominence to the importance of education in today's world. Consistent with the tendency of international instruments to use repetitious language and to repeat cardinal principles, it is not surprising to find echoes elsewhere of the standards noted above. The cumulative effect of these repeated expressions helps to underline the importance of human rights but also an important closely related idea. That is the conviction that we all have a right to know our rights. Having human rights acknowledged and knowing our human rights are both needed in today's world. The reason is stated in The Preamble of the Universal Declaration of Human Rights: to achieve 'a world in which human beings enjoy freedom of speech and belief and freedom from fear and want' people must come to 'a common understanding of these rights and freedoms'.

The idea of human rights has wings. It has found its way around the globe. Human rights, including the right to education and the right of the people to know their rights, are implanted in numerous international instruments.

Examples of such treaties include the Convention on the Rights of the Child (1989),[5] as well as the American (1948),[6] European (1953),[7] and African (1986)[8] regional agreements on human rights standards and

institutions. But there is an obvious global gap, and the need for an Asia-Pacific human rights mechanism is recognized in the area.[9] Nevertheless, in Asia as elsewhere, human rights education is now taking place because people increasingly know that they have human rights and they demand to know and exercise these rights. In recognition of these constructive developments, the UN General Assembly (Resolution 49/184) announced 1995–2005 as the 'United Nations Decade of Human Rights Education'.

While the international instruments cited above carry the message that states are the duty-bearers responsible for human rights education, there should be no doubt that non-governmental organizations may and should be so involved as well. For example, in the Philippines where constitutional rights and liberties today are to be interpreted consistently with the Universal Declaration of Human Rights, NGOs have fully legitimate grounds to undertake human rights education. This is because the Preamble to the Universal Declaration, specifies that 'teaching and education' are obligations of 'every individual and every organ of society', thereby acknowledging popular human rights educational programmes at the grass-roots level and the work of NGOs.

Philippine Constitutional Development

Human rights education is mandated by law in the Philippines. This came about through a complex historical process entwining politics and law. In 1986, a peaceful revolution displaced the tyrannical government of Ferdinand Marcos and brought Corazon Aquino to power as the President of the Republic of the Philippines. During the preceding fifteen years, an atmosphere of intimidation and manipulation had characterized the Marcos government. Nevertheless, even then serious voices of dissent were raised, including those of former Senators José Diokno and Benigno Aquino, Jr. In 1982, Senator Diokno, an attorney and human rights advocate, observed that 'today human rights are praised universally—yet universally violated'. He argued before a UNESCO-sponsored assembly meeting in France, that in the long run, the antidote must be human rights teaching and research. The task of human rights education, according to the one-time political detainee, should be to generate 'an awareness of the meaning, content and value of human rights', and 'the will to respect and vindicate human rights'.[10]

The assassination in 1983 of Ferdinand Marcos' chief political rival, former Senator Aquino, emboldened grassroots activism and unleashed a new era in the political history of the Philippines, stimulating massive opposition to the dictator. In February 1986, a dramatic, but peaceful four-day revolution toppled the Marcos government and

installed the former Senator's widow, Corazon Aquino, as the first woman president of the Philippines. For a time, in fact, she ruled by decree under her Proclamation Number 3, also popularly known as the 'Freedom Constitution'. She conceded that her revolutionary government was established 'by the heroic action of the people [and] done in defiance of the 1973 Constitution'. On this authority, she restored the writ of *habeas corpus*, repealed several repressive Marcos decrees, released hundreds of political prisoners, and affirmed her government's commitment to human rights and the restoration of democracy.

The new Aquino administration moved promptly to re-establish civil liberties according to the 'Freedom Constitution', and to entrench human rights through new international commitments. For example, the government ratified the International Covenant on Civil and Political Rights as well as the Optional Protocol to the Covenant which exposes the Philippine record on human rights to international scrutiny. To monitor national commitments to these obligations, President Aquino also created the Presidential Committee on Human Rights, headed until shortly before his death in 1987 by José Diokno. The committee was designed as a consultative and advisory body to the President on matters relating to the protection and promotion of human rights.

The influence of the Diokno Committee was manifested in two creative presidential orders, both explicitly recommended by the Committee (and still effective today). They were addressed to the topic of human rights education and dated 4 July 1986. Memorandum Order Number 20, is entitled 'Education of Arresting and Investigating Personnel on Human Rights'. It requires military personnel, police and other arresting officers, 'especially those in charge of detention and convicted prisoners' to undertake the study of human rights 'as an integral and indispensable part' of their education and training. Moreover, the Ministry of National Defence and police agencies were ordered to institute ongoing education and training programmes on basic rights defined in terms of constitutional requirements (the 'Freedom Constitution') and internationally defined standards. Implementation of these rules was vested in a tough sanction: the continuance in office of the relevant personnel 'shall depend on their successfully completing the course offered under said programme'. The development of these training programmes was to be undertaken in consultation and co-ordination with the Presidential Committee on Human Rights.

A companion requirement was addressed to the civilian population. Executive Order Number 27 demands the development of a pro gramme of 'Education to Maximize Respect for Human Rights'. With a stroke of a pen at the Malacañang Presidential Palace, Mrs Aquino ordered the

Ministry of Education, Culture and Sports to 'include the study and understanding of human rights in the curricula of all levels of education in all schools in the country'. At the discretion of education officials, more technical courses should be offered 'dealing with international conventions, agreements, declaration, or covenants on human rights which were ratified by the Philippines or to which it is a signatory'. Equipping this wide ranging order with some 'bite', the President directed the Civil Service Commission to include 'basic knowledge on human rights' in qualifying examinations for government service'.

Constitutionalizing human rights education

President Aquino's temporary 'Freedom Constitution' which allowed her the decree power to order human rights education, also anticipated the framing of a new charter of government. Presidential Memorandum Number 3 expressedly provided for the appointment of a new Constitutional Commission to draft a permanent basic law to be submitted for ratification by the people in a plebiscite. The resulting new Philippine Constitution, promulgated on 4 February 1987 with 78 per cent of voter support, is a much celebrated charter influenced by internationally articulated human rights principles and standards. In the spirit of Articles 55 and 56 of the UN Charter, the Constitution of 1987 proclaims that the promotion of human rights should be a national goal. Article 14 of the 1987 Constitution says:

> Section 3 (1) All educational institutions shall include the study of the Constitution as part of the curricula. (2) They shall inculcate patriotism and nationalism, foster love of humanity, respect for human rights, appreciation of the role of national heroes in the historical development of the country, teach the rights and duties of citizenship, strengthen ethical and spiritual values, develop moral character and personal discipline, encourage critical and creative thinking, broaden scientific and technical knowledge, and promote vocational efficiency.

Of course, these and related constitutional provisions to promote human rights values in the Philippines were intensely debated among the constitutional framers. Their discussion largely centred on two topics: first, educational objectives to promote civic values, and second, remedial human rights education for police and the military.[11]

The framers' debate over values started with draft versions of Article 14. The responsibility to guide the Constitutional Commission through the

conceptual and formulation process was given to Wilfredo V.Villacorta, a political scientist interested in civic education. He chaired the Education Committee of the Constitutional Commission where a wide ranging colloquy ensued.

Commissioner Minda Luz Quesada, a registered nurse, expressed concern about the lengthy scope of Article 14 [see above]. Her view was that too much medicine is not always good for the patient. For the sake of greater economy of language, she neatly urged 'removing "human rights" and just constitutionalizing the study of the Constitution'. She advised this first, so as to avoid opening 'the floodgates to many other courses that would now be introduced', as indeed Article 14 shows they were. Second, she noted that the teaching of the Constitution would necessarily subsume human rights training insofar as the proposed Constitution would predictably include many new human rights provisions. To this view, Commissioner José Nolledo, a teacher of constitutional law, disarmingly conceded that heretofore, in teaching the subject, Filipino professors conventionally 'concentrated only on the framework of the government', and not on the rights of citizens.

Commissioner Quesada promptly replied that, with Professor Nolledo's observation on record, it can hereafter be assumed that the teaching of constitutional law should be expanded to include the essentials of civil rights and liberties. But to this proposition, Commissioner Edmundo Garcia strongly objected. A political science professor and convener of Amnesty International of the Philippines, he insisted that human rights teaching implies more than legal instruction, and thus Commissioner Quesada's search for verbal parsimony was misplaced. The reason, Garcia argued, is that the teaching of human rights should include broader perspectives so as to ensure the teaching of 'the whole historical dimension of human rights and its importance with regard to the struggle for a future alternative society which the people should work for'. Garcia made clear that he thought human rights education should be tasked to form new values, alter attitudes and improve behaviour of citizens as well as law enforcement officials. A vote of 30 to 6 followed the colloquy and favoured retention of constitutionalizing the teaching of human rights along with other mandated educational objectives.[12]

Concerning human rights education, the commissioners were clearly united in their strong reactive desire to build institutions to safeguard against the recurrence of abuses of former President Marcos. As explained by Commissioners René Sarmiento and Edmundo Garcia, the human rights provisions of the Constitution responded to 'fifteen years of abuses of fundamental rights and freedoms' when civil and political

liberties were dissolved. To fix independent responsibility with particular attention to those rights, the framers designed a permanent Commission on Human Rights (HRC) authorized to investigate complaints, visit jails and prisons, make recommendations to Congress, and 'establish a *continuing programme of research, education and information* to enhance respect for the primacy of human rights' [emphasis added]. This language is embedded in Article 13, Section 18(5).

In the constitutional drafting process, Commissioner Ambrosio B. Padilla noted that assigning educational functions to the proposed Commission seemed redundant with those (later specified in Article 14, Section 3(2)) regarding human rights teaching by 'all educational institutions'. Attorney Sarmiento said that both provisions were needed because 'schools should work closely with this commission so that the continuing programme of education will be effective'.

Commissioner Garcia advanced the broadest defence of entrenching human rights education in the Constitution in combination with provisions on the Commission on Human Rights. He emphasized that human rights education programmes should encompass three functions: (1) popular empowerment, (2) long-term prevention of violations, and (3) international solidarity. His influential statement deserves extended quotation.

> (1) An outstanding feature of the proposed Commission on Human Rights is that it will help establish a program of education and information to propagate respect for human rights. In other words, we envision the prevention of human rights violations in the future when we have a citizenry that is convinced it must uphold its basic rights. It does so because it knows what their rights are in the first place.
>
> (2) For those who uphold [and enforce] the law, they must…also be educated regarding the treatment of prisoners and detainees, and the proper procedures and due process of law. This responsibility which will be given to the Human Rights Commission, will, in a way, resolve and prevent, rather than merely cure what has already been committed…
>
> (3) Because we have now won our basic rights as a people, we must realize that there are many peoples in other parts of the world who have not yet won their rights. One of the areas of human rights education is precisely to show the different forms and ways by which the human rights of other peoples are violated in other parts of the world. We can thus have a people who will be conscious of these violations and perhaps contribute to the protection of human

rights wherever they are violated. After all, human rights have no color, no creed, no nationality and no boundaries.

Commissioner Garcia's second premise launched a new debate about requiring the prospective independent HRC to take particular responsibility to implement value-changes in the armed forces. Commissioners attuned to the fragile sensibilities of the police and military—often charged with human rights violations—sought to broaden HRC duties to take 'rebel crimes' into account.

Blas Ople, the former Minister of Labour under Marcos and Constitutional Commissioner, objected to directing the attention of the CHR only to human rights violations by the military and not toward the anti-government rebels who had so vexed the previous regime. He said the new institution must not turn a blind eye to atrocities linked to left-wing guerrillas and the allegedly homicidal 'sparrow units'. As things stood at the time, the Presidential Committee on Human Rights (predecessor to the CHR) had avoided investigating rebel offences on two grounds: (1) only states were parties to international human rights instruments, and (2) the CHR would be charged with monitoring Philippines (state) compliance with its international human rights treaty-based duties. Under this view, private parties such as insurgents, are governed by ordinary criminal law sanctions. Commissioner Ople informed the constitutional framers that even as they spoke, 'there are already reports, Madam President, that the efficiency of the armed forces might be impaired where they have to exist in fear of prosecution for human rights violations while their adversaries are exempt from such inquiry and immune to such risks'. While clearly ideologically charged, the argument prevailed, nevertheless, with support from Commissioner Crispino de Castro and others who reminded the assembly that the military had played a key role in finally turning against the dictator and ushering Corazon Aquino into office.

Philippine Values and Policy Development

Under the terms of the Constitution of 1987, the ministry in charge of public education was converted into the Department of Education, Culture and Sports (DECS). In 1987, the new Department's Secretary Lourdes Quisumbing circulated a memo (without guidelines or sanctions) saying that 'all schools at all levels including non-formal and technical and vocational education programmes will include in their curricula the study of human rights, as well as the responsibilities that accompany them' [DECS Order Number 61]. How to implement this policy was one

of the topics of debate among educators attending a multi-venue Education Congress, meeting over a 22-month period during 1986 and 1987. Participants raised questions about the teaching of values including human rights in formal education at all levels as required by Article 14 of the new Constitution.

Over the course of the Education Congress, DECS conceptual planners expressed worry about the teaching of human rights values, emphasizing that they cannot be developed in isolation from other values.[13] The official view was that human rights values must be engrafted on existing Filipino culturally rooted commitments. For example, the propensity to project deep nuclear family loyalties to extended family and patrons—*pakikisama* [good public relations] describes the value of camaraderie which expands on the basis of *utang no loob* [debt of gratitude]. The challenge, in the context of values education including human rights, is to stretch this regard to others in society who claim no kinship or affinity. For this reason, according to Flerida Romero, 'promotional efforts in human rights should seek to make maximum use of these social values by expanding the Asian's sense of self-identity' so as to supplant clannishness with a sense of commitment and obligation to groups at higher levels.[14]

The final outcome of the Education Congress was the 'Values Education Framework' presented in a glossy edition in 1988. It centres on a philosophically derived 'values map' of seven 'core values' and 'related values'. DECS stipluated 'core values' are: health, truth, love, spirituality, social responsibility, economic efficiency, and nationalism/ global solidarity. NGO critics complained that this checklist does not really track the constitutional goals in Article 14, Section 3. Indeed, human rights is buried in the Values Education Framework' as a 'related value' subsidiary to the 'core value' of social justice. It certainly lacks the specialized treatment mandated in Executive Order 27 requiring the inclusion of human rights in the curricula of all levels or education, nor does it really implement DECS Order Number 61 telling teachers in 1987 to start teaching human rights. Thus it was not surprising that human rights education got a slow start in the public schools.

A dilatory start also characterized the CHR in undertaking its educational responsibilities. Between 1986 and 1989, the constitutional mandate of the Human Rights Commission to conduct human rights training was pursued on a piecemeal basis, sometimes grudgingly but only sporadically with NGO participation. In a DECS-like strategy in 1987 to submerge human rights in a broad framework of values formation, the Armed Forces of the Philippines experimented unsuccessfully with evangelical-style courses to effect the 'international

transformation of the soldier into a professional, God-centred, people oriented and nationally focused individual'.[15]

NGOs in the Philippines have been significant agents of values-change, even regarding government duties for human rights education. For example, after several years of foot-dragging, the DECS launched a more constructive phase of human rights education developed under government auspices but with the significant prodding of NGOs such as the Diokno Foundation. It actually designed specific human rights teaching modules now widely relied upon for public pre-college education. Moreover, the NGO, Education Forum, likewise took the initiative to design human rights education modules used in private and parochial schools. In a second example of the 'sparkplugging' capacity of NGOs, the Commission on Human Rights took new interest in human rights education, in 1994 forming a CHR-DECS Implementing Committee to produce instructional materials, sponsor teacher workshops, refresher courses, regional conferences and speakers bureaus.[16] Efforts by the Commission on Human Rights to implement human rights education were halting and half hearted at first but by 1995 they earned UNESCO recognition for developing successful educational programmes. The impetus for action was partly traceable to NGO pressures and to the appointment as a CHR Commissioner of Mercedes Contreres who had previously headed a major human rights NGO—the Philippine Alliance of Human Rights Advocates (PAHRA).

The PAHRA serves as a co-ordinating and networking organization for NGOs. At their Congress in 1990, all 30 of the groups polled by the author indicated that in addition to their advocacy, development and humanitarian activities, they also pursued programmes of human rights education. In April, 1997, the PAHRA held a national consultation on human rights education to assess the work of member organizations and forge future co-operative endeavours. It is a sign of maturity and organizational vibrancy that human rights NGOs are self-consciously engaged in assessment and self-criticism. In large part, human rights education in the Philippines is alive and well, thanks to NGO support and community based projects linking values-change to practical remedial projects couched in terms of human rights.

In 1996, the Development Academy of the Philippines began planning a careful programme of evaluation of CHR human rights training. As envisioned, it will look at both trainees and the communities within which they operate. The programme focuses on two levels. First, at the individual level, an attitude and skills survey instrument will help assess psychological behaviour norms. Second, a community-level impact assessment will canvass the incidence of increases and decreases in

human rights violations which is certainly the ultimate test of whether human rights education is taking hold among law enforcement and security officials. This is the criteria for evaluation that has long been advocated by the PAHRA, the Task Force Detainees, and other NGOs.

In the Philippines, many NGOs have sought to link human rights education to issues of economic development, even attempting to involve development victims. Their common concern is that government officials promoting rapid economic development through programmes of privatization, trade and investment, and export-led industrialization too often seek to transform development into a process of social Darwinism.[17] By the 1990s for example, Task Force Detainees began to rally the public to protest against 'development aggression' and to carry the theme that the entire public benefits when they decry the destruction of ecological balance in the ancestral domains of indigenous peoples, such as the Negritos, Manobos, etc.

Friends of the Earth-Philippines conducted an educational programme with the Manobos which infused their own cultural values with human rights standards seen as tools to preserve their tribal way of life. With NGO support, several communities of the Manobos people collaborated to mark out their Ancestral Domains and asked the Department of Environment and Natural Resources for the exclusion from these areas of two logging concessions which overlap their territories. They explained that their access to these forest areas had always supplied their survival needs, while the logging company is only concerned with cutting down trees. The resulting erosion and destruction of plants and animals would threaten the right to life of the Manobas and denies their Ancestral Domains. Their petition was initially denied by the Department's Regional Officer who explained that he did not understand the basis of the request (human rights) nor did he know the meaning of Ancestral Domains.

Clearly, human rights education is not reaching the Department of Environment bureaucrats. Human rights training for national and provincial employees is formally endorsed but too often slighted in Philippine government plans placing top priority on economic growth in the process of development. Strong NGOs have shown that they can effectively serve 'cultural mediation roles' between lethargic government bureaucrats and tribal peoples. Without NGO education, the tribal minorities would have no tools with which to respond to their government if it tries too aggressively to follow other Asian economic tigers in running roughshod over citizens in pursuit of GNP indicators that flatter elites, flatten the grassroots, ignore 'development victims' and utterly forsake future generations.

NGOS AS THE CARRIERS OF HUMAN RIGHTS VALUES

In the Philippines, as elsewhere in Asia, the principal carriers of human rights values are NGOs which also act as promotional agents. Compared to the Philippines, however, NGOs in other parts of Asia are playing 'catch-up'.[18] In March 1993, 110 non-governmental human rights organizations met in Bangkok to review the Asian human rights situation and to respond critically to the intergovernmental conference on human rights (Bangkok, 29 March-2 April 1993), widely quoted for its conclusion that human rights are not universal and do not accord with 'Asian values'. By contrast, the NGO participants assembled in Bangkok adopted several proposals strongly challenging the self-serving policy positions of various Asian governments.[19]

The NGOs did agree that few cultures any longer live in isolation, and consequently, 'there is an emerging new understanding of universalism encompassing the richness and wisdom of Asia-Pacific cultures'. However they spoke with one voice in saying: (1) cultural difference cannot be used as an excuse to derogate (i.e. set aside) various rights, justify discrimination or infringe upon women's rights;[20] and (2) 'As human rights are of universal concern and are universal in value, the advocacy of human rights cannot be considered to be an encroachment upon national sovereignty'.[21]

The Bangkok groups' 'Workshop on Human Rights Education and Training' linked the universality issue to human rights education. They said that Asians should celebrate their cultural diversity, but learn that cultural practices invoked to deviate from universally accepted human rights—including women's rights—must not be tolerated. They reasoned that because wife-beating has been sanctioned by tradition in some societies does not mean it should continue, and education will help to end this abuse. When people know their rights, they will develop the critical capacity to discern when patriarchal and political powerholders seek to use cultural traditions as a pretext to excuse violations of human rights such as the mistreatment of overseas labourers in Malaysian camps, police state political detentions in Myanmar (Burma), and the wholesale intimidation of dissidents in East Timor.

How can human rights education empower people to resist such rights violations? Of course, the answer depends upon the teaching procedures and the targeted students or participants. For NGOs involved in non-formal education outside the classroom and at the grassroots level, they argue for reliance on the methods of Paulo Friere, the late Brazilian educator and author of *The Pedagogy of the Oppressed*.[22] Identifying

problems, defining needs, clarifying norms, formulating and undertaking plans of action: this is the Friere-process of education for empowerment used by such NGOs as the Task Force Detainees-Philippines. It received a UNESCO Award for effective human rights education in 1991.[23] At the level of formal education, and within the standard programme of state supported primary and secondary schooling, the methodology of 'values clarification' is more conventionally used, for example in the teacher training 'Peace and World Order Studies Unit' of the Philippines Normal University.[24] Using analytical problem-solving and legal skill methodologies at the level of professional and higher education: these are standard at Chulalongkorn University (Thailand) which supports a programme on 'Asian Regional Training on Migration, Refugees and Human Rights'.

In 1993, Asian NGOs meeting in Bangkok called on governments of the region to promote human rights education and training for police, security and military personnel. All formal education should initiate human rights teaching as well, the NGOs said, because as things stand, the typical Asian 'school curriculum tends to favour the ruling elites'. Additionally, NGOs should prepare to disseminate human rights materials in vernacular languages and use participatory learning methods because interactive techniques in which students talk about their own experiences in their local context 'will enrich the process and contribute to the promotion and protection of universal human rights standards by utilizing the cultural wealth of the region'.[25]

Since 1993 when the Bangkok NGO Conference called for human rights education, the number of such activities throughout the region has grown substantially. Five cases will exemplify the varying starting points for Asian NGOs undertaking non-formal human rights education. These cases are respectively characterized by: grassroots directed and constitutionally protected (the Philippines); internationally sponsored and NGO supported (Cambodia); grass-roots initiated and government tolerated (Thailand); grass-roots initiated and government suppressed (Malaysia); and NGO-implemented and administratively supported (Japan). The cases also illustrate the diversity and challenges of programmes struggling to emerge in a new and creative field of activity.

The Philippines

Empowerment is the stated objective of the non-formal human rights educational work of PROCESS, a Philippine non-governmental organization set up to help people learn and act upon their economic and social rights, particularly in rural settings. The group conduct community

organizing activities, but its methods are usually designed 'on site'. The group may typically target a small fishing village where people are encouraged by PROCESS organizers to meet and define their local needs and problems.[26] At some point when maximum possible consensus is achieved, the group introduces what they call their bare-foot lawyers who help to reinterpret needs in terms of rights, relating for instance, to the unfair use of fishing licences by absentee licence holders. Having conceptualized needs in terms of rights, the group then begins to talk about, devise and select remedial strategies that include the systematic collection of information, and action plans, e.g. the formulation of petitions, the drafting of new legislation as well as litigation and presentations by lawyers to administrative boards, etc. The open-ended planning process involved in this example yields a bonus which formal education too seldom does: it reaches the grass roots and involves people in a community context in acquiring control over their own fates and meeting their own needs on their terms.

Cambodia

In 1993, the Human Rights Component of United Nations National Transitional Authority in Cambodia (UNTAC), recruited a team of Cambodians and expatriates with health-care and human rights backgrounds and other international personnel to develop a 20-hour curriculum on human rights for health professionals. Devastated by civil war and policies of the earlier Khmer Rouge regime, the UN-sponsored system had to deal with the aftermath of genocidal killings of one million people, the world's highest mortality rate, and the highest percentage anywhere of victims of landmines (one in every 236 surviving Cambodians are amputees). Thus health professionals needed to learn how to undertake a medical evaluation of landmine victims, how to assess and treat torture survivors, and the importance, under standards of human rights and medical ethics, of providing health care regardless of age, sex, political, social, ethnic or economic background. The team planning the programme included Cambodian doctors, medical assistants, nurses and midwives, and a Cambodian law student. Two of them were torture survivors who suffered abuses during the Khmer Rouge rule. Additional advisors included a Buddhist monk and a Cambodian with extensive background in mental health. The programme follows an 80-page syllabus entitled 'Human Rights for Health Professionals' (in Khmer and English). Two thousand people have completed the courses taught in nursing schools, open fields, and temples. It has survived the vagaries of recent political change because

the Cambodian Health and Human Rights Alliance was formed as an NGO in 1994 to continue the work begun under UN auspices and because the medical and nursing faculty of Phnom Penh have approved the programme as a permanent part of their training.

Thailand

The Thongbai Thongpao Foundation (TTF) brings legal assistance to Thailand's rural people, conducting training on basic human rights and the law for daily life. In the 'Law to the Villages' weekend pro gramme, rural residents learn about constitutional law, human rights, marriage, loans and mortgages, labour law and other legal issues that concern them. Because participants complain of exploitation by those who assume that peasants have no access to law, the programme concludes by setting up a local para-legal committee. They provide participants with a photo identification card including their personal lawyer's name and a listing of the rights of suspects: the right to silence, to legal assistance, to know the charges against them, and the right to bail. Based on the theory that the people have the right to know their rights, the practice of the TTF programme has been emulated elsewhere. Its founder was given the Magsaysay Award (Asia's equivalent of the Nobel Peace Prize) in recognition of 'use of his legal skills and pen to defend those who have "less in life and thus need more in law"'.

Japan

In 1994, an Osaka real estate agent tried to trace the boundaries of a ghettoized neighbourhood occupied by the Burakumin minority. They are Japanese who suffer prejudice because their disfavoured status links them to an earlier period of caste-like social stratification. A complaint that the agent's queries reflected discriminatory business practices resulted in an administrative order 'to study the Buraku issue' under guidance of an NGO, the Buraku Liberation League (BLL). League educators eventually concluded that both the agent and company officials completed the course and demonstrated changed attitudes and modified behaviour. This incident shows how Japanese laws against discrimination, carrying no penalties against offenders, nevertheless informally remedy transgressions through privately conducted 'enlightenment education' when administratively ordered. This non-confrontational approach bridges the inconsistencies between any vestigial negative social attitudes of intolerance and the positive rhetoric of legal safeguards against bigotry. Also, the BLL has devised a

systematic and wide-ranging programme for children in primary schools, including the book *NINGEN* [Human]. This book includes poems, songs, short stories and articles to introduce children to the topic of human rights and discrimination against the Burakumin, Koreans in Japan, women, disabled persons, etc. It teaches that human rights are in accord with Asian values.

Malaysia

Human rights education undertaken by advocacy and activist NGOs can be dangerous, according to Irene Fernandez, the Malaysian founder of 'Tenaganita' (meaning 'women's force'). For her group, the approach must be 'holistic': activism, humanitarian service and non-formal teaching are tied together, affecting the full array of political, economic and social rights. They have educational programmes on women and AIDS, a halfway house for health recovery, a drop-in counselling centre, and a human rights education and leadership training programme. It introduces feminist ideas and human rights principles into a largely Muslim culture. Because the NGO monitors the welfare of female migrant workers, it traced major health problems to government camps where undocumented labourers are detained. For publishing a report on conditions in these centres, Ms Fernandez has been criminally charged with maligning the good name of the country in the eyes of the world. Tenaganita argues that freedom of expression in the Malaysian Constitution should protect their report which is truthful and calls for a humane policy for the recruitment and employment of foreign labour. According to Irene Fernandez, her trial in 1997 shows that human rights education can be risky, but also serves as a lesson for their educational programme: namely that workers are not just human resources and economic units. They are human beings and must be treated with the dignity and the human rights everyone deserves.

Non-governmental organizations worldwide, such as Amnesty International, Physicians for Human Rights, and Asia Watch, were prompted by the Fernandez case to urge their members to write letters of concern to the Prime Minister of Malaysia, and to the ambassadors in Kuala Lumpur from migrant worker sending countries: India, Bangladesh, Myanmar, Indonesia, the Philippines, etc. Moreover, NGOs in these sending countries likewise began more systematic monitoring of Malaysian departures from internationally accepted standards applicable to migrant workers, such as those specified by the International Labour Organization, an affiliate unit of the United Nations (see D.Milly, this volume). The Philippine ambassador in Malaysia sponsored complaint

procedures for overseas workers. Indonesia's Manpower Minister Abdul Latief embarrassed the Malaysian government by visiting 5,000 Indonesians being detained in camps by the Malaysian government for illegally entering the country. Even if Indonesian and Malaysian government officials do not subscribe to human rights standards, increasingly, nevertheless, regional politics and the expectations of the common people make these standards impossible to ignore. Human rights education serves to advance this process whether autocrats and bureaucrats are ready or not.

CONCLUSIONS

Human rights education programmes were first commenced on a national basis in the Philippines as required by their Constitution of 1987. Many of its framers had themselves suffered under the previous tyrannical rule of Ferdinand Marcos, and the resulting new Constitution is strongly reactive to that historical record. The framers explicitly sought through human rights education to change the political environment and prevailing values, attitudes and behaviour of citizens and law enforcement officials. They reasoned that human rights education and training have both preventive and curative impact—they can empower people to prevent problems from arising by nurturing respect for other people's rights, and vice versa, as well as to inform people of the possibilities of redress. Philippine NGOs were quick to use the constitutional mandate as a moral and legal foundation to build their own programmes of community development and practical self-help networks for farmers, fisherfolk, slum dwellers, etc. Such programmes carry less risk of provoking elite-based opposition when linked with human rights education because of its constitutional stamp of approval. Moreover, such programmes have higher prospects for success in shaping values as they link human rights with concrete community improvements that respond to peoples' needs as they define them.

According to some social science research,[27] change agents encounter more difficulties in introducing innovation into groups through reliance on outsiders to the exclusion of in-group participation. Philippine experience and the profiles of NGO educational programmes in several Asian countries suggest the likelihood of acceptance of change favoring human rights values when: (1) indigenous NGOs are the principal change agents; (2) teaching programmes are participatory; and (3) human rights education addresses community problems in practical terms supplying remedial options.

Of course, when human rights NGOs face overt government hostility, like in Malaysia, their efforts may be seriously thwarted for the time being, but not without hazarding an embarrassing diplomatic regional and international response. Where the victim is concerned, Irene Fernandez recognizes that the government can put her in jail and create fear among NGOs. Nevertheless, she says that 'actually, I am optimistic. The trial has had a consciousness-raising effect educating the people about what is really happening'. In an interview with the author, she noted with satisfaction that 'when I walk down the street in Kuala Lumpur, people stop me and say, "we believe in what you're doing"'. Indeed, according to Tenaganita, migrant groups are organizing at the grassroots level more than ever. They conclude that 'while free speech may be suppressed, free association is taking on new life'. This simply illustrates the way education for empowerment works according to Fernandez: '[W]ith action comes reflection, and with reflection, new consciousness, action and mobilization. It's not a strategy for the impatient but it does make a difference and it does effect change'.

NOTES

1 United Nations Charter, signed at San Francisco on June 26, 1945; entered into force on 24 October, 1945. 1976 Y.B.U.N. 1043. Artice I, Sec.3.
2 Universal Declaration of Human Rights. U.N.G.A. Res. 217A (III), 3(1) GAOR Res. 71, UN Doc. A/810 (1948); Preamble/Proclamation.
3 International Covenant on Economic, Social and Cultural Rights. Opened for signature on 19 December 1966; entered into force on 3 January 1976, U.N.G.A. Res. 2200 (XXI), 21 UN GAOR Supp. (No. 16), UN Doc. A/ 5316 (1967).
4 International Covenant on Civil and Political Rights. Opened for signature on 19 December 1966; entered into force on 23 March 1976. U.N.G.A. Res. 2200 (XXI), 21 UN GAOR Supp. (No. 16) 52, UN Doc. A/6316 (1967).
5 The Convention on the Rights of the Child. Adopted by the UN General Assembly on 20 November 1989. U.N.G.A. Res. 44/25, 28 I.L.M. 1448 (1989). On the delicate matter of children's rights vis-à-vis parental/ guardian duties, States Parties 'shall provide direction to the child on the exercise of his or her rights in a manner consistent with the evolving capacities of the child'. (Article 14, Sec. 2). Education of the child shall be directed *inter alia* to 'the development of respect for human rights and fundamental freedoms'. (Article 29, Sec. 1(b).
6 American Declaration of the Rights and Duties of Man. 2 May 1948. Ninth International Conference of American States. 'Every person has the right to an education, which should be based on the principles of liberty, morality and human solidarity'. (Article 12).

7 European Convention for the Protection of Human Rights and Fundamental Freedoms. 4 November 1950, E.T.S. No. 5 (entered into force 3 September 1953). 'No person shall be denied the right to education'. First Protocol, Article 1.

8 African Charter on Human and Peoples' Rights (Banjul) O.A.U.Doc CAB? LEG?67/3 rev. 5:21 I.L.M.58 (1982), entered into force 21 October 1986. The Banjul Charter makes a significant and unique call for effective human rights education. That is, it says that signatory African states 'shall have the duty to promote and ensure through teaching, education and publication the respect for the rights and freedoms contained in the present Charter *and to see to it that these freedoms and rights as well as corresponding obligations and duties are understood*' (Article 25) (emphasis added).

9 Carlos P.Medina, Jr., Towards the Establishment of the Asia-Pacific Human Rights Mechanism', *The Human Rights Journal*. Manila: The Philipine Human Rights Commission, 1, 1, 1995, pp. 30–39.

10 José W.Diokno, 'Human Rights Teaching and Research in the Context of Development and East-West and North-South Conflicts', a paper read at the Experts Meeting on the Teaching of Human Rights, Strasbourg, 26– 30 July 1982, sponsored by UNESCO.

11 The debates are recorded in *Record of the Constitutional Commission* (Manila: Constitutional Commission of 1986), 4 volumes. Quotations are derived from the records of August and September 1986,

12 Teaching the Constitution is challenging because of its length. Article 3 contains a Bill of Rights which specifies all the civil and political rights found in the Universal Declaration of Human Rights (1948). With protections against Marcos-style abuses, Section 2 bans torture and secret detention places as well as political detention (Section 18) and inhumane punishment (Section 19). In its various provisions, including 'compensation to victims of violations of human rights, or other families' (Article 13, Section 18 (6)), it was the first charter to address fully all of Amnesty Inter national's '12 Point Programme for the Prevention of Torture'. [*Torture in the '80s*. London: Amnesty International Publications, 1984, pp. 249– 251.] The Constitution of 1987 is also attentive to social, cultural and economic rights. For example, Article 13 seeks to enhance 'the inalienable right to dignity' with provisions requiring legislative implementation on land reform, labour policy, agrarian and natural resources reforms, problems of the urban poor and housing, education, women, indigenous peoples, and health-related rights. Section 15 endorses the rights of people's organizations, their participation at all levels of government decision-making is affirmed as a right. Government must 'facilitate the establishment of adequate consultation mechanisms for NGO access to government' (Section 16).

13 Minda C.Sutaria, 'DECS Values Framework (Synthesis)', *Philippine Journal on Education*, 66, 6, November 1987.

14 Flerida Ruth P.Romero, 'Promotion and Dissemination of Human Rights in the Asian Context', *Batas at Katarungan (Journal of Law and Justice)*, 1, 1, February 1987, pp. 19–20.

15 Documentation on changing DECS policy is fully cited in Richard Pierre Claude, *Educating for Human Rights: The Philippines and Beyond*. Manila: University of the Philippines Press, 1996, and Honolulu: University of Hawaii Press, 1997, Chapter 3, 'Bureaucratic Incrementalism', and regarding the Commission on Human Rights and police and military training in the same volume, Chapter 5, 'Civil-Military/Police Relations'.

16 In 1989, an Inter-Agency Task Force independent of the military, brought about the first steps toward progress in human rights education for the military and the police. They put Amancio S.Donato, a philosophy Ph.D and reserve military officer in charge of planning and programme development. The ultimate result was the successful development of three-, six-and eight-day 'conscientization programmes on human rights and international law'. Among the topics covered are: human rights definitions and values clarification; international dimensions of human rights; police and military roles in respecting human rights; human rights treaties to which the Philippines is party; etc.

17 Augusto B.Gatmaytan, 'Land, Life and Law: The Continuing Struggle of Indigenous Peoples', *Human Rights Forum*, Symposium Issue on Development and Human Rights, Vol. 3, No. 1 (1993), pp. 3–38, at p. 20. See also Maria Luisa C.Doronila, *Education, Knowledge, Values and Development*, Congressional Oversight Committee on Education, 1995; Clarence Dias, 'Human Rights Education as a Strategy for Development', in George J. Andreopoulos and Richard Pierre Clauce (eds), *Human Rights Education for the 21st Century*. Philadelphia and London: University of Pennsylvania Press, 1997, pp. 51–63.

18 Numerous examples are given in Clarence J.Dias (ed.), *Initiating Human Rights Education at the Grassroots: Asian Experiences*. Bangkok: Asian Cultural Forum on Development, 1992.

19 *Our Voice: Bangkok NGO Declaration on Human Rights,* (Bangkok: Asian Cultural Forum on Development/ACFOD, 1993), Annex 1, 'Selected Government Position during the Final Prepcom', p. 259.

20 Ibid., p. 97.

21 Ibid., p. 198. See also Michael Freeman, Chapter 2, this volume.

22 Paulo Friere, *The Pedagogy of the Oppressed*. New York: Continuum, 1990.

23 'Empowering the People through Human Rights Education', *Philippine Human Rights Update, International Edition,* 6, 4, December 15-January 14, 1991, pp. 11–14.

24 For relevant methodology see, Betty A.Reardon, *Educating for Human Dignity*. Philadelphia: University of Pennsylvania Press, 1995. Produced with Philippine Normal Universal faculty participation is a popular trainers' guide, Amnesty International Philippines-Education for Freedom, *Shopping List of Techniques in Teaching Human Rights*. Quezon City: Zamora Press and Publications, 1994.

25 *Our Voice: Bangkok NGO Declaration on Human Rights,* p. 213.

26 Clarence J.Dias, 'Alternative Law for People's Empowerment', in Jose Ventura Aspiras (ed.), *Law as Weapon*. Manila: Participatory Research, Organization of Communities, and Education towards Struggle for Self-Reliance [PROCESS], Inc., 1990, pp. 19–26.

27 E.Katz and P.H.Lazarsfeld, *Personal Influence*. Glencoe, IL: The Free Press, 1955.

14
The Rights of Foreign Migrant Workers in Asia: Contrasting Bases for Expanded Protections

Deborah J.Milly

People are on the move in Asia. Whether they migrate themselves or just employ migrants, many Asians experience firsthand the realities of labour migration. Compared to Asian states' own nationals, foreign migrant labourers are a vulnerable group who particularly risk human rights violations. How does their need for humane treatment gain recognition? Without a concept of basic human rights, what alternative avenues exist for establishing minimum standards for protecting foreign migrant labourers?

The case of foreign migrant workers in Asia presents an opportunity for examining two elements intrinsic to the debate over human rights and Asian values. First, it allows us to focus on a group of individuals who are not counted as members of the national society. Whereas the host government will be clear about its responsibilities towards its own nationals, that responsibility may not carry over to non-members. Instead, migrants may be rated as outsiders, without clear minimum standards of humane treatment.[1] They may even find themselves actively unwanted by the host society. What is of particular concern to us, however, is how the debate over standards for migrant workers has evolved, since it sets in relief local approaches to the humane treatment of a group of people held as distinct from the ordinary members of society.

Second, their case provides a context for examining the political processes whereby new shared understandings of humane treatment are being established—understandings usually seen to integrate local frameworks with aspects of international human rights.[2] A particularly salient question is whether these processes might lead to setting regional standards for humane treatment, without appeal to rights as such.

Two alternative types of political process have contributed to clarifying and expanding the standards for treatment of migrants in individual Asian states. States that support civil and political liberties for their own nationals provide a distinctive context for publicly negotiating over the

status of foreign migrants with regard to rights and protective standards. In contrast, in states that restrict freedoms of association or expression for the sake of the general good, few indigenous supports exist to encourage improved treatment of foreign migrants, let alone clarification of their rights. Instead, the sending foreign governments, subject to their own internal political forces, may choose to pressure the receiving country to make improvements. Without a strong commitment to rights, the receiving government confronts needing to find elements in its own political or legal system on which to base such alterations.

This chapter uses the cases of South Korea and Singapore to illustrate these two types of discussion process and policy response to protect foreign migrants in Asia. The two types share in common a net result of increased protections for foreign migrants, but not to the same degree. In the former case, the motivations for expanded protections have included explicit concerns about rights expressed within a domestic political process; in the latter, much of the motivation has stemmed from considerations of foreign relations. While in the former case a universalistic approach to human rights has driven policy change, the latter case has involved a search for an 'overlapping consensus' over norms of humane treatment that would span the divergent positions of the participants.[3]

Foreign migrant workers in Asia have entered contemporary public debate in conjunction with their heightened visibility. Between 1990 and 1994 alone, approximately 8.5 million migrant labourers from Asia were deployed abroad; of the 2 million who migrated in 1994, approximately 25 per cent went to other countries within Asia.[4] Some workers have migrated from Southeast Asia to industrialized Northeast Asia; some within Southeast Asia; some within the East Asian region; and others increasingly from South Asia to Southeast and East Asia.[5] In migrating to take jobs as marginally skilled workers (whatever their educational qualifications), they may do so through formal short-term contract schemes or training arrangements, or they may choose 'clandestine' or 'illegal' employment.[6]

Governments on the receiving side, desiring to maintain a supply of labour for their thriving miracle economies, developed policy mechan isms to manage this migration—mechanisms that would further shape some of the problems that migrants would confront. Taiwan initiated in 1989 a system to import foreign contract labour for limited stays.[7] In 1991, South Korea established a system for foreigners' industrial training, and in 1993, it began to systematically set quotas for importing foreign trainees to meet labour demand.[8] Singapore, while having employed migrant labour as a means of meeting labour demand

for some time, tightened its controls over temporary migration in 1989.[9] Hong Kong initiated schemes for importing contract labour in 1989.[10] Japan remained an exception in that, despite business group pressures in the late 1980s, immigration control revisions (1990) allowed admission of only migrants of Japanese ancestry as foreign unskilled labour.[11] More recently, Thailand instituted in 1996 a system for registering migrants already in the country illegally, and Malaysia began more stringent enforcement of its regulations in 1997 after a period of registering undocumented workers. In these countries, the systems established introduced a layer of administrative management that simultaneously eased and restricted the entry of foreign migrants to provide labour that would support favourable growth rates.

By late 1997, several countries were both importers and exporters of labour, and certain economies in the region had become dependent on foreign labour. In Southeast Asia, the Malaysian government estimate commonly quoted in news coverage in late 1997 and early 1998 was 2 million foreign workers, of which 1.2 million had work permits, in a total population of 21 million.[12] In Thailand, newspaper coverage in early 1998 referred to general estimates of approximately 1 million or more foreign workers in a workforce of about 33 million.[13] In November 1997, Singapore relied on over 450,000 low-or medium-skilled non-Singaporeans for 26 per cent of its labour force. As of October 1997, Taiwan had 254,000 documented foreign workers, or approximately 3 per cent of the labour force,[14] and South Korea had an estimated 234,000 foreign workers.[15]

Government measures toward foreign labour after the onset of economic crisis in late 1997 kept shifting. As governments confronted rising unemployment among their own nationals, they either continued with policing efforts toward foreign workers that were already underway, cancelled immediate plans for admitting foreign workers, re-deployed foreign workers to other sectors of their economies, initiated new programmes to expel undocumented workers, or took some combination of these actions. The Thai government had announced a plan to expel all of its estimated 800,000 undocumented migrants, mostly from Myanmar, by 1 May 1998, and by 31 August had deported approximately 261,000.[16] In South Korea, about 20,000 foreign workers exited in January and February 1998, after the government gave undocumented foreign workers a grace period to leave without penalties,[17] but by early 1999, newspaper reports indicated that industrial trainees and other foreign workers were once again entering the country.[18] Malaysia, which had also been in the process of a heightened policing campaign before the economic downturn, continued to rely on

foreign workers throughout. Despite its stated intention not to renew permits of workers already there, by October 1998 the government had approved the admission of 190,000 foreign workers to meet demand in construction, plantation, and manufacturing.[19] Likewise, though the large numbers of Indonesians fleeing to Malaysia in early 1998 had led to overcrowded detention camps and deportations reported widely in the media, by November, the Malaysian government had announced that it would rely on Indonesia to provide the large majority of 220,000 foreign workers to be admitted in 1999.[20]

Until late 1997, however, several Asian governments had been attempting steadily to improve their systems for managing migration and for monitoring compliance with regulations. Among the problems to which they were responding were contradictions in policy mechanisms, failures in the system of social supports, and substandard employment conditions. The examples of discussion and policy change prior to the onset of crisis furnish a perspective on Asian governments' recognition of these outsiders as deserving of equal protections and illustrate the challenges for negotiating regional standards across widely differing political and economic systems.

FOREIGN MIGRANTS IN ASIA AND HUMAN RIGHTS

The visible social presence of foreign migrant workers in several Asian countries leads the respective governments to make choices with serious implications for human rights. A transparent motivation for some of these governments is to limit migrants' terms of stay to prevent settlement and to restrict workers' social position to one of a productive resource. Even so, with increased numbers of migrants abroad, the incidence of abuse, deception, criminal victimization, exploitative wages, and other forms of worker mistreatment has drawn attention to the inadequacies of regulatory measures. As a consequence, the debate that has occurred among academics, non-governmental organizations, and government officials has extended beyond migration control mechanisms to include the substance of rights and protections for migrants. While similar issues have also challenged North American and European states, the discussion in Asian states remains contingent upon different political and institutional contexts, with consequences for foreign migrants as to whether and how protections may be secured and enhanced.

The primary substantive issues for discussion here are integral to migrants' experience and pose problems for many of them: their basic protections vis-à-vis employers and, in conjunction with that, the impact of documentation status on workers' access to protections.[21] Such

protections, however, remain situated within a broader set of stipulations specific to foreign migrants—such as whether documented migrants are permitted to join labour unions or the extent of labour standards applied to them by the host country—and a still broader context of the rights and freedoms extended to nationals of the host country.

In Asian states, much as in European or North American states, a hierarchy of rights for non-nationals governs, yet this hierarchy is bounded by the local system of rights for nationals. It is not uncommon for access to protections to vary according to immigration status— ranging from citizen to permanent resident alien to documented migrant to undocumented worker. In industrialized democratic states, foreign migrant labourers, while unlikely to possess political rights, generally possess civil rights of association, expression, and access to the courts, although these may be somewhat constrained. They often possess economic and social rights in the form of labour and social protections similar to those of local workers; they are dependent upon whatever the policy regime in place is. Undocumented workers, lacking legal residence, have the fewest rights, and are subject to likely further consequences of exploitation by employers and a *de facto* loss of the few rights they may technically enjoy in some systems. These distinctions in immigration categories may entail corollary differences in access to rights and protections in Asian countries as well, but the substantive effect varies. The rights and protections accorded to nationals of the host countries constitute a base that is uneven across Asian countries, and this has consequences for the ability of migrants, and nationals sympathetic to them, to associate freely, to pursue officially sanctioned protections for foreign migrants, and to work to revise policy mechanisms.

The perceived fairness of documentation status as a determinant for migrants' access to many rights and protections is undermined often by failings in the system for managing migration. Migrants' freely-made individual choices may not be the reason for their undocumented status, a situation that introduces ambiguities into the discussion of the rights of migrants. Circumstances over which a migrant has little control, such as the behaviours of employers or recruiters and contradictions in policy mechanisms, may affect their status or their choice to relinquish documented status. For instance, when failures in implementation, monitoring, or policy design exist, undocumented status or fear of losing documented status may dissuade workers from seeking assistance when they are abused or exploited. Likewise, the potential penalties may deter nationals from working through the system to advocate on foreigners' behalf. For such reasons, the UN International Convention on the Rights of All Migrant Workers and Members of Their Families goes to lengths to

specify extensive rights for 'undocumented' workers in recognition of their special vulnerability to exploitation, but it also maintains a distinction between documented and undocumented workers and their rights.[22]

State mechanisms for regulating migration, along with their implementation, have a huge bearing on whether or not a worker obtains and maintains legal residence. This may occur because standards specified are so uncoordinated with market conditions and living standards that they are exploitative. In South Korea, officials had recognized by 1995 that the minimal compensation and conditions sustained through the officially-sanctioned trainee programme were encouraging 'runaways' to choose better-paid but undocumented work; revising the system led to a subsequent reduction in those numbers (see below).

A state may fail to monitor and implement adequately regulations concerning labour contracts, labour standards, or employer-provided housing and other benefits. For instance, if a government fails to monitor whether employers are living up to their contracts with migrants, or if a government's own border officials collaborate with traffickers of migrant workers, the workers will most likely be unable to obtain relief. To respond to the former type of problem, the Malaysian and Philippine governments have conducted talks to promote improved monitoring of a sort that might provide abused workers with an alternative to choosing between illegal work or returning home.[23]

Criminal activity by employers and recruiters, left unmonitored, may similarly result in workers ending up unwittingly without documentation and deprived of a basis for seeking relief from abusive conditions. In some of the personal accounts of migrants circulated by non-governmental organizations in Japan, Taiwan, and elsewhere, workers have believed that they were complying with regulations to obtain proper documentation and legal employment, when in fact they have been deceived and manipulated by illicit recruiters or employers. In such cases, particularly if the employer holds the passport of the worker (a frequent occurrence throughout Asia), fleeing an abusive and criminal employer often means abandoning one's proof of identity and living fully underground. To respond to criminal exploitation of female entertainers, the Japanese and Philippine governments have conducted regular discussions since 1988, and each has incrementally introduced changes in practices.[24]

Accompanying these problems, a second set of questions related to human rights affects prospects for revisions to solve them satisfactorily. What types of conditions enable foreign migrants to pursue protections

when policies are enforced ineffectively? Similarly, what types of conditions promote improvements in policy to make it easier and more rational for migrants to maintain a documented status and to expand the protections available to legal migrants? Clearly, other actors besides the migrants play a role in the host government's choice to enhance protections for migrants, whether they are non-governmental organizations that support migrants, domestic interest groups, or foreign governments concerned about the welfare of their own nationals overseas. But which actors, through what means, become pivotal depends on features of the political system. General conditions of human freedoms—both for nationals of the host country and for the migrants themselves—determine what processes will be available for representing migrants' needs effectively.

For instance, in some of the examples mentioned in the preceding paragraphs, non-governmental organizations of the host country's nationals were instrumental in drawing attention to policy failures. Their familiarity with migrants' needs, which was a result of their support activities, prompted their advocacy on behalf of migrants. For these organizations to play such a role has required a context in which they have the freedom to associate and provide assistance, in which migrants have been able to seek assistance with impunity, and in which nationals have been able to gain access to government officials in their advocacy efforts.

Alternatively, in some cases, domestic interest groups, working on their own behalf, may end up calling for changes that benefit the migrants. For instance, in Thailand in 1996, objections by organized labour to legalizing foreign workers resulted in a government decision to apply the minimum wage to the foreigners (although the extent of enforcement is difficult to determine).[25] Other generalized concerns for the social welfare may similarly stimulate provisions for health care and other benefits, as has been visible in Thai efforts to provide migrants with health care as a preventive public health measure.[26] While the latter example did not necessarily require a context of civil and political freedoms, the former example depended upon conditions of open political debate.

Finally, officials of the sending governments have entered into discussion in a manner that has created further incentives for change. Foreign sending governments—most notably the Philippines—have taken government-to-government initiatives in response to their own domestic pressures over the issue and as a response to the chronic problems of their nationals overseas. Likewise, the Philippine government has increased the support services that it provides to its overseas contract

workers. While the government-to-government process may not depend on a context of human rights to have an impact, civil and political freedoms in the sending country are significant for putting pressure on the government to make migrants' needs an issue in their foreign relations.

In sum, alternative processes afford means through which foreign workers' needs can gain a constructive response. State and societal participants work within the existing framework of the legal system, workers' protective measures, enforcement institutions, and rules regarding freedom of speech, association, and political participation. But when such a framework constrains rights of society's members, let alone migrants, the opportunities for change through domestic processes to benefit foreign workers are limited.

CONTRASTING CASES: SINGAPORE AND SOUTH KOREA

Two contrasting cases highlight the manner in which the different priorities given to rights influence alternatives for improving the conditions of migrant workers by receiving countries. When a host government maintains a relatively open civil society in which non-governmental organizations and even foreign migrants can mobilize, policy adjustments and protections have been possible from within— through governmental processes or through the courts—even if assisted by bilateral government-to-government relationships. When the host government limits freedoms of expression and association within its own borders, improvements depend far more on the government-to-government relationship; the dynamic of *that* relationship, however, may also depend indirectly on domestic political pressures and non-governmental activism within the sending country.

For such reasons of process, the conditions that affect the quality of migrants' lives extend well beyond mechanisms for managing migration or the protections they specify. Social, legal, and political contexts interact with specific policy provisions to shape the sum total of conditions that migrants face. They may offer resources for advocacy, further policy change, and clarification of rights; or they may function to restrict the alternatives to which migrants have resort in the event of abuse or violations of contract, thus elevating the importance of government-to-government relations as an alternative medium. These contexts provide more than just a vehicle for discussion. As the South Korean and Singaporean examples illustrate, they offer conceptual justifications and institutional resources on which to ground protections for foreign temporary workers.

South Korea

Although the economic crisis that began in fall 1997 triggered a temporary lull in South Korean demand for unskilled foreign workers as industrial trainees, the tenor of discussion has continued to be one of improving the system in a manner that ensures protections for these workers. Many political participants' recognition of contradictions in the system and the need to clarify the rights of industrial trainees as workers had already led to changes. Premised on a respect for the rights of workers, this debate incorporated a visible role for industrial interests, activism by non-governmental organizations, and governmental efforts to eliminate policy contradictions and failures.

The system for relying on foreign workers expanded steadily over the 1990s. In 1991, South Korea established its system for foreigners' industrial training, and in 1993, it began systematically to set quotas for importing 'trainees'.[27] At the end of 1996, there were over 210,000 foreign workers in South Korea, of whom about 70,000 were industrial trainees and approximately 130,000 were classified as 'illegal' (meaning that they had either entered illegally, had deserted their positions as industrial trainees for other better-paid work, or were working in violation of another visa status).[28] By October 1997, the estimated number of foreigners working in South Korea was about 234,000.

Over the first two-thirds of the 1990s, the inadequacies of this system drew attention from non-governmental organizations and government agencies alike. The system failed to protect clearly the rights of these trainees, and inherent policy contradictions made it rational for trainees to desert for 'illegal' work. 'Trainees', because they lacked the employment status of 'worker', were not protected by minimum labour standards, despite their legal immigration status. Even so, the South Korean political system gave both South Korean non-governmental organizations and trainees themselves adequate freedom of speech and association to champion reforms and to provide supports to foreign workers, documented or not. Organizations such as the Korea Research Institute for Workers' Human Rights and Justice and the Association for Foreign Workers' Human Rights have provided an umbrella for the many smaller organizations that support foreign migrants. In addition, some trainees organized, and protests by Nepalese trainees in January 1995 resulted in Labour Ministry regulations that brought conditions of trainees in line with those of workers. As a result, trainees obtained some benefits equivalent to those legislated for Korean workers, in the form of injury compensation, medical insurance, and so forth.[29]

Even in the sluggish economic conditions of early 1997, the South Korean government and societal groups continued to discuss the rights of industrial trainees and the conditions of their stay, so as to revise this system of admitting foreign low-skilled workers. In September 1997, the government announced its plan that, as of 1 January 1998, workers who had fulfilled the two-year period of industrial traineeship were to become eligible for employment permits and for all of the rights that South Korean workers possess—including the right to organize, to bargain collectively, and to strike.[30] But conditions declined precipitously, and the South Korean government soon announced a moratorium on admitting industrial trainees for 1998 and subsequently issued directives to ensure that undocumented workers would leave.[31] By summer 1999, however, demand for foreign workers and the estimates of those in the country illegally had both risen.[32]

In the above South Korean discussion of policy revisions, concerns about rights were intertwined with an awareness that the policy as implemented was encouraging industrial trainees to defect and to choose undocumented labour. Initially, trainees received substantially lower compensation than Koreans doing the same work, and they were readily able to find much more remunerative work by leaving their trainee posts. Improving the level of trainee compensation had an impact by diminishing the incentives to leave for undocumented, but better-paying, employment: the 'runaway rate' declined steadily from 1994 through 1997. By late 1997, coverage in the Korean English-language press of the anticipated 1998 changes indicated that non-Koreans would likely achieve parity with Koreans in wages and benefits as a result.

Such discussion of policy change soon was supplanted by that of dealing with widespread unemployment. By the beginning of 1999, however, the admission of industrial trainees had resumed and by mid-1999, requests by small-and medium-sized businesses for them had increased, despite domestic unemployment rates of 6.4 per cent as of July 1999 (seasonally-adjusted; Republic of Korea Ministry of Labour). Despite the instabilities, the South Korean case remains important for illustrating a process of extending and defining the rights of foreign migrant workers. That process has occurred in a context of political freedoms that allows nationals and foreigners to mobilize for change over policy inadequacies. The language of rights and the efforts to define workers' status so as to ensure rights has been at the heart of this incremental process of inclusion and change.

Singapore

In contrast to South Korea with its explicit embrace of rights, ideologically and institutionally Singapore presents a different set of resources for improving the standards of treatment for foreign migrants. Instead of domestic pressures and activism, government-to-government relations have been the main impetus for protections. The Singaporean government, for its part, has focused on enforcement of existing Singaporean law in a manner that responds to some of the complaints, and the mass media have co-operated by publicizing this stand. In the government's effort to satisfy external pressures, the legal system has become the institutional sphere of overlap between differing positions on rights.

Certainly, the dominant ideology minimizes the likelihood that government or Singaporean citizens would be vocal about protecting foreign migrants, at least with a rhetoric of rights. Even use of a rhetoric of the state's responsibility for the social and economic welfare of its citizens is unlikely, because such responsibility does not extend to non-citizens. Furthermore, the ideology of responsibility to the collectivity, as Chua suggests, inhibits sensitivity to issues of individual rights for its members; this may make it doubly difficult to recognize or raise questions over humane treatment for outsiders. Government's stress on ideological consensus and its strategies for managing critical opinion foster 'a sense that participation must be conducted within the agenda and concepts generated and approved by the government itself'.[33] These factors, supported by the implicit discouragements of an Internal Security Act, serve as deterrents to public discussion or advocacy that is not sanctioned by government.

That said, Singapore's reliance on foreign migrant labour occurs in a technocratic process of labour market management in which the state has the capacity to gain employers' compliance with its regulations. Singapore relies on low-or medium-skilled non-Singaporean labour for over 25 per cent of the work force. A system of work permits and levies is designed to satisfy but moderate demand for foreign labour. 'Work permits' (issued by the Ministry of Manpower, formerly named the Ministry of Labour) are required for low-skilled and medium-skilled jobs, and employment passes (issued by the Immigration Department of the Ministry of Justice) for highly-skilled employees. Levies imposed on employers are intended to allow but constrain employment of foreign workers; dependency ceilings, which vary by sector, limit individual employers as to the proportion of foreigners they may hire.

Officials adjust the levies and dependency ceilings as conditions change: recent changes that reflect the Singaporean government's increased priority on moderately-skilled workers are one such example. In September 1997, the government announced new plans to yet further encourage the entry of 'foreign talent', particularly 'mid-level' skilled workers in jobs such as bus driver, equipment operator, technician, nurse, or teacher. Subsequent changes in levies announced in November 1997 included an increase in the levy for unskilled workers but decreases in the levy for skilled foreign workers.[34]

This system is focused on smooth management of the labour market and foreign labour use, with little emphasis on worker protection. All the same, it suggests the extent of control that the state can exercise over employers and its readiness to impose sanctions on them when so motivated. In the mid-to-late 1990s, government efforts to enforce the system for employing foreign migrants increasingly focused on employers as the culpable parties when violations were uncovered. The government focused on prosecuting employers for violations concerning levies, dependency ceilings, work permits, and use of employees in jobs for which employers did not have authorization.[35] While technically the workers found working illegally were also liable to arrest and penalties, media coverage sent a clear message that employers would be prosecuted.

In contrast with this administrative control of the labour market, the main impetus for protecting migrant workers has come from the country's foreign relations. In the absence of formal bilateral agreements, which the Singaporean government has consistently resisted, governments such as the Philippines and Indonesia have used sensational incidents that threaten Singapore's international image as occasions for urging consideration of the general conditions for their workers. The 1995 hanging of a Filipina maid for murder in Singapore triggered major debate within the Philippines over humane treatment of Filipinas abroad and resulted in a temporary downgrading of diplomatic relations between the two countries. In conjunction with restoring diplomatic relations and removing a ban against Filipina maids going to Singapore, the Philippine government significantly reorganized its overseas system of supports available to migrant workers.[36] It has also imposed a minimum standard contract on recruiters from Singapore and it has refused licensing to certain recruiters.

Likewise, the Indonesian government called public attention to the treatment of their maids in Singapore in mid-1997. After a hideous case of abuse of a fifteen-year-old maid became a media topic over the summer of 1997, the Indonesian government called for a ban on maids going to

Singapore until they could undergo preparatory orientations for coping with their overseas situations.[37]

These diplomatic episodes with Association of Southeast Asian Nation (ASEAN) allies account for the formulation of a protective solution compatible with Singaporean ideology. The Singaporean government has stressed enforcement of existing laws to prevent the physical abuse of foreign workers by employers. Media attention has stressed the penalties to be applied for molestation and other violent crimes, and it incorporates a paternalistic approach of educating employers about their liability.[38] The Singapore Ministry of Labour, in response to the temporary ban on maids to Singapore by Indonesia, included the following as part of a press statement on 24 September 1997:

> The Ministry takes a serious view of employers who ill-treat or abuse their foreign domestic workers. The Singapore government will act swiftly against errant employers guilty of ill-treating their workers. In addition to the penalties meted out under the law, errant employers and their spouses are permanently barred from future employment of foreign domestic workers.

In taking this position, the government has focused on the issue of physical abuse and violence as it is proscribed by Singaporean law; it has not reversed its basic position of non-intervention regarding the employment contract. Instead, the shared condemnation of physical abuse and commitment to legal institutions constitutes the basis for an overlapping position between Singapore and the foreign governments involved. The motivation to co-operate with allies and to preserve international image, buttressed by customary pressures from the ASEAN relationship to resolve bilateral tensions, has resulted in a Singaporean response of stronger attention to enforcement of existing laws. Otherwise, the sending governments have found they must regulate behaviours through the recruiting system on their end to the possible extent.

Arguably, the sending governments were under similar pressures to express indignation and to speak out for migrants when these events occurred, to respond to public outcry at home and to mute criticism in the international press. Critics who speak for migrants may contend (as I have heard them do in conversation) that such actions amount to gestures without a commitment to their nationals abroad. Whether or not that is the case, the crucial question for the current discussion is whether the Singaporean government has changed anything in its handling of the

mistreatment of migrants. The above evidence indicates that, in certain senses, it has.

CONCLUSION

The preceding discussion of South Korea and Singapore has presented two contrasting examples of processes that have resulted in incremental changes to protect foreign migrant workers by building on different assumptions and reasoning. In the case of South Korea, expansion of protections has depended on a domestic context of civil and political liberties, which has afforded opportunities for advocacy and change within the system. Beyond the process itself, argument and justifications have incorporated an explicit rhetoric of rights. By contrast, in Singapore, government-to-government relations have been the channel for change. To the extent that change has occurred, protections for foreign migrants have been built on stringent adherence to the legal system in applying penalties for violations of existing law. Rather than to assert the 'rights' of the migrants, the Singaporean government has asserted the 'wrongs' of employer abuse toward them. It has not changed the law, but has become attentive to its implementation so as to protect this group of outsiders whom society may perceive as not equally human or worthy of protections.[39] Rather than rights, the normative basis for this inclusion has been the enforcement role of the state and a commitment to the legal system.

The two examples reaffirm that establishing principles for humane treatment—whether in terms of rights or otherwise—occurs within specific political processes and policy systems. Political institutions, legal institutions, and the particular rights enjoyed by nationals of the host country constitute significant factors that affect the treatment of migrants. Although these institutions may promote clarification of migrants' rights in some countries, in others the pressures from other governments are the main impetus for improving these workers' conditions. Whatever interests and identity the states of Asia may share, the divergence among them is such that finding a consensus over the status and treatment of migrants through political negotiation of regional norms remains a challenge.

What do these cases suggest about the potential for finding an overlap between concepts of basic universal rights and locally developed normative systems that evade a language of rights or that justify a position for rights that is contingent upon the good of the collectivity? In the one case, an explicit embrace of basic human rights for one's own nationals made it relatively easy to extend them to include this new

group of foreign workers. But making the necessary concrete changes in policy additionally depended upon a context of civil and political liberties in which migrants could find assistance and citizens could advocate. In the second case, while the motivations and process available for exerting influence may have been mainly external, a compromise of sorts across ideological frameworks involved a more inclusive application of the law.

These patterns of adjustment suggest questions about the longer term likelihood that a cumulation of such solutions will eventuate in shared understandings and norms, if not fully accepted principles, of basic human rights across diverse political systems. Apprehensions, scepticism, and confusions will understandably accompany many readers' appraisal of whether it is possible to integrate a universalistic approach to human rights with other locally-specified approaches in a manner that will satisfy proponents of both views. Three issues that arise in the cases here warrant comment: the notion of 'human-ness'; potential scenarios involving government-to-government relations; and the difference between negotiated norms compared to a universalistic approach to human rights.

First, the notion of 'human-ness' as it indicates a universalistic basis for inclusion does not necessarily incorporate a stress on rights. The Singaporean attempt to apply more stringently its laws and regulations hinged upon a commitment to impersonal legal institutions, even though the motivation may have arisen from pressures in foreign relations. As a consequence, the government exercised a greater vigilance regarding enforcement to prevent 'wrongs' against foreign migrants, within existing laws, and to reinforce a notion of basic 'human-ness'. The obvious foreign relations motivation does not negate the implicit rationale—which furnished a domestically acceptable justification for action by appealing to the legal system and the need to maintain it no matter who a victim or perpetrator might be. In other words, this response embodied an approach to the victims of abuse that was more socially inclusive and that, in effect, asserted migrants' equality as humans. Yet that response did not incorporate an affirmation of individual rights as such.

This expanded inclusiveness minus an affirmation of individual human rights, however, exhibits its limitations if one asks the means by which migrants who fall victim to abuse are to gain access to the legal system or how any substantive changes in the laws are to be made. Barring sanctioned efforts to change the law for citizens, the status quo of criminal law, employment law, and mechanisms for their monitoring will determine the extent of possible protections. For migrants to seek legal redress frequently requires some set of supports to encourage them or

others to speak out and seek assistance; sometimes these are provided to a degree by the migrants' own governments. Yet migrants are unlikely to be able to pursue such assistance themselves and doing so could put them at further risk. In a social context in which the local members tend not to speak out (for whatever reasons), how this legal inclusiveness can have an impact bears watching.

Second, government-to-government interactions provide a set of processes through which attention to human needs and protections is strengthened, but the basis for this and the possible alternative scenarios need to be examined further. State-to-state relations may contribute positively to the welfare of foreign migrant workers, even to the limited extent described above, but this is by no means guaranteed. Within a generally co-operative bilateral relationship characterized by mutual economic or political dependence, reciprocity may serve as the basis for a sense of 'extended' societal membership among nationals of the two allies.

Arguably, for states with a fairly established history of bilateral collaboration and possibly co-operation in multilateral contexts, this familiarity may help to breed government and societal openness to a status of 'quasi-membership' for the foreign nationals of the counterpart state. This is not the same as creating a shared human identity, but it is part of a process of enlarging the umbrella of social acknowledgement for groups who may not be considered 'members', but worthy of equal treatment. Whatever agreements governments may negotiate over migrants, their effectiveness remains dependent on the sense of interconnectedness, perceived reciprocity, and shared interests between not just governments, but the members of the respective societies. Without this perceived interconnectedness, any historical tendencies to cast certain foreign nationals as an enemy, for political, cultural, or economic reasons, will persist. Whatever formal agreements states may negotiate, it is unlikely that there will be much societal will to live up to state directives, and the societal co-operation needed to enforce them will be lacking.

A co-operative relationship between governments, however, in no way guarantees improved conditions for workers, for reciprocity may work in more than one direction. If neither government plays the role of advocate on behalf of the migrants, the only potential incentives to improve conditions will be perceived economic or administrative effects. Instead, the governments may collaborate in policing without providing a countervailing voice of protection. Such state-to-state co-operation involves dealing with a 'social problem' for the governments, with little incentive to turn attention to the well-being of the workers themselves.

Put another way, state co-operation of itself will not necessarily work to further the human rights of foreign migrants and may conceivably work against them. Unless at least one of the governments is committed to or advocates on behalf of the rights of migrants, the relationship of reciprocity will not lead to improvements.

Third, one still confronts the question of how norms for protection negotiated through a search for an overlapping consensus compare to an acceptance of the concept of basic human rights—a question whose answer remains in the realm of speculation. The shifting responses by North American and European governments to handling migration as well serve as a reminder that the substance of protections anywhere are negotiated and subject to change in circumstances, but that concepts of rights set limits on what can be negotiated.

In most Asian countries, the standards for treating migrant workers have yet to endure repeated practice and application to new circumstances, whether in a bilateral or a multilateral context. Even individual systems that explicitly adopt a rights perspective, such as South Korea, are still finding their way in establishing the parameters of basic rights. Although Japan has a long history of activity by the courts and has changed its policies toward non-citizens to reflect its ratification of several international human rights conventions, its limited and recent reliance on foreign migrant workers has shielded the government from some difficult issues. Most receiving countries in the region, however, are primarily focused on establishing administrative and enforcement systems that will support their domestic labour markets but minimize the numbers of clandestine workers and settlers. In most of Asia, then, the short history of policies regarding the treatment of migrants is indicative of their fragility, for there has been little opportunity for establishing precedents of humane standards or for their repeated affirmation as norms. Sudden political or economic shifts can easily result in a set of conditions for which participants may argue that old practices ought not apply; the lack of a second underlying principle of rights on which to call weakens the ability of governing practices to withstand such shifts.

To date, co-operation over migrants' issues, whether standards for their treatment or policing, has occurred almost exclusively at the bilateral level, but multilateral discussion is emerging. For migration questions that just involve the receiving and the sending country, a bilateral approach is often adequate. In addition, bilateral co-operation has helped to limit the likelihood of disagreements and inability to come to some common understandings, particularly given the political and economic divergences among countries and the disparities in their stands on human rights generally. Up to now, the norms of

regional co-operation, which stress maintaining a 'comfort level' and relegating tenser issues to the bilateral context, have supported the bilateral approach and have fostered resistance to a regional consideration of the treatment of migrants in terms of human rights or criticizing another states' internal practices.[40]

Recently, however, the push for an ASEAN initiative has heightened in response to issues that cannot be handled bilaterally, for instance third-country migrants, the policing of transnational trafficking rings, and the increasing incentives to migrate due to adverse conditions in certain countries of the region. In August 1998, the ASEAN Inter-Parliamentary Organization General Assembly issued a resolution on transnational labour migration with strong recommendations for actions by member states.[41] As the initiation of an ASEAN Free Trade Area in 2003 approaches, the pressures for a collective approach to the handling of migration are likely to increase.

Although a multilateral discussion may be emerging, any discussion of standards for human protection will occur in conjunction with discussions on policing, human trafficking, public health, and other issues. Contributing to this discussion will be certain governments and numerous non-governmental organizations who have called for both a regional discussion of migration and the ratification of the United Nations International Convention on the Protection of Rights of All Migrant Workers and Members of Their Families. Host countries not only in Asia, but throughout the world, have resisted ratifying this convention, but the possibility remains that host countries might choose to participate in an Asian regional agreement could they be persuaded that such would benefit their individual economies or their ability to manage labour migration. Even if a set of minimum standards for the treatment of migrants were to be established through some regional multilateral forum, enforcement would likely depend on voluntary compliance as a product of the pressures that states brought to bear on one another.

The message to be taken from the above discussion is that there is potential for a communicative process eventually resulting in improved protections for foreign migrants. This, however, is unlikely to produce a set of regional norms equivalent to human rights principles. For improving basic protections for foreign migrants, the conditions of political, civil, and social rights of nationals of the host country will continue to be significant contextual factors, but state-to-state relations will provide a limited alternative avenue for improving protections for foreign workers when the domestic impetus is not there. Likewise, when the Asian countries move toward establishing a regional

framework for managing migration, the protection of migrants will be one of many issues to be addressed.

ACKNOWLEDGEMENT

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