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The East Asian Challenge to Human Rights: Reflections on an East West Dialogue ¹

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This paper attempts to get beyond the rhetoric that has dogged the human rights debate and to identify relatively persuasive East Asian criticisms of traditional Western approaches to human rights. It distinguishes among three sorts of arguments for a culturally sensitive approach to human rights: (1) the argument that situation-specific justifications for the temporary curtailment of particular human rights can only be countered following the acquisition of substantial local knowledge; (2) the argument that East Asian cultural traditions may well provide the resources to justify and increase [End Page 641] local commitment to values and practices that in the West are typically realized through a human rights regime; and (3) the argument that distinctive East Asian conceptions of vital human interests may justify some political practices that differ to some extent from human rights regimes typically endorsed in Western countries. This typology is intended to clarify the "East Asian Challenge to Human Rights" and thus reduce the likelihood of "civilizational" conflict over human rights issues.

It is a notable fact of the contemporary world that gross human rights violations tend to occur "off the record." Few governments will admit to murdering political opponents, torturing members of minority ethnic groups, or forcing women and children into slavery, much less justify obvious human rights transgressions in public forums. ² In such cases the task of the human rights activist is to expose the gap between public allegiance to human rights and the sad reality of ongoing rights abuses. However, there is not much point deliberating about the desirability of practices that all condemn at the level of principle.

The disputed area of human rights therefore falls outside what Michael Walzer terms the "minimal and universal moral code," namely rights against murder, slavery, torture, and genocide. ³ This "grey" area of debate includes criminal law, family law, social and economic rights, the rights of indigenous peoples, and the attempt to universalize Western-style democratic practices. Some of these issues are contested on cultural grounds, others are a matter of how rights are prioritized in developing nations. Not [End Page 642] all human rights values and practices typically endorsed in Western countries are automatically accepted elsewhere, and dialogue between interested parties may well help to identify areas of commonality and difference.

A new discourse on human rights may be emerging in the East Asian region, currently the fastest

growing part of the world. The human rights positions of senior Asian officials such as Lee Kuan Yew of Singapore and Prime Minister Mohamad Mahathir of Malaysia are well known, but less publicized are the more nuanced views of critical intellectuals in East Asia.⁴ Neither wholly rejecting the concept of human rights nor wholly endorsing the values and practices ordinarily realized through a human rights regime in the Western world, these intellectuals are being prompted to reflect on and debate over how to locate themselves in a human rights discourse in which they have not heretofore played a substantial part. In light of the growing economic and military might of the East Asian region, it is particularly important for the West to consider the more persuasive East Asian viewpoints on human rights. The alternative--efforts to promote human rights that do not seriously engage East Asian perspectives on these issues--risks widening misunderstandings, setting the stage for hostilities that otherwise could be avoided.

This paper distinguishes among three sorts of arguments put forward by East Asian critics of Western approaches to human rights and suggests these arguments' implications for the human rights discourse. Part I addresses the claim often asserted by East Asian governments that a right must be temporarily curtailed in order to deal with an unfortunate set of particular social and political circumstances. Once the perceived crisis is over, according to this view, then the rights denial is no longer justified. This viewpoint is not in the first instance a "cultural clash" over human rights,⁵ as both the government in question and the human rights activist share a common set of moral and political aspirations as an end goal.

The second and third challenges to Western conceptions of human rights are more directly disputes over cultural values. As against the claim [End Page 643] that human rights ideas and practices are distinctive products of the Western liberal tradition, many East Asian human rights activists argue that their own cultural traditions do provide the resources for local justifications of ideas and practices normally realized through a human rights regime in Western countries. This argument, discussed in Part II, also has strategic importance for advocates of human rights reforms in East Asia.

The third challenge is the argument that cultural particularities in East Asia may justify a different moral standpoint vis-a-vis the human rights regime typically endorsed by Western governments, scholars, and human rights activists. While there seems to be a consensus that acts such as torture, slavery, and genocide are unacceptable violations of fundamental human rights, in other areas--such as criminal law and social and economic rights--different cultural values may justify different kinds of political practices. To be sure, the East Asian region is a complex mix of societies, cultural traditions, and political viewpoints. It is also true that values change significantly over time in response to various internal and external pressures and this is evident in the region. However, the point here, discussed in Part III, is that some traditional values in some East Asian societies may be more persistent than others and that these values may diverge from some human rights ideas and practices typically endorsed in Western countries. In such cases, it may be necessary to tolerate, if not respect and learn from, cultural differences.

I. Trade-Off Issues

A. Rights versus Development: A Zero-Sum Game?

A common East Asian argument is that Western-style civil and political liberties need to be sacrificed in order to meet more basic material needs. Most famously, Lee Kuan Yew argues that political leaders in developing countries should be committed to the eradication of poverty above all else: "As prime minister of Singapore, my first task was to lift my country out of the degradation that poverty, ignorance and disease had wrought. Since it was dire poverty that made for such a low priority given to human life, all other things became secondary." ⁶ If factional opposition threatens to slow down the government's efforts to promote economic development or to plunge the country into civil strife, then in Lee's view tough measures can and should be taken to ensure political stability. Such is the message Lee delivers to receptive audiences in China, Japan, Vietnam, and the Philippines. [End Page 644]

According to Harvard University economist and philosopher Amartya Sen, however, there is little evidence to vindicate the "general theory" that political and civil rights hamper economic growth. Systematic cross-national statistical studies do not support the claim that there is a correlation or a causal connection between authoritarianism and economic success. In fact, civil and political rights may help to safeguard economic security in the sense that such rights draw attention to major social disasters and induce an appropriate political response:

Whether and how a government responds to needs and sufferings may well depend on how much pressure is put on it, and the exercise of political rights (such as voting, criticizing, protesting, and so on) can make a real difference. For example, one of the remarkable facts in the terrible history of famines in the world is that no substantial famine has ever occurred in any country with a democratic form of government and a relatively free press. ⁷

Similar to Lee Kuan Yew, the Burmese military junta argues that rights must be curtailed in order to provide the political stability said to underpin economic progress. ⁸ At least some freedoms, however, need to be restored in order to allow for economic growth. In the words of Yozo Yokota, the UN Special Rapporteur on Human Rights in Burma:

If the government allows economists to freely engage in research and to make necessary recommendations to improve the economic situation of the country, and if the people are allowed to do business freely by travelling without government restrictions and collecting information and conducting negotiations as they like, there is a great chance that the country would grow rapidly. ⁹

B. The Need for Specificity

While the general claim that civil and political rights must be sacrificed in the name of economic development may not stand up to social scientific scrutiny, several Hakone workshop participants noted that there are narrower claims being presented by East Asian regimes, which are more deserving of our attention: namely, that particular rights may need to be curbed in particular contexts for particular economic or political purposes as a short term measure, in order to secure a more important right or to secure more of that same right in the long term. Xin Chunying, a lawyer working at the Human Rights Center of the Chinese Academy of the Social Sciences, notes that East Asian governments emphasize "the particularity of [End Page 645] human rights protection

and the priority determined by the specific conditions of each country." ¹⁰ Such claims are put forward by government officials, but often attract significant local support.

Workshop participants offered several examples of situation-specific justifications for the temporary curtailment of particular rights that cannot be dismissed readily. ¹¹

1. Kevin Tan, a professor of constitutional law at the National University of Singapore, noted that Singapore in the 1960s was plagued by "the threat of a communist take-over and communalism which pitted Singapore's majority Chinese population against the minority Malays." ¹² Tan notes that Singapore made use of emergency powers (originally established by British colonial rulers) to counter these threats when it was expelled from Malaysia in 1965. The Singapore government argued that without these powers, including the authority to detain without trial persons suspected of being subversives, it may not have been able to prevent the country from plunging into civil strife. ¹³

2. The Malaysian government sometimes deprives indigenous populations of access to forests and waters, thus restricting their right to a secure cultural context. ¹⁴ The Malaysian government asserts that control of such natural resources is necessary for economic development in that country. ¹⁵ **[End Page 646]**

3. When Korean President Park issued a threat to execute blackmailers, a capital outflow that was hemorrhaging the country's economy ceased.

4. Post World War II land reform in Japan, South Korea, and Taiwan would have been much more difficult to accomplish without a US occupying force. If instead there had been a democratic context in each country, the political process may have been captured by landed interests that would have posed serious obstacles to land reform.

5. The existence of underpaid labor, denied the right to protest, ¹⁶ has attracted much international investment in China's coastal regions, leading to high growth rates and increasing opportunities for enrichment. As international enterprises along the coast become increasingly capital and technology intensive, foreign firms requiring cheaper labor move inland. There is an argument that the whole process has a spillover effect that, in the end, may benefit much of the country.

6. Although meaningful political participation for the hearing impaired requires state subsidies for the use of sign language interpreters in public forums when political leaders address citizens in an official capacity, and the use of interpreters for the hearing disabled to make their own views known to political officials, as well as the use of subtitles when political candidates speak on television, poor countries such as China, Vietnam, and the Philippines simply cannot afford to provide such services to the hearing disabled. ¹⁷

Whatever one thinks about these justifications for rights violations, it is important to note that they are not offered as general arguments for repression and hence cannot be refuted by social scientific evidence based on generalizations. What makes these arguments for human rights violations plausible is that they include a description of a pressing social problem (for example, communal strife, capital outflow, and lack of economic resources) and an account of why a rights

violation (for example, the right to detain without trial, a threat to execute blackmailers, not providing interpreters for the hearing impaired) is the only effective way of dealing with that particular [End Page 647] problem. ¹⁸ To counter such arguments with the claim that most countries do not have to face similar problems or that not all rights need to be curtailed for purposes of economic development seems beside the point. ¹⁹

Nor is it appropriate to respond to this "Asian" challenge to human rights with the claim that human rights are universal and hence cannot be restricted under any circumstances. The so-called Asian side of the debate often concedes that human rights are universal and that ideally governments ought to try to secure as many rights as possible. ²⁰ The point being made [End Page 648] here, however, is that certain rights may conflict and that consequently governments may either have to sacrifice some rights in order to safeguard more important ones or to sacrifice a certain right in the short term in order to secure more of that same right in the long term. Put differently, the real East Asian challenge to human rights is often not so much a dispute about the ideal of promoting human rights or about alternative cultural outlooks ²¹ as a plea for recognition of the (alleged) fact that certain East Asian governments often find themselves in the unenviable position of having to curtail certain rights in order to secure other more basic rights. To paraphrase Isaiah Berlin, not all good rights go together, contrary to the optimistic and well meaning pronouncements of some Western human rights activists.

When countering plausible government justifications for rights violations of this sort one can question either the premise that the East Asian country under question is facing a particular social crisis (for example, a high risk of intercommunal warfare) requiring immediate political action or that curbing a particular right is the best means of overcoming that crisis. Whatever the tactic, the social critic must be armed with detailed and historically informed knowledge of the society that finds itself in a specific, historically contingent condition.

Yet, it is important to be aware that even if the human rights critic were to concede (1) that the society is facing a social crisis which ought to preoccupy policymakers and (2) that curbing a human right is the most effective way of overcoming that crisis, such local justifications for the denial of human rights are, as Jack Donnelly puts it, "at best a short-run excuse." ²² Once the economic or political troubles are more or less [End Page 649] successfully overcome, then according to the government's own logic the denial of rights is no longer justified.

While justifications for the denial of human rights often appeal in this way to short term political and economic considerations, some Hakone workshop participants noted that other voices in East Asia offer a more direct challenge to human rights. These other voices argue on the one hand that the Western liberal tradition may not be the only moral foundation for realizing the values and practices similar to human rights regimes and on the other hand that some human rights ideas and practices may not be compatible with East Asian cultural traditions. Let us now turn to some of these long term, cultural issues.

II. An Asian Voice on Human Rights?

A. Human Rights: A Western Invention?

According to the prominent human rights theorist Jack Donnelly, "the idea that all human beings, simply because they are human, have certain inalienable political rights" ²³ was essentially foreign to Asian political thought as well as to premodern Western political thought. The theory of human rights was first fully developed in John Locke's *Second Treatise on Government*. ²⁴ These ideas spread broadly in response to the dual threats to human dignity posed by modern centralized states and socially disruptive free markets in seventeenth century Europe.

In response, several participants argued that what Amartya Sen termed "proto ideas," ²⁵ similar to (aspects of) Western conceptions of human rights, can also be found in many non-Western traditions. For example, Nurcholish Madjid of the Indonesian Human Rights Commission notes that "Islam too recognizes the right to found a family, the right to privacy, the right to freedom of movement and residence, the right to use one's own language, the right to practice one's own culture and the right to freedom of religion." ²⁶ While the source of modern human rights ideas may be [End Page 650] anthropocentric in many modern Western formulations, rather than theocentric as in many non-Western traditions, it is worth recalling that Locke himself assumed that individual rights had theocentric foundations. ²⁷ In any case the question of the ultimate source of human rights is primarily of interest to philosophers and theologians and is likely to be of little relevance to human rights activists.

In addition, if an important purpose of human rights is to protect the individual from the exercise of arbitrary state power, then clearly the functional equivalents of human rights practices can sometimes be found in non-Western traditions. For example, individuals guilty of offenses nominally calling for capital punishment in Ching Dynasty China were protected by lengthy, multilayered procedures, including the "right" to enter a personal plea before a "Board of Punishments" in Peking. Participating jurists at the "Board of Punishments" included prominent government officials and dignitaries, such as the tutors of the imperial heir apparent, and judicial proceedings were open to the public. A list of those found guilty was "then submitted to the Emperor who, with a brush dipped in vermillion, [made] a circle on it at seeming, and to some extent real, hazard, and the criminals whose names [were] traversed by the red line [were] ordered for execution." ²⁸ Those who escaped the vermillion brush ten times achieved the status of "deferred execution." The reformist Chinese jurist Shen Chia-Pen estimated in 1907 that as a end result of this practice, less than ten percent of those sentenced to death were actually marked off for execution. ²⁹ Derk Bodde and Clarence Morris, authors of the book *Law in Imperial China*, comment that

it is striking to see the long progression of highly rationalistic procedures culminating in a ceremony resting upon magic and the charismatic insight of the emperor. . . . the appellate system in general and more particularly the system for handling capital cases should rightly be regarded as notable creations of the human mind. . . . it constitutes a kind of 'due process' which, different as it is from our own, certainly deserves admiration and respect. ³⁰

[End Page 651]

B. Increasing Commitment to Human Rights in East Asia: Strategic Considerations

While it may be possible to defend the argument that human rights ideas and practices resonate to some extent with Asian cultural traditions, are there any particular reasons for proponents of human rights to adopt culturally sensitive strategies for the promotion of rights, either instead of, or as a complement to, other strategies? If the ultimate aim of human rights diplomacy is to persuade others of the value of human rights, it is more likely that the struggle to promote human rights can be won if it is fought in ways that build on, rather than challenge, local cultural traditions.³¹ To deny the possibility that human rights norms and practices are compatible with Asian traditions translates into dependence on a foreign standard for promoting human rights. This approach has a number of drawbacks.

First, the argument that human rights is a distinctive invention of the West unwittingly plays into the hands of nasty forces in East Asia who seek to stigmatize human rights voices as "agents of foreign devils" and defamers of indigenous traditions. Similarly, the argument that the development of human rights is contingent on the development of capitalism strengthens the position of antimodernists who oppose human rights, while the argument that human rights is contingent on anthropocentric arguments strengthens advocates of a theocentric view who oppose human rights.³² Worse, arguments that present a stark choice between religion and human rights (as opposed to an approach that promises to reconcile religious insights with human rights ideas) may lead politically moderate religious persons into developing feelings hostile to human rights positions.³³ [End Page 652]

Second, it is a widespread belief within the United States--currently the dominant voice on the world diplomatic stage--that exporting US political practices and institutions is necessary for the promotion of human rights abroad. As Stephen Young, former Assistant Dean at the Harvard Law School puts it,

Many Americans seem to believe that the constitutional pattern of governance in the United States today--as formalized in the Declaration of Independence, the Constitution, and the Bill of Rights--is a necessary prerequisite for protecting human rights. Thus, they evaluate the performance of other countries in the field of human rights by comparing their conduct with the standards of American politics.³⁴

It may well have been feasible to act on this belief in the post World War II era, when the United States was powerful enough to insist upon human rights norms. The US capacity to dictate appropriate forms of government to Japan in the immediate post World War II period is a classic example. Today, however, the relative economic and military strength of [End Page 653] East Asia means that the United States must now rely primarily on moral authority to promote human rights in Asia. However, several factors undermine US moral authority in this respect.

Widely publicized domestic social problems in the United States such as high rates of drug use, collapsing families, rampant crime, growing economic inequality, and alienation from the political process no longer make the United States the attractive political model that it may once have been. The widespread sentiment that such domestic ills are at least partly attributable to the excessive pursuit of individual rights at the cost of common social goods further undermines the attractiveness of the particular human rights regime (the priority of civil and political rights over social and economic rights) often promoted by US human rights activists.

The tendency to carry out abominable deeds under the name of promoting freedom, as in the case of the Vietnam War; to subordinate human rights concerns when these conflict with commercial and security considerations, as in the case of renewing Most Favored Nation status with China in response to pressure by American business interests; ³⁵ and the passive acquiescence in, if not active support for, gross human rights violations, as in the case of East Timor, also contributes to some cynicism in Asian circles as to the true motivation of US policymakers. Thus, Prime Minister Mahathir of Malaysia is able to argue forcibly that the United States campaigns for workers' rights in Asia in order to undermine the competitiveness of Asian companies and to maintain US economic dominance in the region. ³⁶ The fact that US domestic drug problems lead the government to support regimes with atrocious human rights records, such as the decision in June 1995 to cooperate with the Burmese military junta in its fight against drug trafficking, also undermines US moral credibility in the human rights field. Furthermore, the United States refusal to make amends for the Vietnam War may undermine its moral authority in Asia in a similar way that Japan's refusal to fully accept responsibility for its war of aggression weakens its own moral authority in Asia. [End Page 654]

Third, appeal to the Universal Declaration of Human Rights (UDHR) ³⁷ as a standard for promoting human rights in East Asia is not without drawbacks. Although the UDHR has served as an effective tool in some human rights struggles in East Asia (for example, by human rights campaigners in the Philippines during Marcos' rule), ³⁸ in many parts of East Asia the UDHR and other UN documents are not nearly as relevant. ³⁹

Since the UDHR was formulated without significant input from East Asia, ⁴⁰ it is not always clear to East Asians why the UDHR should constitute [End Page 655] "our" human rights norms (the Bangkok Declaration was significant because it was the first organized expression of Asian opposition to the UDHR). Although the UDHR is normatively binding, most East Asian states endorsed it for pragmatic, political reasons and not because of a deeply held commitment to the human rights norms it contains. The UDHR thus does not have the normative force and political relevance of a constitution that emerges from genuine dialogue between interested parties keen on finding a long term solution to a shared political dilemma. It is possible, however, that if the International Bill of Human Rights, as the UDHR and subsequent documents are called, has a proper enforcement mechanism--such as an international UN force with the explicit mission to intervene in cases of gross human rights violations ⁴¹--it could gain greater legitimacy among states.

Still, one might ask why the government's voice should count as the normatively binding final interpretation of human rights issues in East Asia. Ironically, the same critics who point out that East Asian governments illegitimately present their own interpretations of human rights (often self-interested arguments for the denial of rights) as though it represents a society-wide consensus, in effect are saying that international human rights standards enshrined in the UDHR should be upheld because their *governments* endorsed this document.

Another fundamental weakness of the UN documents is that they are pitched at too high a level of abstraction (perhaps necessarily so in view of the need to reach agreement among many states) to be of use for many actual social and political problems. For example, the claim that "everyone has a right to nationality" in the Universal Declaration of Human Rights ⁴² avoids the question as to

which nationality is to count and thus cannot help to resolve the conflicts over self-determination that are the source of so many rights abuses in the contemporary world. Moreover, UN documents do not provide much guidance when rights conflict or arguably need to be violated preemptively in order to prevent further violations of rights.

In short, universal and Western justifications for human rights do not seem particularly promising from a tactical point of view, and to be effective [End Page 656] human rights activists may need to pay more attention to local justifications for human rights in Asia. There are also numerous positive reasons in favor of drawing on the resources of indigenous cultural traditions to persuade East Asians of the value of human rights.

First, building human rights practices on traditional cultural resources is more likely to lead to *long term* commitment to human rights ideas and practices. As Stephen Young puts it,

[I]t would be best to ground new [human rights] structures on those existing values that have meaning for most members of those societies. Otherwise, changes will be short-lived. Progress protecting human rights can best be made by building procedures and institutions out of traditional values. . . . The task for human rights advocates is thus to understand the dynamics of other societies so that progressive changes can be suggested, introduced, and supported. ⁴³

Second, local traditions may shed light on the *groups* most likely to bring about desirable social and political change. For example, Sangjin Han, Professor of Sociology at Seoul National University, suggests that students from universities in Korea, centers of "cultural authority," could draw on the Confucian tradition of respect for intellectual elites and hence play a crucial role in establishing a society-wide commitment on the need for improving the human rights situation in Korea. ⁴⁴ It may be that intellectual elites are granted uncommon (by Western standards) amounts of legitimacy, prestige, and respect in societies shaped by Confucian traditions, with the implication that human rights activists need to target this group in particular, as opposed to investing their hopes in a mythical liberalizing middle class that often supports human rights reforms only in so far as they maintain a political order conducive to the accumulation of wealth. ⁴⁵

Third, awareness of cultural traditions allows the human rights activist to draw on the most compelling *justifications* for human rights practices. According to Hoi-Man Chan, a sociologist at the Chinese University of Hong Kong, even dissidents in China appeal primarily to instrumental considerations to justify human rights practices. ⁴⁶ For most of the twentieth [End Page 657] century, social critics in China have tended to value democratic political rights primarily as a means for increasing public-spiritedness and nation-building, not on the grounds that democratic decisionmaking is an essential component of leading an autonomous life, which is the sort of intrinsic justification for democracy most common in a Western context. ⁴⁷ For example, many critics in China defend the need for a free press as a means for combatting the widespread official corruption that has such a corrosive effect on commitments to the public good in that country. In Singapore, opposition politician Dr. Chee Soon Juan opens his 1994 political manifesto *Dare to Change: An Alternative Vision for Singapore* with a chapter exposing the gap between the official rhetoric of communitarianism and the more individualistic reality in Singapore, putting the blame squarely on excessive intervention by an authoritarian government that causes people to feel

apathetic and atomized and to lack even minimal concern for the common good of Singaporeans. ⁴⁸ Dr. Chee calls for more protection of rights as an essential measure that would lead to more patriotism and greater national cohesion. In short, strategic considerations of political relevance suggest that human rights activists need to pay more attention to communitarian arguments for human rights, arguments which are particularly persuasive in many East Asian societies. ⁴⁹

Fourth, regardless of the substance or the moral justification for one's arguments, awareness of local traditions may shed light on the appropriate *attitude* to be employed by human rights activists. For example, Professor of Law at Hakone University, Yasuaki Onuma, reminds us that "[i]n Japanese culture, modesty is highly valued. Even if one believes in certain values, proselytizing for them is regarded as arrogant, uncivilized, and counterproductive. Instead, one should find ways to induce others to appreciate these values in a quiet and modest manner." ⁵⁰ This has implications for cross-cultural critics of human rights violations: instead of the blanket criticism of [End Page 658] human rights practices that is often seen in East Asia as high-minded and self-righteous, even by dissident intellectuals, more effective criticism of another society's human rights practices may be prefaced by (1) criticism of human rights practices at home and (2) sincere praise for certain aspects of the society under question. ⁵¹

Fifth, local traditions may also make one more sensitive to the possibility of alternative, *nonlegalistic mechanisms* for the protection of the vital human interests normally secured by a rights regime in a Western context. ⁵² As Onuma notes, "legalistic thinking has been rather foreign to many Japanese . . . to resort to juridical measures and to enforce one's rights is not appreciated. Rather, one is expected to reach the same goal by resorting to less forceful measures such as patient negotiations, mediation, and other conciliatory measures." ⁵³ In such a context human rights activists can suggest nonjuridical mechanisms for the protection of vital human interests, emphasizing that legal means are to be employed only as a last resort. ⁵⁴ This argument is particularly important in view of the growing awareness in East Asia that US-style "rights talk," the tendency to resort to [End Page 659] legal means (or threaten to do so) as a first resort for the protection of rights, has unintended negative consequences, such as justifying the neglect of social responsibilities without which a society could not function and ultimately weakening all appeals to rights by devaluing the really important ones. ⁵⁵

It would seem, then, that strategic considerations of political relevance speak strongly in favor of local justifications for the values and practices that, in the Western world, are normally realized through a human rights regime. Perhaps, however, the deepest and most controversial question remains to be addressed: Can one identify aspects of East Asian cultural traditions relevant not just in the strategic sense of how best to persuade East Asians of the value of a human rights regime, but also in the sense that they may provide a moral foundation for political practices and institutions different from the human rights regimes typically favored in Western countries? It is to this topic that we now turn.

III. A Different Moral Standpoint?

Part II questioned the view that the Western liberal tradition is the only moral foundation for realizing the values and institutions similar to human rights regimes. However, there may be a

deeper flaw with standard liberal theory that lies in its denial of a state's role in giving political embodiment to cultural particularity. In practice this denial is often a prescription for universalizing the balance between freedom and community that characterizes Western societies.

According to the dominant Anglo-American liberal tradition, the role of the state is to secure the rights that allow self-governing individuals to seek the good in their own way. "Left-liberals" favor considerable state intervention to ensure a fair distribution of material resources required for meaningful freedom, and "right-liberals" (or libertarians) ⁵⁶ argue that the liberal vision of individual self-government requires that the state intervene as little as possible in the economic life of the society. However, both groups generally agree that it is not the business of the state to promote or to **[End Page 660]** safeguard particular cultural outlooks. ⁵⁷ The government, in this view, must not favor a particular conception of the good life, for only then can it respect the equal freedom that all persons should have to pursue their chosen ways of life.

This neutralist brand of liberalism thus leads to the conclusion that state and culture cannot mix and that cultural particularity is irrelevant for purposes of justifying a human rights standpoint, as well as for politics more generally. ⁵⁸ However, note that liberal neutrality often conflicts with majoritarian democracy. To take an example from a Western country, the French government, worried by the influx of US fast food chain restaurants and the deleterious impact these are having on the eating habits of young persons in France, recently issued guidelines to include material on culinary appreciation as part of the French primary school curriculum. ⁵⁹ These guidelines seem to be justified in part by the need to maintain the rich and distinctly French culinary tradition. Does liberalism require the French equivalent of a Supreme Court to strike down these guidelines as a violation of basic rights? If so, the conclusion may be that liberal theory needs to be revised. ⁶⁰ **[End Page 661]**

Perhaps the liberal claim that cultural particularity ought to be irrelevant may be valid only with respect to defining and justifying a limited set of fundamental individual (human) rights. This would allow for the legitimate influence of local traditions, as defined by majorities, on the details of educational policy and other such relatively trivial political measures. However, such an approach fails to take into account the need to recognize the cultural rights of minorities, a matter of pressing political concern in the contemporary world now and for the foreseeable future. Consider, for example, minority demands for the right to be schooled in a mother tongue, for official recognition of public holidays, and for local control over immigration policy. These minority rights are not defended as short term compromises to be eliminated once social and political conditions allow it, but rather as essential long term measures to maintain flourishing cultural communities in a potentially hostile environment where the majority partakes of a different language and cultural outlook. Traditional liberal theory and dominant contemporary human rights approaches are inadequate to resolve minority rights issues of this sort. ⁶¹

Given the limits of liberal universalism, it may be necessary to consider alternative conceptual frameworks that are more sensitive to legitimate concerns for governmental protection and promotion of particularistic conceptions of vital human interests. ⁶² Turning now to East Asian conceptions of human rights, it is clear at the outset that there is little dispute over **[End Page 662]** the value of the "minimal and universal moral code": rights against murder, torture, slavery, and genocide (though needless to say many governments continue to engage in nasty deeds off the

record). As Singaporean government official Bilahari Kausikan puts it, "It makes a great deal of difference if the West insists on humane standards of behavior by vigorously protesting genocide, murder, torture, or slavery. Here there is a clear consensus on a core of international law that does not admit of any derogation on any grounds." ⁶³ However, beyond this agreed upon core it may well be possible to identify "civilizational" faultlines with respect to differing conceptions of vital human interests.

As noted at the beginning of this paper, both Western and Asian cultural traditions are complex and change a great deal in response to various internal and external pressures. Nonetheless, it is possible that most politically relevant actors, both officials and intellectuals, in East Asia typically endorse a somewhat different set of vital human interests than their counterparts in the West at this point in time and for the foreseeable future. ⁶⁴ If there is some truth in the propositions set forth below, it is essential for purposes of improving mutual understanding and minimizing cross-cultural conflict to take them into account. ⁶⁵ It may mean that some Western conceptions of human rights are actually culturally specific conceptions of vital human interests, not readily accepted elsewhere, too encompassing in some cases and too narrow in others.

On the one hand, it may be that many East Asians can be persuaded to adopt a *narrower* definition of vital human interests than would typically be the case in the West. Consider the following examples: [End Page 663]

1. In Singapore, there is a law that empowers the police and immigration officers to "test the urine for drugs of any person who behaves in a suspicious manner. If the result is positive, rehabilitation treatment is compulsory." ⁶⁶ University of Hong Kong political philosopher Joseph Chan comments that "[t]his act would be seen by Western liberals as an unjustifiable invasion of privacy. But for some Asians this restriction may be seen as a legitimate trade-off for the value of public safety and health." ⁶⁷

2. In democratic South Korea, each household is required to attend monthly neighborhood meetings to receive government directives and discuss local affairs. ⁶⁸

What may be viewed as a minor inconvenience in Korea would almost certainly outrage most US citizens and it is likely that the US Supreme Court would strike down a governmental policy that forced citizens to associate for political purposes of this sort as a violation of the First Amendment. ⁶⁹ Once again there seems to be more willingness in East Asia amongst the general population to serve the common good by limiting individual freedom, perhaps as a residue of the Confucian cultural tradition.

3. Islamic legal scholar and human rights activist Abdullahi A. An-Na'im offers the following example from Islamic criminal law. According to Islamic law, which is based on the Qur'an and which Muslims believe to be the literal and final word of God, and on the Sunna, or traditions of the Prophet Muhammad, theft is punishable by the amputation of the right hand and homicide by exact retribution or payment of monetary compensation. An-Na'im notes that

Islamic law requires the state to fulfill its obligation to secure social and economic justice and to ensure decent standards of living for all its citizens *before* it can enforce

these punishments. The law also provides for very narrow definitions of these offenses, makes an extensive range of defenses against the charge available to the accused person, and requires strict standards of proof. Moreover, Islamic law demands total fairness and equality in law enforcement. In my view, the prerequisite conditions for the enforcement of these punishments are extremely difficult to satisfy in practice and are certainly unlikely to materialize in any Muslim country in the foreseeable future. [70](#)

[End Page 664]

Notwithstanding the practical impediments to the legitimate implementation of corporeal punishment under Islamic law, An-Na'im argues that Islamic criminal law is endorsed in principle by the vast majority of Muslims today, [71](#) whereas most Western liberals and human rights activists would almost certainly regard it as a violation of the human right not to be subjected to "cruel, inhuman or degrading treatment or punishment."

In other areas, however, it may be that most East Asians would likely subscribe to an unusually *wide* definition of vital human interests:

1. Whereas East Asian ideas about the punishment and prevention of crime are heavily weighted towards repentance and rehabilitation, ex-criminals in the West are not typically encouraged to repent and resume normal lives. Fifteen states in the United States, for example, currently make no provision for ex-felons even to regain basic rights of citizenship, instead disenfranchising them for life, and most states restrict ex-offenders from working in occupations as varied as banking, teaching, bartending, and barbering. [72](#) This legal denial of the possibility that ex-criminals can be rehabilitated and reintegrated into society may be viewed a violation of a vital human interest from some East Asian perspectives.

2. While the "excessive" concentration on the punishment of criminals in the above example may be more of a distinctly US phenomenon, in other areas East Asians may find incomplete even the wide set of rights typically endorsed by left-liberal thinkers and Western European governments, including a full range of civil and political rights as well as many social and economic rights. For example, Harvard University professor of Chinese philosophy and history Tu Wei-ming notes that in Confucianism filial piety is "the essential way of learning to be human." [73](#) Children have a profound duty to care for elderly parents, a duty to be forsaken only in the most exceptional circumstances, and parents have a fundamental right to be cared for by their children. Thus, whereas it is widely seen as morally acceptable in the West to commit elderly parents to nursing homes, [74](#) from an East Asian perspective this often amounts to condemning one's parents to **[End Page 665]** a lonely and psychologically painful death [75](#) and is a violation of a vital human interest.

In political practice this means that it is incumbent on East Asian governments to provide the social and economic conditions for the realization of the right to obtain care from one's children. The Singaporean government, for example, recently enacted a law that forces children to provide financial support for their elderly parents, [76](#) although critics sensitive to East Asian nonlegalist traditions argue that trying to enforce in detail community intuitions about filial piety may well

have the unintended effect of weakening those same intuitions. Some persons who once gave freely to their parents now ask for receipts just in case the government may come to check on them, and one can imagine the impact this has on the amount of trust informing family relationships. Instead, such critics argue for more indirect mechanisms such as tax breaks for those who care for elderly parents (as in Hong Kong) and priority for public housing to those who want to live near elderly parents. It is worth keeping in mind that even such relatively innocuous means to promote the cultural value of filial piety would be ruled out of court by mainstream Western liberals for whom cultural particularities are strictly private matters. ⁷⁷ [End Page 666]

In sum, East Asian conceptions of vital human interests may well differ from the human rights standards typically endorsed by US liberal theorists, Western governments, and international human rights documents formulated without substantial input from East Asia. The position that every society need not settle on exactly the same balance between the claims of individual freedom and the human need for a decent common life when these two concerns come into conflict with one another is not particularly controversial in East Asia. However, many otherwise progressive liberal voices in the West still seem compelled by a tradition of universalist moral reasoning that proposes one final solution to the question of the ideal polity, yet paradoxically draws only on the moral aspirations and political practices found in Western societies. ⁷⁸ If the ultimate aim is an international order based on universally accepted human rights, the West needs to recognize that human rights have been in constant evolution and should welcome the possibility of a positive East Asian contribution to this process.

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Notes

¹. This paper (especially Parts I and II) draws on discussions and papers presented at a workshop held in Hakone, Japan, in June 1995, which was the first of three workshops on the theme "The Growth of East Asia and Its Impact on Human Rights" (hereinafter "Hakone workshop"). The overall three-workshop project is the first sustained and structured dialogue on human rights involving the United States and Asia that relies on empirical data from project countries. It is an attempt to understand how the societies of this region, undergoing rapid social and economic change, are coping with the notion of human rights. It is administered by the Carnegie Council on Ethics and International Affairs, and cosponsored by the Japan Institute of International Affairs, and the Faculty of Law at Chulalongkorn University in Thailand. The project is supported by generous grants from the Japan Foundation Center for Global Partnership, the Rockefeller

Brothers Fund, and the United States Institute of Peace.

An earlier version of this paper has been distributed to all project participants and presented at the 1995 annual meetings of the American Sociological Association and the American Political Science Association. The author--also the co-editor (with Project Director Joanne Bauer) of the book that is to emerge at the end of this project--is particularly grateful for the detailed comments of the following individuals: Abdullahi Ahmed An-Na'im, Joanne Bauer, Maria Serena Diokno, Jack Donnelly, Amitai Etzioni, Laurence Goldstein, Jomo K.S., Eric Kuhonta, Michael Posner, Dorothy Solinger, Bing Song, Kevin Tan, Eric Tsui-James, and Yozo Yokota. The author would also like to thank the Carnegie Council on Ethics and International Affairs and the Center for Communitarian Policy Studies for financial assistance. While it would not have been possible to write this paper without the help of the above individuals and institutions, the author assumes sole responsibility for the viewpoints presented and defended in this paper.

2. In response to a recent gathering of world leaders in New York to celebrate the fiftieth anniversary of the United Nations, *The New York Times* commented sardonically on various states' official rhetoric, juxtaposing statements by, *inter alia*, Iranian, Croatian, and US officials with a brief analysis of those countries' policies. See Barbara Crossette, *Incredibility at the U.N.: Forget What I Do, World; Listen to What I Say*, **N.Y. Times**, 29 Oct. 1995, at E7.

3. **Michael Walzer, Interpretation and Social Criticism** 24 (1987). See also **Michael Walzer, Thick and Thin** (1994).

However, Michael Posner, the Executive Director of the Lawyers Committee for Human Rights, points out that there is a problem when states may interpret the minimal universal code in different ways. "Many states condemn torture, but then justify physical means of coercion, for example in extracting information from a detainee which affects national security interests. Who decides whether this is torture?" Letter from Michael Posner, Executive Director, Lawyers Committee for Human Rights, to Daniel Bell, Lecturer, Dept. of Philosophy, University of Hong Kong 2 (4 Apr. 1996) (on file with the author).

Things become even more problematic when Walzer argues that every society has also come to accept a prohibition against "deception." See **Walzer, Interpretation and Social Criticism**, *supra*, at 24. However, what counts as "deception" in the United States (for example, saying "yes" to an invitation when one really means to say "no") may be termed "politeness" in Thailand, Java, and Japan. More importantly (pace Immanuel Kant) one can think of circumstances when it may be justifiable to resort to deception (for example, consider Schindler's recourse to lies for the purpose of protecting Jews from Nazis in World War II).

4. These include many of the East and Southeast Asian participants at the Hakone workshop, most of whom were chosen on the basis of their independent points of view and academic reputations. See, e.g., *supra* notes 7-10, 12, 22, 26, 44, 4, 6, 50 and accompanying text.

5. "Not in the first instance" because different societies may rank rights differently, hence "cultural" factors can come into play when it must be decided which right must be sacrificed when two rights conflict. However, the claim that different societies facing a similar set of disagreeable circumstances may come to different conclusions about the right that needs to be curtailed in the short term (assuming here that both "sides" agree that the same set of rights must be secured once

circumstances no longer force political authorities to make hard choices in this respect) suggests a less intractable cultural conflict than the claim that two societies value a different set of rights as an end point.

6. Nathan Gardels, *Interview with Lee Kuan Yew*, **New Perspectives Q.** (1992).

7. Amartya Sen, Human Rights and Economic Achievements 16 (June 1995) (unpublished manuscript presented at the Hakone workshop, on file with author).

8. Yozo Yokota, Economic Development and Human Rights Practice 3 (June 1995) (unpublished manuscript presented at the Hakone workshop, on file with author).

9. *Id.*

10. Xin Chunying, East Asian Views of Human Rights 9 (June 1995) (unpublished manuscript presented at the Hakone workshop, on file with author).

11. With the exception of the points raised by Kevin Tan (see *infra* notes 12-13 and accompanying text), these examples arose in discussion during the Hakone workshop. They were not endorsed by the participants. Rather, they were raised as examples of justifications that cannot be rebutted without the acquisition of local knowledge.

12. Kevin Tan, Developments in Legal Reform in East Asia 6 (June 1995) (unpublished manuscript presented at the Hakone workshop, on file with author).

13. *Id.* See also **David Brown, The State and Ethnic Politics in Southeast Asia** 86 (1994) ("Singaporeans have thus been repeatedly reminded of the ethnic tensions of the 1960s in order to maintain a garrison mentality.").

It is worth pointing out that Western countries have resorted to similar means to combat crises. The British government not too long ago had the power to detain without trial suspected IRA activists in Northern Ireland, and magistrates in Italy currently have the power to imprison recalcitrant witnesses to aid the fight against the mafia. See, e.g., Adrian Lyttleton, *The Crusade Against the Cosa Nostra*, **N.Y. Rev. Books**, 5 Oct. 1995, at 56.

14. For a defense of the right to a secure cultural context from a liberal perspective see **Will Kymlicka, Liberalism, Community, and Culture** 161-81 (1989).

15. Needless to say, many other governments have also dispossessed native peoples of their ancient homelands for purposes of economic development. For example, in 1873, Governor L.F. Grover of Oregon offered the following justification for (successfully) opposing plans by President Ulysses Grant to designate a portion of the Wallowa Valley as a reservation:

If the (white) families should be removed to make roaming ground for nomadic savages, a very serious check will be given to the growth of our frontier settlements, and to the spirit of our frontier people in their efforts to redeem the wilderness and make it fruitful for civilized life.

Michael Frome, *Close Yellowstone!*, **Chi. Trib.**, 8 Mar. 1992, at C1.

[16.](#) While the central government does oppose, at least rhetorically, this kind of maltreatment of labor, Dorothy Solinger points out that its own economic policies (decentralizing profit retention to local governments and allowing tax receipts on local industry to be collected and kept locally) have disposed local leaders to solicit rights abusing investors. As Solinger observes, "the problem is pretty complex--it's not just a question of 'the state' and its approach to rights . . . the various echelons of the state may have separate interests and different reasons for their stances on rights." Letter from Dorothy Solinger, Professor of Political Science, University of California at Irvine, to Daniel Bell, Lecturer, Department of Philosophy, University of Hong Kong 1 (23 Sept. 1995) (on file with author).

[17.](#) The example of human rights violations against the hearing impaired was provided by Akihiko Yonaiyama in a public forum on "The Growth of East Asia and Its Impact on Human Rights," held at the United Nations University in Tokyo following the Hakone workshop referred to in this paper.

[18.](#) It is worth noting that Article 4 of the United Nations International Covenant on Civil and Political Rights (1966) explicitly allows for short term curbs on rights if these are necessary to deal with particular social crises:

In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

International Covenant on Civil and Political Rights, *adopted* 16 Dec. 1966, 999 U.N.T.S. 171 (*entered into force* 23 Mar. 1976), G.A. Res. 2200 (XXI), 21 U.N. GAOR, Supp. (No. 16) 52, U.N. Doc. A/6316 (1966). The article goes on to state that derogation of rights against murder, torture, and slavery (i.e., prohibitions similar to Walzer's "universal and minimal moral code") among others, may not be made under this provision.

[19.](#) It is interesting to note that some arguments for affirmative action in the United States take a similar form as situation- specific "trade off" arguments for the restriction of particular rights in East Asia. Amy Gutmann, for example, argues that affirmative action for African-Americans, and the consequent possibility of restrictions on the right to equal opportunity for some equally qualified white candidates who may not be participants in or direct beneficiaries of racist practices, is a necessary and effective temporary measure to remedy years of discrimination against African-Americans in the United States. Amy Gutmann, *Responding to Racial Injustice in the United States* (Apr. 1995) (on file with author). Michael Walzer similarly begins with the premise that political authorities must respond to the serious problems faced by African-Americans arising in the context of a painful history, but he argues that "the redistribution of wealth is more likely than the reservation of office to have enduring results." **Michael Walzer, Spheres of Justice: A Defense Of Pluralism And Equality** 154 (1983).

The point here is that both defenders and critics of affirmative action often accept the structure of the argument on affirmative action: our country is confronted with a serious, situation-specific

crisis in need of a political response (i.e., racism in America), and the proposal to deny a right (i.e., the right to equal opportunity for equally qualified white candidates who may not be responsible for racist practices in the past) is offered as a short term measure that may (the supporter of affirmative action) or may not (the critic) serve to overcome this crisis. In order to make a meaningful contribution to this debate one must be armed with local knowledge that allows one to evaluate the following premises: the premise that a country is facing a crisis; the premise that it is in need of a political response; and the political conclusion that temporarily denying a right is the most effective means of dealing with that crisis.

[20.](#) For example, Article 8 of the Bangkok Declaration adopted by several Asian states in 1993 states 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, [and] bearing in mind the significance of national and regional particularities and various historical, cultural and religious backgrounds." Xin, *supra* note 10, at 12 (emphasis added).

[21.](#) Cultural factors, to be more precise, may affect the prioritizing of human rights. *See supra* note 5. For example, US citizens may be more willing to sacrifice a social or economic right (e.g., the right to health care regardless of income) in cases of conflict with a civil or political right (e.g., if neither the constitution nor a majority of democratically elected representatives support universal access to health care). In contrast, the Chinese may be more willing to sacrifice a civil or political liberty in cases of conflict with a social or economic right (e.g., restrictions on the internal movement of farmers may be necessary to guarantee the right to subsistence). Both "sides," however, can agree that such restrictions are unfortunate and hopefully temporary.

It is worth noting that arguments over justifications for short term restrictions of rights may sometimes turn solely on empirical issues (e.g., disagreements over whether curbing a right is in fact necessary to deal with a temporary crisis). Sometimes arguments may turn on whether or not rights curbs are necessary in order to limit the deleterious effects of deeply held cultural values, as in the case of arguments over whether the one child per family policy in China is necessary to curb the effects of a deeply held rural preference for siring male children. In this sense what Kevin Tan terms "priority issues" are less inclusive than what I call "short term, situation specific justifications for the curtailment of a particular right," which refer to more than cultural clashes over the priority of rights. *See* Tan, *supra* note 12, at 1.

[22.](#) Jack Donnelly, Human Rights and Asian Values 15 (June 1995) (unpublished manuscript presented at the Hakone workshop, on file with author). *See also* Xin, *supra* note 10, at 15.

[23.](#) Donnelly, *supra* note 22, at 3.

[24.](#) John Locke, *Second Treatise on Government*, in **Two Treatises of Government** (Cambridge University Press 1963) ().

[25.](#) Sen, *supra* note 7.

[26.](#) Nurcholish Madjid, Islam, Modernization and Human Rights: A Preliminary Examination of the Indonesian Case 7 (June 1995) (unpublished manuscript presented at the Hakone workshop, on file with author) (quoting Chandra Muzaffar). For an argument that strains of classical Confucian thought are consistent with elements of modern human rights values, see Du Gangjian & 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 **Human Rights and Chinese Values** 35 (Michael C. Davis ed., 1995).

[27.](#) See e.g., **James Tully, A Discourse on Property: John Locke and His Adversaries** 36 (1980). The large majority of US Americans who believe in God might also be puzzled by the assertion that human rights need to have anthropocentric foundations.

[28.](#) **Derk Bodde & Clarence Morris, Law in Imperial China** 140 (1967).

[29.](#) *Id.* at 145.

[30.](#) *Id.* at 141-42. Pursuing a similar theme (i.e., the search for functional equivalents of human rights practices in East Asian cultural traditions), Stephen Young argues that "the theory of yin and yang was explicitly used by the Chinese to limit political power." Stephen B. Young, *Human Rights Questions in Southeast Asian Culture: Problems for American Response*, in **The Politics of Human Rights** 190 (Paula R. Newberg ed., 1980). In the same vein, Alan Wood argues that "the neo-Confucian legacy of the Northern Sung was clearly present in the modernization of both Japan and China and employed to advocate a limited, constitutional monarchy, not blind obedience to the ruler." **Alan Wood, Limits to Autocracy: From Sung Neo-Confucianism to a Doctrine of Political Rights** 170 (1995).

[31.](#) The conception of tradition refers to an *ongoing* argument about the good of the community whose identity it seeks to define. The cultural traditions of interest to human rights activists, in other words, should be *living* in the sense that fundamental values still have the capacity to motivate action in the contemporary era. For similar accounts of tradition, see **Robert Bellah et al., Habits of the Heart** 27-28, 335-36 (1985); **Alasdair MacIntyre, Whose Justice? Which Rationality?** (1988).

[32.](#) John L. Esposito points out that "[t]oo often analysis and policymaking have been shaped by a liberal secularism that fails to recognize it too represents a world view, not the paradigm for modern society, and can easily degenerate into a 'secularist fundamentalism' that treats alternative views as irrational, extremist, and deviant." John L. Esposito, *Political Islam: Beyond the Green Menace*, 93 **Current Hist.** 24 (1994). The problem with "secular fundamentalism" is not just that it fails to respect nonliberal cultural traditions, but that it plays into the hands of "religious fundamentalists" who also seek to reject wholesale values and practices associated with the Western liberal tradition.

[33.](#) This is not to deny that aspects of religious traditions are inconsistent with contemporary human rights values and practices, but only to suggest that aspects of religious traditions may be supportive of human rights and to offer the possibility that contemporary members of religious traditions may be able to formulate persuasive interpretations while excising "contingent" aspects inimical to human rights concerns. See, e.g., **Jean Bethke Elshtain, Public Man, Private Woman: Women in Social and Political Thought** 55 (2d ed. 1993) (arguing that Christians have good reasons to excise justifications for the subordination of women without undermining more valued aspects of the Christian tradition).

It may also be worth noting that accounts of traditional values and practices may be distorted by

powerful interests or may rest on an inadequate understanding of the traditions by rivals and even by practitioners themselves. Whereas it is often held that Islam justifies the subordinate position of women, for example, some contemporary interpreters of Islamic teachings have argued that:

the Quran's strictures on the family display a concern to ameliorate the status of women by abolishing pre-Islamic practices such as female infanticide, and according women rights of divorce, property ownership, and inheritance. Arguably many practices which weakened women's status [in Islamic societies] were the result of local customs which were often antithetical to the spirit of emancipation envisaged in the Quran.

Chandran Kukathas, *Explaining Moral Variety*, 11 **Soc. Phil. & Pol.** 10 (1994). *See also* **Fatima Mernissi, Women and Islam: An Historical and Theological Inquiry** (1991) (arguing that there are no true grounds in Islam for discrimination against women). One can also point out that the practice of female genital mutilation predates the rise of Islam in Northern African societies, and that none of the major Islamic texts call directly for female genital mutilation. *See* Linda Burstyn, *Female Circumcision Comes to America*, **Atlantic Monthly**, Oct. 1995, at 30.

[34.](#) Young, *supra* note 30, at 187. It is important to note that Young proceeds to criticize this standpoint: "Although the Anglo-American political and legal tradition has been a forceful expositor of human rights causes, it is not the only basis upon which to build a political system that respects individual dignity." *Id.* Nonetheless, Young falls into his own universalist trap when he fails to distinguish between democracy and human rights, apparently assuming that Western style electoral mechanisms are necessary and sufficient to secure basic human rights. *See id.* at 187-88, 209. It is important to keep in mind that nondemocratic governments sometimes do fairly well at securing human rights (e.g., Hong Kong or the Republic of Venice for most of this millennium), whereas democratic governments can sometimes have atrocious human rights records (e.g., Sri Lanka and El Salvador under Duarte).

[35.](#) It is worth noting that nongovernmental agencies in the United States officially committed to certain rights also subordinate rights concerns when these conflict with commercial considerations. While *The New York Times* and *The Washington Post* tend to be unequivocal defenders of the right to freedom of the press at the level of rhetoric (i.e., in editorials), as co-owners of *The International Herald Tribune* they have in a recent case accepted liability and paid a \$214,285 fine for having "libelled" (i.e., criticized) members of the Singaporean government. One can surmise that *The International Herald Tribune* feels obliged to compromise its journalistic principles in order to maintain its regional headquarters in Singapore, but the probable effect is to discredit the ideal of freedom of the press in the eyes of the local audience. *See* William Glaberson, *Paper to Pay \$214,285 in Singapore Libel Case*, **N.Y. Times**, 29 Nov. 1995, at A10.

[36.](#) Mahathir bin Mohammad, *East Asia Will Find Its Own Roads To Democracy*, **Internat'l Herald Trib.**, 17 May 1994, at 3.

[37.](#) Universal Declaration of Human Rights, *adopted* 10 Dec. 1948, G.A. Res. 217A (III), 3 U.N. GAOR (Resolutions, part 1) at 71, U.N.Doc. A/810 (1948), *reprinted in* 43 **Am. J.Int'l L. Supp.** 127 (1949).

[38](#). One can explain this phenomenon in part by the fact that the Marcos regime depended to a great extent on United States economic and military support. Because of this, Marcos was extremely conscious of his public image before the world. This, in turn, led him to employ legalistic justifications for his policies. As Maria Serena Diokno puts it, "what better way than to apply international instruments he had publicly proclaimed as the guiding principles of his rule?" Letter from Maria Serena Diokno, Convenor of the Program for Peace, Conflict Resolution, and Human Rights, University of the Philippines, to Daniel Bell, Lecturer, Department of Philosophy, University of Hong Kong 2 (20 Nov. 1995) (on file with author).

[39](#). Needless to say, many East Asian governments do pay lip service to UN documents while ignoring them in practice. Walter Laqueur and Barry Rubin write that "these accords [international accords on human rights], while ratified by the requisite number of countries and sometimes provided with detailed machinery for implementation, have remained dead letters." **The Human Rights Reader** 195 (Walter Laqueur & Barry Rubin eds., 1990). In view of this phenomenon one may want to modify the sentence on the second page of this paper stating that "there is not much point deliberating about the desirability of practices that all condemn in principle" with the claim that further cross-cultural dialogue, even with respect to "universal and minimal rights" that all accept at the level of principle, may help to *deepen* commitment to human rights norms and narrow the gap between the ideal and the practice. So, for example, if it can be demonstrated that according to traditional Confucian conceptions of political rule governments have an obligation to alleviate suffering and avoid cruelty, this may help to persuade self-identified "Confucian" rulers to avoid committing torture. Of course, the realities of power politics in some cases will mean that cynical rulers are not likely to pay more than lip service to human rights no matter what the justification, but still in other cases "local justifications" for human rights may be more persuasive than articles in the International Bill of Human Rights.

[40](#). See, e.g., Geoffrey Best, *Where Rights Collide With Duties*, **Times Literary Supplement**, 22 Sept. 1995, at 12 (book review). Geoffrey Best, a Senior Associate Member of St. Antony's College, Oxford, points out that

it cannot be denied that human rights did have a strongly "Western" appearance at their first launching on the world. . . . Western Europe, the British Commonwealth, and the Americas, both North and South, dominated the initial definition and promotion of human rights, the participation of authentically non-Western representatives was relatively meagre, and no ordinarily skeptical reader was much moved by the testimonies of supportive intellectuals rounded up by, eg. Unesco . . . [The problems with the UDHR] derive from the 1948 Declaration's model of the human being: a Western model roughly but not unfairly describable as individualistic, secularizing, morally autonomous, acquisitive, and so on. . . . The Western historical experiences which produced the UDHR are regionally peculiar.

Id.

But see John P. Humphrey, *The Memoirs of John P. Humphrey, First Director of the United Nations Division of Human Rights*, 5 **Hum. Rts. Q.** 387, 396-97 (1983). During the period when the Commission on Human Rights was drafting the Universal Declaration of Human Rights, P.C. Chang, China's representative to the Economic and Social Council, was the Vice-Chair of the Commission. Evidently Mr. Chang played a key role in the drafting process. "He was a master of

the art of compromise and, under cover of a quotation from Confucius, would often provide the formula which made it possible for the Commission to escape from some impasse." *Id.*

[41.](#) Canada has recently floated a plan for a UN force to help the United Nations respond to human rights crises. See Christopher Wren, *Canada Proposes Force to Help U.N. Respond Rapidly to Crises*, **N.Y. Times**, 29 Sept. 1995, at A7.

[42.](#) Universal Declaration of Human Rights, *supra* note 37, art. 15.

[43.](#) Young, *supra* note 30, at 209.

[44.](#) Sangjin Han, Political Liberalization, Stability, and Human Rights 21 (June 1995) (unpublished manuscript presented at the Hakone workshop, on file with author).

[45.](#) See **Daniel A. Bell et al., Towards Illiberal Democracy in Pacific Asia** 78-106 (1995).

[46.](#) Hoi-Man Chan, Confucianism and Human Rights: Backward Toward the Society of Affect 28 (June 1995) (unpublished manuscript presented at the Hakone workshop, on file with author). In the same vein, William Alford argues with reference to the Chinese context that

[a]ppeals to adopt international standards for their own sake or because their advocates believe that these standards enhance individual freedom as an end in itself are less likely to be successful than those that endeavor to portray the instrumental value of human rights in the process of building the state, and thereby securing the collective good.

William P. Alford, *Making A Goddess of Democracy from Loose Sand: Thoughts on Human Rights in the People's Republic of China*, in **Human Rights in Cross-Cultural Perspectives: A Quest For Consensus** 75 (Abdullahi Ahmed An-Na'im ed., 1992).

[47.](#) Consider the fact that US communitarians such as Amitai Etzioni and Philip Selznick, troubled by the erosion of communities in the United States, often defend the need for flourishing communities as an essential means for the protection of individual liberty. See, e.g., Amitai Etzioni, *The Responsive Communitarian Platform*, in **The Spirit of Community** 251 (Amitai Etzioni ed., 1993).

[48.](#) See **Chee Soon Juan, Dare to Change: An Alternative Vision for Singapore** (1994).

[49.](#) See Daniel A. Bell, *A Communitarian Critique of Authoritarianism*, **Society**, July/Aug. 1995, at 38.

[50.](#) **Yasuaki Onuma, In Quest of Intercivilizational Human Rights: "Universal vs. Relative" Human Rights Viewed from an Asian Perspective** 4 (Centre for Asian Pacific Affairs, The Asia Foundation, Occasional Paper No. 2, 1996). Professor Onuma also participated in the discussions at the Hakone workshop.

[51.](#) One good example of this approach emerged from a recent tribute to the late United States Secretary of Commerce Ronald H. Brown. Sara French, *Brown Much More Than a Superb Salesman*, **Eastern Express** (Hong Kong), 13-14 April 1996, at 28. Recalling Secretary Brown's

first official trip to China two years ago, Jeffrey Garten, who served as Undersecretary of Commerce for International Trade until November of 1995, said that Brown had been advised that the merest mention of human rights to Chinese President Jiang Zemin would jeopardize the entire mission and scuttle negotiations over several big commercial deals. *Id.*

But Secretary Brown, an African-American in the United States' largely white power structure, vowed nonetheless to raise the issue. *Id.* After launching into a sales pitch for one of the projects under discussion, Secretary Brown paused for breath and said "Let me tell you something about myself." *Id.* He went on to talk about his experience in the US civil rights movement and about continuing race discrimination in the US. *Id.* Neither he nor anyone else was in a position to preach, he said. *Id.* "But it would really be to your advantage to do something about the abuses that occur here," he told President Jiang. *Id.* "Don't do it for us. Do it for yourselves. Do it because you're a great country, because you're a great power." *Id.*

After a long pause, President Jiang said "If you put it that way, I think we have something to talk about." *Id.* Jiang eventually agreed to resume the human rights dialogue and told Secretary Brown that he could announce it that evening. *Id.*

[52.](#) If human rights practices and institutions refer by definition only to the *legal* protection of individual rights, then, needless to say, nonlegalistic mechanisms for the protection of those same individual rights cannot be termed "human rights practices." However, if the end result is the same--i.e. protection against threats to human dignity, which is presumably the whole point of a human rights regime--it is unclear why one should place too much emphasis on this terminological issue.

[53.](#) Onuma, *supra* note 50, at 4.

[54.](#) The proposal to set up a Human Rights Equal Opportunities Commission in Hong Kong is particularly promising in this regard. By initially emphasizing informal conciliation instead of court litigation as a response to complaints of discrimination, this proposal, as Michael Davis notes, "seems to adhere to the expected standards of conflict resolution under allegedly less adversarial Asian social conditions." Michael Davis, *Chinese Perspectives on Human Rights*, in **Human Rights and Chinese Values** 20-21 (Michael Davis ed., 1985). For more details see Anna Wu Hungyuk, *Why Hong Kong Should Have Equal Opportunities Legislation and a Human Rights Commission*, in **Human Rights and Chinese Values**, *supra*, at 196-97.

[55.](#) See **Mary Ann Glendon, Rights Talk: The Impoverishment of Political Discourse** (1991).

[56.](#) This is a reference to libertarian advocates of the free market such as Milton Friedman and Robert Nozick, not to neoconservatives who favor use of the state to promote "traditional values."

[57.](#) See, e.g., **Daniel A. Bell, Communitarianism and Its Critics** 3-4 (1993).

[58.](#) It should be noted that some contemporary Western liberal thinkers offer persuasive critiques of the ideal of state neutrality from within the liberal tradition. See, e.g., **Stephen Macedo, Liberal Virtues** (1991). While it may be possible to formulate a defensible "nonneutralist" version of liberalism at the level of high philosophical theory, the fact remains that the value of neutrality informs many of the actual political practices and legal judgments in the United States

as well as much popular thinking about life and ethics. See **Michael Sandel, Liberalism and the American Political Tradition** (forthcoming 1996).

59. See, e.g. **Centre National de Documentation Pédagogique, Programmes de l'école primaire** 27-28 (1995). According to Josiane Volck, Responsable Pédagogique de l'Ecole Primaire at the French International School in Hong Kong, gastronomic education begins in kindergarten, when five year old children are taught to distinguish between various sorts of tastes. The lunch menu at primary school is designed to promote a healthy diet and the appreciation of French cuisine, although North African, Italian, Chinese and other "non-French" dishes are also served to promote an appreciation of the contributions of minority groups in France. It is interesting to note as well that every classroom in the French secular school system must display a copy of the 1789 French Declaration on the Rights of Man and Citizen--a document that in France seems to have more emotional resonance than the Universal Declaration of Human Rights, just as ordinary US Americans seem most attached to the Bill of Rights in the US Constitution. Interview with Josiane Volck, Responsable Pédagogique de l'Ecole Primaire, French International School, Hong Kong (15 Apr. 1996).

60. It is interesting to note that Michael Walzer does allow for the fact that the governments of France, Norway, and the Netherlands

take an interest in the cultural survival of the majority nation; they don't claim to be neutral with reference to the language, history, literature, calendar, or even the minor mores of the majority. To all these they accord public recognition and support, with no visible anxiety. At the same time they vindicate their liberalism by tolerating and respecting ethnic and religious differences and allowing all minorities an equal freedom to organize their members, express their cultural values, and reproduce their way of life in civil society and the family.

Michael Walzer, *Comment*, in **Multiculturalism: Examining the Politics of Recognition** 99, 100 (Amy Gutmann ed., 2d ed. 1994).

However, Walzer argues that a different kind of liberalism informs the official doctrine of immigrant societies like the United States. This liberalism "is committed in the strongest possible way to individual rights and, almost as a deduction of this, to a rigorously neutral state, that is, a state without cultural or religious projects or, indeed, any sort of collective goals beyond the personal freedom and the physical security, welfare, and safety of its citizens." *Id.* at 99. Even as an account of the actual situation in the United States, however, Walzer's description of US-style liberalism is misleading. One important federal agency--the National Park Service (NPS)--is explicitly entrusted with the task of identifying, safeguarding, and interpreting natural and cultural resources of national significance (such as Yellowstone National Park and the Statue of Liberty). An official NPS publication makes this "nonneutralist" justification explicit:

The ability of our national historic sites, cultural symbols, and natural environments to contribute to the public's sense of a shared national identity is at the core of the purpose of the NPS. . . . Hence, park use has meaning and purpose higher and apart from purely recreational, entertainment, or economic values. It is partly an act of nation building.

National Parks for the 21st Century: The Vail Agenda 15, 74 (1991).

[61.](#) For an interesting attempt to supplement traditional liberalism with a theory of minority rights, see **Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (1995)**. Kymlicka, however, defends minority rights on the grounds that a rich cultural context is a crucial precondition for the exercise of individual freedom. *See id.* at 75-106; **Kymlicka, *supra* note 14**, at 162-81. It is doubtful that this approach captures the way that members of minority groups actually think of the value of communal attachments.

[62.](#) Another drawback of this version of liberal universalism is that it conflicts with the ideal that all parties in a dialogue among equals should leave open the possibility of learning something from the other interlocutors, in this case of learning from alternative political values and practices in the course of cross-cultural dialogue. If the only just form of government is one that bars cultural particularities from the political realm, then the purpose of dialogue with members of societies that give political embodiment to cultural particularity cannot be more than the strategic aim of persuading them to do otherwise. This approach to "dialogue" is both disrespectful and counterproductive.

[63.](#) Bilahari Kausikan, *Asia's Different Standard*, 92 **Foreign Pol'y** 39 (1993).

[64.](#) In order to avoid confusion, this paper assumes that "human rights" are (or ought to be) universal, and defines "vital human interests" as a broader term which includes conceptions of what is most important to human flourishing that may vary from culture to culture. It should be noted, however, that in ordinary parlance many (especially in the United States) do not distinguish between "human rights" and "vital human interests"--what is thought to be crucial to human flourishing in a particular setting is labelled a "human right" and is therefore said to be universal (no competing conceptions of human interests are allowed to "trump" one's conception of vital human interests), with no space left for the idea that particularistic conceptions of what is most crucial to human flourishing can shape political practices and institutions in different ways.

[65.](#) The examples below were selected from the author's research and from ideas that arose during informal discussion with participants at the Hakone workshop. They did not emerge (with the exception of the example of filial piety) in formal presentations and discussions at the Hakone workshop.

[66.](#) Joseph Chan, *The Asian Challenge to Universal Human Rights: A Philosophical Appraisal*, in **Human Rights and International Relations in the Asia Pacific** 25, 36 (James T.H. Tang ed., 1995) (quoting Won Kan Seng, *The Real World of Human Rights*, Address at the Second World Conference on Human Rights, Vienna, 1993).

[67.](#) *Id.*

[68.](#) Kim Dae Jung, *Is Culture Destiny?*, **Foreign Aff.**, Nov/Dec. 1994, at 190.

[69.](#) *See Norman Redlich et al., Understanding Constitutional Law* 309-25 (1995).

[70.](#) Abdullahi A. An-Na'im, *Toward a Cross-Cultural Approach to Defining International Standards of Human Rights: the Meaning of Cruel, Inhuman, or Degrading Treatment or*

Punishment, in Human Rights in Cross-Cultural Perspectives: A Quest for Consensus, *supra* note 46, at 34.

[71.](#) *Id.* at 34.

[72.](#) See Robert Wuthnow, *Repentance in Criminal Procedure: The Ritual Affirmation of Community*, in **The Responsive Community** (forthcoming); **David T. Stanley, Prisoners Among Us** (1976).

[73.](#) **Tu Wei-ming, Confucianism in an Historical Perspective**, 15 (Institute of East Asian Philosophies, Occasional Paper and Monograph Series No. 13, 1989).

[74.](#) This is not to deny that Westerners sometimes agonize over the decision to commit a parent to an old age home. It is only to say that generally speaking, East Asians are more likely to provide personal care for elderly parents in response to (1) the special value of filial piety in Confucianism; and (2) the fact that East Asian social and political systems are often structured in such a way as to make it easier for adults to care for their elderly parents.

[75.](#) Substantial international exposure in some cases can reinforce rather than change this initial moral standpoint. For example, Dewi Fortuna Anwar, educated in London and Melbourne and currently the head of the regional and international affairs division of Jakarta's Center for Political and Regional Studies, told *Asiaweek* that "[f]amily ties are considered the most important in society. If a member does really well, he has a responsibility toward those who are not as fortunate." *The Cultural Element*, **Asiaweek**, 2 Mar. 1994, at 24. "She is especially disturbed by the practice in the West of entrusting the care of the elderly to nursing homes." *Id.* The fact that Dewi Fortuna Anwar is from Indonesia suggests that there may be cultural traditions besides Confucianism that place special value on care for elderly parents.

[76.](#) See Daniel A. Bell, *Together Again?*, **Times Literary Supplement**, 25 Nov. 1994, at 6 (book review).

Similarly, in Japan the civil law "requires children to decide which sibling is responsible for supporting their parent(s)." *Japanese, American Approaches Differ on Aging, Long-Term Care*, **JEI Rep.** No. 14A, 10 Apr. 1992, at 13. The same source notes the following cross-cultural difference:

despite the complaint in the 1980s that adult children were returning to the nest because of the high cost of independent living, older Americans generally do not expect their children to provide the home-centered care that might be necessary to avoid entering a nursing home. Many Japanese senior citizens, however, continue to expect immediate family or relatives to care for them as they become more dependent in old age.

Id. at 10.

[77.](#) As Jack Donnelly puts it, "A human rights approach assumes that people probably are best suited, and in any case entitled, to choose the good life for themselves. If Asians truly value family over self, they will exercise their personal rights with the consequences for their family in mind."

Donnelly, *supra* note 22, at 35. In addition to exercising their rights with the consequences for their family in mind, however, Asians committed to the value of filial piety may also favor state support in the form of incentives and housing benefits that *facilitate the realization* of this value. Is it really a human rights problem if democratic majorities in East Asia vote for such policies?

78. Even some of the most thoughtful proponents of human rights in the West do not admit the possibility that every society need not settle on exactly the same conception of vital human interests. Sydney Jones, for example, argues that "a good policy should be sensitive to the concerns and priorities of human rights groups and activists within a country, to the extent that these can be accurately assessed." **Sydney Jones, Council on Foreign Relations, The Impact of Asian Economic Growth on Human Rights** 30 (1995). Jones does not suggest, however, that "sensitivity" goes beyond the strategic question of drawing on local activists and indigenous cultural traditions to persuade East Asians of the value of a "universal" human rights standard. Similarly, Jack Donnelly sees a need for more empirical research to determine the best way to promote a "universal" human rights standard in the developing world. *See* Jack Donnelly, *Post-Cold War Reflections on the Study of Human Rights* 8 **Ethics & Int'l Aff.** 97, 112, 116 (1994). However, he upholds as a "universal" ideal the set of rights endorsed by Western Europe's social democratic states. Donnelly, *Post-Cold War Reflections on the Study of Human Rights, supra*, at 113.

One may add that this criticism does not apply to the great Western liberal political philosopher John Rawls. In his latest work on "the law of peoples" (presented in three closed seminars at the University Center for Human Values, Princeton University, April 1995), Rawls contemplates the possibility of a decent nonliberal society (in effect a relatively communitarian, nondemocratic society that secures a minimal list of human rights similar to Walzer's "minimal and universal moral code"). Unfortunately, from this author's perspective, Rawls does not draw on any examples from East Asia (and more broadly from outside the US context) to illustrate what he means by decent nonliberal political practices.

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