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"ASIAN VALUES" AND GLOBAL HUMAN RIGHTS

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"Human rights" today has become a global agenda. While previously functioning as part of broader political ideologies (say, progressive liberalism), "human rights" in our time operates as an autonomous ideology or global program—equipped with its advocates and missionaries, and also its detractors. As history teaches, the status of missionaries is always ambivalent, because one can distinguish between the quality of the message and the role of the messenger. While the message may be intrinsically sound, the *modus operandi* of the messenger may be suspect or obnoxious. Thus, to take a very egregious example: the Christian gospel may announce "good news" to the world, but the manner in which Christianity was extended into the New World, by Spanish missionaries and soldiers, was surely bad news for the Indians. It is estimated that, in the course of less than a century, the European excursion into the Americas resulted in the deaths of some seventy million native inhabitants, victims of killing, starvation, and disease.[1] A later historical example is the spreading of French revolutionary ideas throughout Europe by Napoleon's armies.

If nothing else, historical examples of this kind are a summons to caution. In our time, advocates of human rights are typically (though not always) citizens and emissaries of the "West"; and one does not have to be a student of Noam Chomsky in order to realize that the West today has amassed the most formidable arsenal of military, economic, and technological power—a fact that buttresses talk of global hegemony. In this situation the distinction between message and messenger becomes relevant again. On the whole, one would hope for fewer messengers who are zealots and for more self-critical, reflectively engaged individuals; differently phrased, one would wish for fewer Juan Ginés de Sepúlvedas, and more of the likes of Bartolomé de Las Casas.[2]

The name of Las Casas evokes again the message of "good news." Basically, human rights are meant to be good news for the underprivileged, the downtrodden, and the dispossessed. As one can show, this has historically been the function of human rights—from the assertion of baronial rights against kings in the *Magna Carta* to the proclamation of citizen rights against feudal absolutism in the French Revolution to the demand for social and economic rights in the era of industrial capitalism. Thus, rights were always meant to be a protective shield of the weak against the mighty; however, detached from their historical and social contexts, rights (taken abstractly) have a double-edged status: they can also serve as weapons of aggression and domination in the hands of the powerful. The baronial rights against the king can turn into privileges asserted against peasants and serfs; the revolutionary rights of citizenship can deteriorate into weapons of exclusion wielded against foreigners and strangers. In our own time, the property rights claimed by a few immensely wealthy

individuals or corporations can serve as instruments to keep the vast masses of humankind in misery and in (economic as well as political) subjugation. Here is an illustration of the complex and deeply conflictual relation between West and non-West and between North and South in our present world.[3] Generally speaking, rights-claims should always give rise to questions like the following. Whose rights (or liberties) are asserted, against whom, and in what concrete context? Do rights-claims advance the cause of justice, equity, and human well-being, or are they obstacles on this road? Basically, these questions boil down to the simple query: Are rights rightly claimed, or what is the "rightness" of rights (a query that is etymologically inscribed in the connection between *ius* and *iustitia* and in the subjective and objective senses of the German *Recht*).

What these considerations indicate is that rights are in a certain sense contextual —which does not necessarily vitiate their universality. In order to ward off governmental manipulation, rights are often claimed to be universal and absolute—although this, correct in this usage, is otherwise equivocal: property rights, for instance, may very well be a universal claim; but this leaves untouched questions of the amount of property and the rightness of its exercise. In Hegelian language, rights may well be rational "ideas," but their enactment "stands in the world" and, as such, calls for situated judgment regarding justice and equity. To counter claims of universality— most often advanced by Western intellectuals indebted to the Enlightenment legacy— critics frequently assert the purely ethnocentric character of "rights-talk" and hence its function as a mere tool of Western global hegemony. Most prominent among the critics of Western-style universality today are the proponents of so-called "Asian values" and "Islamic values." Sometimes, under conditions of extreme provocation, such proponents allow themselves to be lured into the counter-position of "cultural relativism"—which is a bad bargain. For, on the assumption of radical relativism, what moral grounds would the critics have to challenge the sway of Western hegemony? How could they challenge the infliction of "wrongness" if "wrong" is merely a contingent choice?

The following discussion will focus on the issue of universality in reference specifically to the challenge or contestation coming from the side of "Asian values." While the first section will examine the status of rights and their presumed universality in general terms, the second section probes more particularly the issue of the universality or nonuniversality of Asian values. In the conclusion, an effort will be made to draw some lessons from this inquiry both for contemporary rights-discourse and global politics.

Universalism versus Relativism

Given its status as a global agenda, human-rights talk surely calls for and merits philosophical scrutiny. Are human rights permanent or "transcendental" endowments or are they revocable gifts? In fashionable contemporary language: do rights have "foundational" status, or are they merely arbitrary fictions (perhaps comforting illusions)? Such questions, to be sure, are not novel discoveries but have exercised hu-

man ingenuity for many centuries. To anchor rights more securely, many prominent thinkers (especially in the West) have attempted to ground them alternatively in human "nature," in human "reason," or in a divinely sanctioned "spirit" or spirituality. Despite their captivating universal zeal, all these attempts are unfortunately marred by drawbacks. If the first option is chosen, one can legitimately ask how "nature," as a causal nexus, can function as the source of moral or legal titles. (In the philosophy of Thomas Hobbes, nature was depicted as granting to humans a "right to everything"—which in the end turned out to be a right to nothing.) If the accent is placed on unaided human "reason," rights can quickly deteriorate into discriminatory weapons of exclusion—against the unrational, the barbarians (not to speak of "brute" nature). If, finally, the focus is shifted to a divinely created spirit or spirituality, the question can hardly be suppressed whether God as omnipotent creator cannot also omnipotently withdraw or cancel the benefit of rights (for example, on account of guilt or evildoing). No doubt, all these drawbacks can be subject to further cross-questioning, and much philosophical labor has been devoted to these issues—but without resulting in the secure establishment of a justificatory solution.

In our time, the search for foundations is continued by "natural law" philosophers, but also—and perhaps more incisively—by some proponents of analytical philosophy. Thus, Alan Gewirth has attempted to provide a strictly conceptual-deductive grounding, namely by deducing human rights from the very concept of human "action" or "agency." As he writes, human rights are entitlements to "the necessary conditions of human action," that is, to those conditions that "must be fulfilled if human action is to be possible either at all or with general chances of success in achieving the purposes for which humans act"—these purposes being chiefly freedom and well-being. For Gewirth, action or agency supplies the "metaphysical and moral basis" of human dignity and personhood—thus providing human rights with a kind of self-grounding; as a corollary, the latter might also be termed "natural rights" in that they pertain to humans simply in their capacity as actors or agents.[4] Despite its apparent logical tightness, however, several quandaries beset this conceptual scheme.

One qualm concerns the move from logic to morality, from internal consistency to obligation (what has been termed the "naturalistic fallacy"). More important is another point: since (as Gewirth recognizes) the exercise of rights always involves claims against others, their grounding would have to be sought not in singular action as such but in human interactions (which are always concretely situated and not logically deducible). Aware of the difficulties involved in "foundational" arguments, many contemporary proponents of human rights modestly "fudge" or circumvent the task of ultimate justification—while continuing to uphold the requirement of an absolute-universal grounding. Thus, Jack Donnelly, a leading expert in this field, bluntly disclaims that human rights can be derived from "God, nature, or the physical facts of life"; instead, they are said to be grounded in "man's *moral* nature," in the need for "human dignity," and hence to reflect the choice of "a particular vision of human potentiality." Although admitting the role of social-historical contexts, Donnelly insists (with Gewirth) that rights are anchored in "the person and his or her

inherent dignity" and thus establish "the social conditions necessary for the effective enjoyment of moral personality." Social context in this view appears basically as an external constraint arising from "the limitations, peculiarities and advances" of prevailing anthropologies—while "the universality of claims of human rights reflects their source in human nature."[5]

As already indicated, attempts at a "natural grounding" of rights have always been met with skepsis, if not outright denial. Apart from other iconoclastic pronouncements, Jeremy Bentham is remembered for having famously denounced the idea of natural rights as "nonsense on stilts." In our contemporary setting, grounding efforts are most prominently debunked by deconstructionists and deconstructive pragmatists; among the latter, no one has been more eloquent and stinging in his rebuke than Richard Rorty. For Rorty, attempts at ultimate justification are basically misguided and possibly obnoxious. In their theoretical structure, attempts of this kind are anchored in knowledge claims that can historically be traced to Plato and his successors. "Foundationalist philosophers, such as Plato, Aquinas, and Kant," he writes, "have hoped to provide independent support for such summarizing generalizations" as the notion of human endowments, and they tried to infer these generalizations from further premises—all of which can be summed up under the label "claims to knowledge about the nature of human beings." In the wake of Nietzsche's and Dewey's writings, however, the latter claims have become implausible.

In Rorty's view, there is today "a growing willingness to neglect the question 'What is our nature?' and to substitute the question 'What can we make of ourselves?'" Basically, what recent (especially pragmatist) philosophy has disclosed is "our extraordinary malleability," the fact that we are a "flexible, protean, self-shaping animal" rather than the rational animal dear to traditional thought. With this insight, "human rights foundationalism" is simply *"outmoded,"* making room instead for cultural constructivism. In line with the Argentinean jurist Eduardo Rabossi, Rorty agrees that Western culture has recently adopted the shape of a "human rights culture," made possible by economic and technological progress. As one should note, Rorty is quite willing to defend this culture, and even its superiority over other alternatives—but he does so on purely ethnocentric or culture-specific, and not foundationalist, grounds:

> I quite agree that ours [Western culture] is morally superior, but I do not think this superiority counts in favor of the existence of a universal human nature.... We see our task as a matter of making our own culture—the human rights culture—more self-conscious and more powerful, rather than of demonstrating its superiority to other cultures by an appeal to something transcultural.[6]

As matters stand, the debate about the universality of human rights is presently impaled on the sketched dilemma, and it is likely to remain so for some time to come. What both foundationalists and anti-foundationalists—proponents both of universal grounding and of contextual relativism—ignore or bypass is the question of "rightness," that is, the question (alluded to earlier) of whether and how rights-claims advance or thwart the cause of justice—which intrinsically involves social relation-

ships. For foundationalists, rights are anchored in an invariant human "nature," "reason," or spiritual "dignity," with social relationships (and their justice/injustice) being irrelevant or at best marginal to their conceptual definition. For anti-foundationalists, on the other hand, rights are historically and contextually contingent or else willfully constructed or fabricated—an approach leaving the justice of social relations unaccounted for or suspended in midair. Taking seriously the social character of human rights—the fact that humans are basically social or "political creatures" (in Aristotle's sense)—rescues rights from the grip of abstractly universal fictions, while also redeeming them from contingent willfulness.

As one should note, the privileging of social rightness (or ethical "goodness") does not by itself cancel universal aspirations: on the contrary, precisely because of their social embeddedness, justice and the proper (right) exercise of rights are perennial issues in all human societies. To be sure, with this shift of focus, the meaning of universality is subtly transformed, namely from a necessary precondition to a goal or horizon (entelechy), or from a premise to a promise. What this transformation entails is that, far from being rooted in a pre-given human nature, rightness and rights are corollaries of a laborious practice: the ongoing practice of "humanization," that is, the steady cultivation of the sense of justice and fair-mindedness (traditionally called "virtues"). Seen as a social practice, humanization cannot be a purely individual or monological achievement, but requires interaction, collaboration, and appropriate institutional arrangements; depending on the character of these arrangements, rightness may be furthered and strengthened or else obstructed and derailed.[7]

The shift of focus affects human rights also in another sense, namely by transforming their globally universal scope or the global character of universality. From the perspective of humanization, globalism cannot be taken as a ready-made premise or *fait accompli,* but again only as part of a difficult practice—more precisely, an ongoing learning experience involving the participation and collaboration of diverse cultures around the world. In turn, such a learning experience presupposes attentiveness to different, possibly alien teachings and a willingness to review and possibly revise one's own predilections—a disposition that cannot be a one-way street but demands multilateral engagement. On this score again, both foundationalism and anti-foundationalism are glaringly deficient. By assuming a uniform human nature—the sameness of human identity—prior to and outside all social interactions, foundationalists see no need to enter into the travail of a learning process; since everything is already presupposed or known, nothing further needs to be looked for. On the other hand, by regarding cultures as self-enclosed systems or language games, deconstructive contextualists are bound to treat learning across borders either as impossible or else as (disguised) strategies of colonization.

Thus, in celebrating "our human rights culture," Rorty is willing to affirm its "superiority" and its qualification as a possible article of export—but without any readiness to face "otherness" or the risk of a possibly transforming and disorienting learning experience. Still, Rorty's candor may yet be preferable to the haughty disdain for otherness (meaning non-Western cultures) often displayed by foundationalists and quasi-foundationalists. A case in point is the attitude of Donnelly toward

"Asian values." Although willing to acknowledge something valuable in Chinese traditions, Donnelly basically stresses the need for a one-way learning process, namely *by* contemporary China *from* "our human rights culture." As he writes, despite its ancient standing, the Chinese system of values and social relations is "incompatible with the vision of equal and autonomous individuals that underlies international human rights norms. In fact, the 'Western' emphasis on individual rights is likely to seem little short of moral inversion." Adopting the authoritative tone of an emissary, he adds: "Sovereignty, development, and traditional conceptions of social order do not absolve Asian governments from the requirements to implement internationally recognized human rights."[8]

The Question of "Asian Values"

When moving from human rights to the theme of "Asian values," it seems advisable to proceed with caution. First of all, considered geographically, "Asia" is a vast continent comprising a multitude of different cultural strands. Conventionally, it is true, the term "Asian values" has been linked chiefly with Confucian teachings, with Buddhist and Taoist legacies being treated more like variations on, or internal reactions to, the former; still, to avoid oversimplification, some awareness of diversity should be maintained. More importantly, the term is sometimes invoked in a starkly provocative manner, with the result that "Asian values" and human rights are pitted against each other as antithetical or incommensurable spheres. As previously indicated, however, this battle of relativisms—"Asian" versus "Western" types of ethnocentrism—is ultimately self-defeating: on the assumption of radical antithesis, mutual critique becomes pointless (or else a means of strategic harassment).

Yet, caution is required on this point as well. The rejection of antithesis does not necessarily vindicate the doctrine of a smooth synthesis or harmony, predicated on the notion that "Asian" values and "Western" human rights are simply slight modifications of a common theme or different stages on the same evolutionary trajectory. Thus, Louis Henkin's assertion that "Asian values" (meaning Confucian values) "are universal values too" can probably be accepted only with many provisos and caveats. On the whole, it seems preferable as well as prudent to accept Henry Rosemont's argument in favor of the need to distinguish between different (though non-antithetical) moral paradigms or language games—which he terms "concept clusters"—and the further need to juxtapose such moral clusters to the domain of "ethics" understood as a mode of preconceptual lived experience (or a mode of "goodness" antedating "rights"). As he observes, the term "ethics" refers basically to human praxis and the "evaluation of human conduct" on a practical level, while "morals" or "morality" denotes a theory of principles and axioms—characteristic chiefly of modern Western philosophy.[9]

Based on these distinctions, Rosemont perceives modern human-rights discourse as a distinctive "concept cluster"—a cluster attractive and meritorious in many ways, but also subject to severe limitations. Moving on to the Asian context, a curious dilemma emerges: the fact that classical Chinese language (used by early Confucians)

lacked most of the terms constitutive of modern rights-talk. In Rosemont's presentation, that language not only had no lexical item for "moral"; it also had no equivalents for such terms as "freedom, liberty, autonomy, individual, utility, principles, rationality, rational agent, action, objective, subjective, choice, dilemma, duty, or rights." Now, if these items are viewed as key terms in moral theorizing, one might conclude that classical Confucianism offered no relevant moral or ethical teachings at all—a conclusion that seems preposterous and an obstacle to cross-cultural learning. Actually, all one can legitimately infer is that classical Confucians were not "moral philosophers in our sense" and, correspondingly, that modern Western rights-talk is one among several ways or options of moral theorizing—an option eminently appropriate for modern liberal individualism but inappropriate and debilitating in many other respects:

> I maintain that the concept cluster of early Confucian ethics is very different indeed from the concept cluster of contemporary Western moral philosophy.... The most fundamental challenge raised by early Confucian ethics is that contemporary moral philosophy has become increasingly irrelevant to concrete ethical concerns, utilizing an impoverished—and largely bureaucratic—technical vocabulary emphasizing law, abstract logic, and the formation of policy statements. Contemporary moral philosophy, the Confucian texts suggest, is no longer grounded in the real hopes, fears, joys, sorrows, ideas, and attitudes of flesh-and-blood human beings.[10]

In Rosemont's account, early Confucianism offers precisely an antidote to modern rational abstractions, namely by focusing attention on concrete human experiences in the ordinary life-world. In contrast to the "unencumbered" individualism celebrated in Western modernity, classical Confucians were concerned with the "qualities of persons" and with "the kinds of persons who have or do not have these qualities"; where modern morality invokes "abstract principles," they invoked "concrete roles and attitudes toward these roles." Most importantly, classical texts had a different view of what it means to be human: shunning the fiction of isolated monads inhabiting a pre-social "state of nature," they depicted humans as necessarily (and not just accidentally) engaged in social contexts and as exhibiting their "nature" not in singular desires or volitions but in "human interactions" and patterns of shared responsiveness. Rosemont's comments on this point are thoroughly grounded in the Confucian notion of "humaneness" *(jen)* according to which individuals acquire their properly human status only through a difficult process of "humanization" involving the cultivation of qualities required for "rightful" interactions (or interactions guided by "rightness," *li*).

This linkage between humaneness and humanization has been most eloquently stressed by Tu Weiming in several of his writings. As he notes in his book *Humanity and Self-Cultivation,* humaneness or "being human" is not simply a static essence or fixed premise, but rather denotes a practical performance or achievement, a process of "learning to be human" that is a lifelong undertaking. As part of this process, "self-cultivation" does not refer to private self-indulgence or egocentrism, but rather to a nurturing of self in relationships, particularly in the relations of family, society, state,

and global community. As Tu emphasizes, moreover, humanization for Confucians was not limited to "mundane" settings, but had a self-transcending or transgressive quality, extending ultimately (in the classical formula) to "Heaven, Earth, and the myriad things." This transgressive aspect is stressed also in one of Tu's more recent writings where we read that "the move toward the unity of Heaven and humanity" challenges every self-enclosure, and especially the "blatant form of anthropocentrism characteristic of the intellectual ethos of the modern West." In lieu of this ethos, Confucianism sponsors an "anthropocosmic" outlook anchored in "communication between self and community, harmony between human species and nature, and mutuality between humanity and Heaven."[11]

By accentuating human embeddedness in multiple relationships, Confucianism —in the eyes of its critics—runs the risk of fostering conventionalism, if not abject conformism; by asserting the constitutive character of contexts, its teachings are accused of denying selfhood, or else of reducing selves to social functionaries and pliant tools. Responding to these charges, Roger Ames has introduced a number of important pointers and clarifications—pointers having to do ultimately with the issue of paradigm shifts or the move between different "concept clusters." As Ames emphasizes, the relation between Western modernity and Confucianism should not be construed in a binary or antithetical fashion, with the result that the former would celebrate "unencumbered" individuals and the latter social or societal "encum-brances," thus pitting autonomy against heteronomy. What is required, instead, for an understanding of Confucianism is a rupture of these binary schemes and a will-ingness to contemplate a different self-other relation. In Ames' words, many com-mentaries on classical Chinese texts have privileged social duties over selfhood or "humaneness," to the point of affirming a kind of self-erasure or total self-submission—which is nothing but an "echo of Hegel's 'hollow men' interpretation of Chinese culture."

However, attributing such self-erasure to the Chinese tradition simply "sneaks both the public/private and individual/society distinction in by the back door," viti-ating the Chinese notion of selfhood or personhood, which is neither a monadic ego nor a mere social function or construct. What Western critics of Confucianism often have in mind is the "contest between state and individual that has separated liberal democratic and collectivist thinkers" in our century but has "only limited applica-bility" to the Chinese model. For, in the latter, self-realization requires "neither a high degree of individual autonomy nor capitulation to the general will"; rather, it involves "benefiting and being benefited by membership in a world of reciprocal loyalties and obligations."[12]

These considerations—with their emphasis on different "concept clusters"— have clear implications for the relation between "Asian values" and human rights, and especially for the issue of moral "universality" or universalism. Reacting against charges of parochialism or ethnocentrism, defenders of Confucian ethics often are led to assert the universal sweep of classical teachings—a sweep congruent and on a par with the universality claimed by Western human-rights discourse. Louis Henkin's phrase (previously quoted) that Asian or Confucian values "are universal values,

too" points in this direction. Yet, clearly, there are different types of universality and different modes of universalizing experience. Here again, Roger Ames offers some helpful guidance: by differentiating between "top-down" and "bottom-up" forms of moral discourse.

As Ames writes, modern moral philosophy (in the West) starts basically from universal axioms or principles and then proceeds to subsume particular situations under the former. By contrast, classical Confucianism focuses first of all on immediate life-contexts and then expands its concerns outward in steadily widening concentric circles. In his words, ethics in the classical tradition is "a cultural product that derives from the ethos or character of the society and is embodied in its ritual patterns of conduct" (that is, in rightness or *li*). This approach is evident in the Confucian doctrine of "graduated love" centered on the family, a doctrine predicated on "the priority of the immediate and concrete over universal principles and ideals." The same approach also is manifest in the traditional Chinese distrust of formal legal procedures in favor of face-to-face interactions. Contrary to Western allegations of social conformism, the "bottom-up emergent order" sanctioned by Confucianism actually provides "an internal check on totalitarianism." Ames adds:

> Given that order is defined from the bottom up, and concrete conditions temper generalizations to yield varying degrees of appropriateness, the notion of universalizability is certainly problematic. In fact, the Chinese have approached doctrines of *universals* with the caution of a culture fundamentally reluctant to leave the security of immediate experience for the more tentative reaches of transcendent principles.[13]

Ames' comments probably should not be read as a simple rejection of universality, equaling a retreat into parochialism. Congruent with his critique of binary (self-versus-society) schemes, his observations should more plausibly be taken as a salutary reminder cautioning against univocal construals of universality, a reminder making room for diverse configurations of the universal/particular nexus. Ultimately, what this reminder brings into view is not some radical incommensurability, but rather the hazards and dilemmas involved in the assumption of a smooth synthesis or fusion of cultural perspectives. Against this background, struggling against relativism and ethnocentrism can only mean entering into a sustained, perhaps agonal dialogue—a dialogue in which differences of "clusters" are acknowledged from the start and where all participants are willing to undergo a mutual learning experience without necessarily expecting a final synthesis.

The importance of mutual learning is strongly underscored by Tu Weiming when he exhorts both human-rights proponents and defenders of Confucianism to accept reciprocal challenges. As it happens, he writes, the Confucian personality ideals may perhaps "be realized more fully in the liberal-democratic society than either in the traditional imperial dictatorship or a modern authoritarian regime." On the other hand, beneficiaries of Western individual rights might do well to recognize how "our human-rights culture" has been corrupted by "excessive individualism," "vicious litigiousness," and related ills. Only this willingness to learn can provide the space for a genuine global moral discourse, that is, for a rights-discourse befitting our

globalizing age. Although of a more skeptical temper, Henry Rosemont likewise sees the only chance for contemporary rights-talk in a genuinely global discussion and contestation. If we do not wish to abandon our responsibilities, he states, if instead we wish

> to seek new perspectives that might enable [philosophy] to become as truly all-encompassing in the future as it has mistakenly been assumed to have been in the past, we must begin to develop a more international philosophical language which incorporates the insights of all of the worldwide historical tradition of thinkers who addressed the questions of who and what we are, and why and how we should lead our all-too-human lives.[14]

Rights: An Entangled Web

The discussion of "Asian values" and their universal/particular status throws into relief the broader question of the universality of rights in general. As one should note, Western liberal rights-discourse is challenged today not only from the Asian-Confucian side but also from the side of Islamic values and, more broadly, from the angle of traditional and indigenous cultures around the world. The situation is further complicated by claims advanced on the part of socially and economically disadvantaged or exploited groups sidelined by the advances of global capitalism and technology. In the literature on human rights, it is customary to distinguish between three "generations" of rights: first, civil and political rights (anchored in modern Western individualism); next, social and economic rights (sponsored chiefly by socialist movements); and finally, cultural and collective rights (championed mainly by non-Western and indigenous peoples). A basic question here concerns the interrelation of these different rights-claims. Paralleling the equation of Asian and universal rights, some commentators perceive an easy synthesis or symbiosis of the three generations patterned on familial harmony. Thus, commenting on the issue, Sumner Twiss remarks somewhat placidly that the "international human rights community" recognizes and accepts "all three generations or types of human rights as important and interrelated and needing to be pursued in a constructive balance or harmony." Although in a given situation "one or another generation may merit special emphasis," there is no possible dilemma because the three generations are "indivisible."[15]

Despite its emotive appeal or attractiveness, this vision of harmony stands in need of corrective criticism. As in the confrontation between "Asian values" and Western universality, the three generations of rights are not simply variations on one common denominator ("human rights") but should be seen again as distinct "concept clusters" that, although partially overlapping, are embroiled in critical dialogue and mutual contestation. Thus, the cluster of civil and political rights is not simply continuous or smoothly compatible with the cluster of social and economic rights—as is demonstrated by the hegemonic position of the former in Western human-rights discourse (especially after the so-called defeat of socialism/communism and the marginalization of the labor movement). In a similar, and even aggravated way, individual civil rights are often in conflict with the preservation of cultural and collective

claims—as is evident in the havoc frequently wrought by individual and corporate property rights in non-Western "developing" societies and especially among indigenous peoples. On this score, the clusters of socioeconomic and of collective-cultural rights tendentially merge or coalesce in that both share the brunt of hegemonic global agendas.

The conflictual character of modern rights-discourse is eloquently highlighted by Rosemont when he calls that discourse a "bill of worries." In Rosemont's account, there is no smooth way of simply "extending" individual rights into the social and economic domain, because the realization of "second generation" rights (such as adequate housing and health care) typically requires a curtailment of "first generation" rights (chiefly private property). Hence, belief in a ready-made synthesis of rights-claims is "more an article of faith" than based on plausible arguments. Worries further intensify once attention is shifted to "third generation" rights, that is, to the defense of cultures, indigenous peoples, and ecological resources (where the very concept of "rights" becomes dubious or problematic). In light of the troubles afflicting Western society (and its hegemonic discourse), Rosemont recommends caution and critical contestation. Given prevailing social and existential dilemmas, he writes,

> how can Americans justify insisting—by diplomatic, military, economic, or other means—that every other society adopt the moral and political vocabulary of rights? . . . The questions become painful to contemplate when we face the reality that the United States is the wealthiest society in the world, yet after over two hundred years of human-rights talk, many of its citizens have no shelter, a fifth of them have no access to health care, a fourth of its children are growing up in poverty, and the richest two percent of its peoples own and control over fifty percent of its wealth.[16]

At this juncture, it seems advisable to recall some points made at the beginning of this essay, namely that rights traditionally have been protective shields of the underprivileged and oppressed, and that the concrete enactment of rights needs to be assessed in terms of their justice or rightness. Regarding the diversity of rights-claims, what these points suggest is that social context matters crucially and that, in the contemporary global context, greater attention needs to be given to second- and third-generation rights than is customary in hegemonic global-rights discourse. One may also usefully recall here Roger Ames' distinction between "top down" and "bottom up" modes of universalization and cross-cultural moral argument. This distinction concurs roughly with Richard Falk's opposition (previously invoked) of different types of global governance and citizenship, namely "globalization from above" and "globalization from below." In Falk's presentation, "globalization from above" denotes basically a strategy of global control carried forward under the auspices of "unleashed" market forces, international finance capital, and Western-based media and technology; by contrast, "globalization from below" involves reliance on the momentum generated by peoples' movements and aspirations, especially movements in "Third" and "Fourth World" societies.

Paralleling this opposition is a shift of accent in the global human-rights discourse, namely a shift from the near-exclusive concern with "first-generation" rights

(focused on individual interests and property claims) to a stronger preoccupation with "second and third generation" rights seen as protective shields of underprivileged social and cultural groups and populations. For Falk, the latter groups prominently include unskilled laborers, women, ethnic minorities, and indigenous peoples. As he writes at one point, "The example of the fate of indigenous peoples as a subordinate culture victimized by a dominant culture suggests the relevance of exclusion and inclusion in evaluating the normative adequacy of human rights as a protective framework at a given time and place."[17]

Falk's views are echoed and corroborated by a number of intellectuals writing from diverse cultural and ethnic perspectives. Thus, in their book *Rethinking Human Rights,* Smitu Kothari and Harsh Sethi criticize the preeminence accorded to legalistic and individualistic conceptions of rights, a preeminence that hides from view the plight and suffering of the vast majority of humankind, including the majority of people in their native India. Against the predominant rights-discourse mired in proceduralism, Kothari and Sethi seek to marshal a human-rights praxis or a "politics of human rights," that is, "a social praxis, rooted in the need of the most oppressed communities, that aims to create shared norms of civilized existence." In attacking hegemonic abuses, both writers extend their critique to oppressive features in Indian culture—*not* with the purpose of negating or erasing Indian cultural traditions, but of recovering in these very traditions resources fostering the advancement of human liberation and social justice (with Gandhi serving as their chief mentor).[18]

In a similar vein, speaking mainly from an Islamic perspective, Chandra Muzaffer challenges both the dominant human-rights discourse allied with Western hegemony *and* unjust or oppressive practices perpetrated by Islamic governments (in violation of the deeper spirit of Islam). As he pointedly writes, "Though formal colonial rule has ended, Western domination and control continues to impact upon the human rights of the vast majority of the people of the non-Western world in ways which are more subtle and sophisticated but no less destructive and devastating." Faced with the confluence of hegemonic strategies and moral rhetoric, many people in the non-Western world "have become skeptical and critical of the West's posturing on human rights." At the same time, skepsis regarding Western aims cannot serve as an alibi for abusive domestic policies. In Muzaffer's words:

> Some Asian governments . . . have chosen to focus solely upon the adverse consequences of crass individualism upon the moral fabric of Western societies. . . . [But] it is not just the moral crisis of Western society that we lament; we are no less sensitive to the moral decadence within our own societies—especially within our elite strata. If we adhere to a universal spiritual and moral ethic that applies to all human beings, we should not hesitate to condemn the suppression of human rights and the oppression of dissident groups that occur from time to time in a number of our countries. Our commitment to spiritual and moral values, drawn from our religions, should never serve as a camouflage for authoritarian elites who seek to shield their sins from scrutiny.[19]

What the preceding discussion points to—it is important to keep in mind—is not a simple negation of universality or moral universalism, but rather a rethinking of

human rights in a direction that gives primacy to considerations of global justice—which in turns sustains rights as a protective shield. Such a rethinking or refiguration treats universality not as a *fait accompli,* but rather as a hope or yearning; above all, it deprives any given culture—especially Western culture—of pretensions to monopolize universal "truth," placing its trust instead in the difficult process of interactive dialogue potentially enlisting participants around the globe. Given the diversity of cultural perspectives or "clusters," this dialogue is often going to be agonal or conflictual: both domestically and globally threats to the just exercise of rights need to be challenged—though preferably not "from above" (the lectern of an intellectual elite) but "from below" by enlisting the empowering resources of local cultures and practices.

The importance of critical dialogue in the latter sense is vividly underscored by Abdullahi An-Na'im when he insists on the needed concurrence of both "internal" and "cross-cultural" contestation, adding that proponents of critical views are more likely to achieve acceptance of their position "by showing the authenticity and legitimacy of their interpretation within the framework of their own culture." The basic point for An-Na'im is that contemporary human-rights discourse cannot possibly achieve genuine universality unless it is conducted and articulated "within the widest range of cultural traditions"; only by enlisting both intra-cultural and cross-cultural sensibilities for justice and rightness can a way be found for "enhancing the universal legitimacy of human rights." In this respect, An-Na'im is in agreement with Charles Taylor's reflections on the prospect of a "world consensus on human rights." Pointing to the vast distance between Gewirth's stress on self-actualization and the Buddhist notion of "no-self-nature," Taylor ponders the diversity of views and "concept clusters" that a global human-rights discourse has to mediate or negotiate:

> This perhaps gives us an idea of what an unforced world consensus on human rights might look like. Agreement on [some] norms, yes; but a profound sense of difference, of unfamiliarity, in the ideals, the notions of human excellence, the rhetorical tropes and reference points by which these norms become objects of deep agreement for us. To the extent that we can only acknowledge agreement with people who share the whole package, and are moved by the same heroes, the consensus will never come or must be forced.[20]

Notes

1 – See, for example, Tzvetan Todorov, *The Conquest of America: The Question of the Other,* trans. Richard Howard (New York: Harper and Row, 1984), pp. 133–137. As Todorov notes (p. 133), "If the word genocide has ever been applied to a situation with some accuracy, this is here the case."

2 – For the confrontation between Sepúlveda and Las Casas see my *Alternative Visions: Paths in the Global Village* (Lanham, Maryland: Rowman and Littlefield, 1998), pp. 71–73. More than two centuries later, when Christianity extended itself into China, a controversy arose over whether Christian dogma

should adjust itself to "Asian values," that is, to Chinese language and world-views. As in the earlier case, the defenders of absolute universalism (Christ's message is the same everywhere and at all times) triumphed. See George Min-amiki, *The Chinese Rites Controversy* (Chicago: Loyala University Press, 1985).

3 – According to the 1999 United Nations Report on Human Development, the combined wealth of the world's three richest families is greater than the annual income of six hundred million people in the least developed countries. During the last four years, the world's two hundred richest people have doubled their wealth to more than $1 trillion; in the same period, the number of people living on less than one dollar a day has remained steady at 1.3 billion. See *South Bend Tribune,* 12 July 1999, p. A6, and *Human Development Report 1999* (Oxford: Oxford University Press, 1999).

4 – Alan Gewirth, *Human Rights: Essays on Justification and Application* (Chicago: University of Chicago Press, 1982), pp. 3–7. Given the status of human rights as necessary conditions of action, their denial, in Gewirth's view, amounts to self-contradiction.

5 – Jack Donnelly, *The Concept of Human Rights* (New York: St. Martin's Press, 1985), pp. 31–32, 35. Donnelly describes his own theory as "constructivist" and "dialectical"—which may be terms hiding ambivalence. While holding that "human nature" is in a sense "conventional," he also maintains that his theory is "fundamentally consistent with . . . the classic natural rights tradition," while also being compatible with the approach of Alan Gewirth (pp. 32, 36). In a more recent study, Donnelly writes more forthrightly (and more foundation-ally): "The term human rights indicates both their nature and their source: they are the rights that one has simply because one is human. They are held by all human beings, irrespective of any rights or duties individuals may (or may not) have as citizens, members of families, workers, or parts of any public or private organization or association. They are universal rights." See Donnelly, *International Human Rights* (Boulder, Colorado: Westview Press, 1998), p. 18.

6 – Richard Rorty, "Human Rights, Rationality, and Sentimentality," in Stephen Shute and Susan Hurley, eds., *On Human Rights* (New York: Basic Books, 1993), pp. 115–117. As Rorty adds (p. 121), the "best explanation" of Darwin's and Dewey's "relatively easy triumph" over foundationalism is "that the nine-teenth and twentieth centuries saw, among Europeans and Americans, an ex-traordinary increase in wealth, literacy, and leisure. This increase made possi-ble an unprecedented acceleration in the rate of moral progress."

7 – In this respect, Rorty is not far off the mark when he points to the importance of "sentimental education" in the cultivation of rights; see Rorty in Shute and Hurley, *On Human Rights,* p. 122. Regarding the goal of humanization, one might also wish to concur with Gewirth's formula of "freedom and well-being."

8 – Jack Donnelly, "Human Rights and Asian Values: A Defense of 'Western' Universalism," in Joanne R. Bauer and Daniel A. Bell, eds., *The East Asian*

Challenge for Human Rights (Cambridge: Cambridge University Press, 1999), pp. 80, 83. Suffering his stance somewhat, he adds (p. 83), "But this does not mean that Asian societies ought to follow 'Western' models blindly. Quite the contrary, internationally recognized human rights leave considerable space for distinctively Asian implementations of these rights. . . . Human rights are treated as essentially universal, but substantial space is allowed *[sic!]* for variations in implementing these universal norms."

9 – See Henry Rosemont, Jr., "Why Take Rights Seriously? A Confucian Critique," in Leroy S. Rouner, ed., *Human Rights and the World's Religions* (Notre Dame: University of Notre Dame Press, 1988), pp. 168, 173–174; also Louis Henkin, "Epilogue: Confucianism, Human Rights, and 'Cultural Relativism,'" in Wm. Theodore de Bary and Tu Weiming, eds., *Confucianism and Human Rights* (New York: Columbia University Press, 1998), p. 314.

10 – Rosemont, "Why Take Rights Seriously?" pp. 169, 173–175. Without in any way endorsing cultural relativism, Rosemont insists that the move from one "concept cluster" to another requires much more cultural sensitivity and attention to problems of translation than is customary among foundationalists. Universality, from this perspective, is an ongoing agonistic achievement rather than a fixed premise.

11 – Tu Weiming, "Epilogue: Human Rights as a Confucian Moral Discourse," in de Bary and Tu, *Confucianism and Human Rights,* p. 302. In the same essay (p. 299), Tu speaks of Confucian "core values," namely "the perception of the person as a center of relationships rather than simply as an isolated individual, the idea of society as a community of trust rather than merely a system of adversarial relationships, and the belief that human beings are duty-bound to respect their family, society, and nation" (and global community). See also his *Humanity and Self-Cultivation: Essays on Confucian Thought* (Berkeley: Asian Humanities Press, 1979) and *Confucian Thought: Selfhood as Creative Transformation* (Albany: State University of New York Press, 1985). Compare my "Humanity and Humanization: Comments on Confucianism," in *Alternative Visions,* pp. 123–144.

12 – Roger T. Ames, "Rites as Rights: The Confucian Alternative," in Rouner, *Human Rights and the World's Religions,* pp. 205–206; Rosemont, "Why Take Rights Seriously?" p. 177.

13 – Ames, "Rites as Rights," pp. 206–207. Ames illustrates the different approaches to universality by pointing to contrasting conceptions of human equality (p. 208), where Western human-rights discourse stresses the numerical or quantitative equality (read: sameness) of individuals, while Confucianism cultivates "qualitative parity": "Where rights-based order strives to guarantee a minimum and yet vital sameness, ritual-based order seeks to guarantee tolerance. For it is the basic nature of harmony, the aspiration of ritual practice, that is enhanced by a coordinated diversity among its elements." See also Tu Weiming, "Epi-

logue," p. 299; and the exchange between Ames and Jack Donnelly: Ames, "Continuing the Conversation on Chinese Human Rights," and Donnelly, "Conversing with Straw Men While Ignoring Dictators: A Reply to Roger Ames," *Ethics and International Affairs* 11 (1997): 177–206, 207–213.

14 – Rosemont, "Why Take Rights Seriously?" p. 180. If this goal is to be accomplished, he adds (p. 168), "the Western philosophical tradition will have to incorporate more non-Western philosophy than it has in the past." See also Tu Weiming, "Epilogue," p. 305.

15 – Sumner B. Twiss, "A Constructive Framework for Discussing *Confucianism and Human Rights,*" in de Bary and Tu, *Confucianism and Human Rights,* pp. 32, 34.

16 – Henry Rosemont, Jr., "Human Rights: A Bill of Worries," in de Bary and Tu, *Confucianism and Human Rights,* pp. 57, 60. As he adds (p. 62), "I would also argue that industrial capitalism can never become the norm for most of the world's peoples, which should make rights talk even more suspect." Compare also these comments, adding to his bill of worries (p. 59): "Isn't there a hint of desperation in having to claim that trees have rights? . . . I believe we fundamentally misunderstand our human relations to trees, animals, our great-great grandchildren, and the natural world that sustains us by seeing them all as rival rights claimants. This view must see us as essentially distinct from the entire nonhuman world, in the same way that free, autonomous individuals are already cut off from each other in the 'original position'" (of Rawls). According to a recent report of the Center on Budget and Policy Priorities in Washington, D.C., the wealthiest 2.7 million Americans have as much to spend today as the poorest 100 million Americans; the top one-fifth of American households now earns half of all the income in the United States. See "Gap Between Rich and Poor Found Substantially Wider," *New York Times,* 5 September 1999, p. 14Y. Still greater disparities prevail on a global scale; see note 3 above.

17 – Richard Falk, "Cultural Foundations for the International Protection of Human Rights," in Abdullahi Ahmed An-Na'im, ed., *Human Rights in Cross-Cultural Perspectives: A Quest for Consensus* (Philadelphia: University of Pennsylvania Press, 1992), p. 48. See also Falk, "The Making of Global Citizenship," in Jeremy Brecher et al., eds., *Global Visions: Beyond the New World Order* (Boston: South End Press, 1993), pp. 39–50; "Human Rights and the Dominance Pattern in the West: Deforming Outlook, Deformed Practices," in Chandra Muzaffer, ed., *Human Wrongs* (Penang: Just World Trust, 1996), pp. 234–242; and his *On Humane Governance: Towards a New Global Politics* (Cambridge: Polity Press, 1995).

18 – Smitu Kothari and Harsh Sethi, eds., *Rethinking Human Rights* (Delhi: Lokayan, 1989), p. 9.

19 – Chandra Muzaffer, "From Human Rights to Human Dignity," in Peter Van Ness, ed., *Debating Human Rights: Critical Essays from the United States and Asia* (London and New York: Routledge, 1999), pp. 26, 28, 30. See also Muzaffer,

Human Rights and the World Order (Penang: Just World Trust, 1993), where, commenting on the "generations" of rights, he states (p. 39): "By equating human rights with civil and political rights, the rich and powerful in the North hope to avoid coming to grips with those economic, social and cultural challenges which could well threaten their privileged position in the existing world order. What the rich and powerful do not want is a struggle for economic transformation presented as a human rights struggle, a struggle for human dignity."

20 – See Charles Taylor, "A World Consensus on Human Rights," *Dissent,* Summer 1996, p. 20; also his "Conditions of an Unforced Consensus on Human Rights," in Bauer and Bell, *The East Asian Challenge for Human Rights,* pp. 124–144. See also Abdullahi Ahmed An-Na'im, "Introduction," in An-Na'im, *Human Rights in Cross-Cultural Perspectives,* pp. 2–4; also his "Toward a Cross-Cultural Approach to Defining International Standards of Human Rights," in the same volume, pp. 19–43. Compare also An-Na'im, "The Cultural Mediation of Rights," in Bauer and Bell, *The East Asian Challenge for Human Rights,* pp. 147–168; his "Islamic Foundations for Religious Human Rights," in John Witte, Jr. and Johan van der Vyver, eds., *Religious Human Rights in Global Perspective* (Dordrecht: Martinus Nijhoff, 1996), pp. 337–360; and Alison D. Renteln, *International Human Rights: Universalism versus Relativism* (Newbury Park, California: Sage Publications, 1990).