

HUMAN RIGHTS AND GOVERNANCE: THE ASIA DEBATE

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Asian governments are right to insist that the meaning and importance of human rights must be viewed from the social and economic context of specific societies. The so-called universal human rights of the West have evolved over a long period of European history, responding to the changing configurations of power and the tasks of each epoch of history. Claims of universality and indivisibility of rights are hard to sustain in the face of the West's history of oppressing its own people and others; slavery, which once enjoyed religious approbation; abuse of child labour; the exploitation of colonies; and the other depredations of imperialism and racism. Nor is the process of developing rights complete. Social welfare rights were acknowledged only in this century, and the appalling degradation of the environment has now set the stage for a new conception of rights and responsibilities, in which the community will have to be accorded a key position as bearer of rights as well as duties. There is no reason why contemporary concerns and fads in the West should define the parameters of international discourse on and aspirations to human rights.

That is not to say, however, that the framework adopted by Asian governments is justifiable. I start with one element of that framework, religion, which has played a less important part in East Asia than in South and West Asia, but which is nevertheless supposed to give a uniform and distinctive character to Asian perspectives on human rights.

Religion

An immediate difficulty arises when examining the role of religion in the Asian perspective on human rights: there are numerous religions in Asia, including all the world's major ones. Assuming that religion does indeed have an influence on a people's perception of this issue, then one would have to concede that there would be a plurality of perspectives, not one. Even if we concede that for our inquiry what matters are "Asian religions (Hinduism, Islam, and Buddhism, plus the influential set of beliefs represented by Confucianism), we are still faced with the fact that religions vary in their beliefs and values, and the religion does not manifest itself uniformly in its discourse about human rights at all times and in all countries. Buddhism is militant and aggressive in Sri Lanka, asserting the ethnic and religious superiority of one section of the population, while elsewhere, as in Cambodia, it has been a force for peace and the protection of the rights of all communities. Hinduism was once seen as tolerant and nonproselytising, providing a constitutional basis for secularism in India; today many of its adherents are militant and attack the beliefs and constitutions of other

religions. The Hinduism of Nepal is more syncretized than that of modern India, able to coexist and even assimilate with other religions. In many East Asian countries, all religions seem to be mediated through Confucian thought and values, detracting from the specificity of the religion.

In many places religion takes its coloration from politics and is woven into the apparatus of status or claims a special eminence in the affairs of the state. While Western countries have separated state and religion (whatever the influence of religion on human rights), the contemporary tendency in many parts of Asia (particularly South Asia) is to connect religion with state. In some instances this has served to diminish the scope for human rights. Sometimes religion acts as a conservative force, at other times it is a major factor for change.¹

As to whether religion can provide a basis for a universal pan-Asian bill of rights, it is always hard to say what the essence of a particular religion is, but it would seem that different values are enshrined in different religions. Some, like Hinduism, have sanctified social and caste distinctions; others, like Confucianism, established a social and political hierarchy. Nor is equality the hallmark of Islam, for despite its ideals, its practices have remained true to the tribal and unequal society of its origin. Christianity justified slavery for centuries, and Christian-based Western political systems did not accommodate the equal rights of blacks and women until this century. Not all Asian states encourage the holding or the exercise of religious beliefs, in fact some prefer to base the source of rights in popular sovereignty, as in China. Religion would not appear therefore to hold the key to universalism. Indeed most religions in some sense deny the claims of equality; traditionally Hindus found people of other religions polluting, and most other religions accord the nonbeliever an inferior status in both religious and secular systems. Consequently, religion does not provide a basis for a distinctive Asian perspective on human rights.

Culture

While religion may be looked upon for some common understanding of human rights, cultural differences are expected to explain the diversity of beliefs on this issue. As noted above, some Asian governments claim that their societies place a higher value on the community than in the West, that individuals find fulfilment in their participation in communal life and community tasks, and that this factor constitutes a primary distinction in their approach to human rights. The Western pre-occupation with individualism is

explained by the alienation resulting from its economic system which has sapped the vitality of the community, and forced introspection on individuals as a means towards their identity. This argument is advanced as an instance of the general proposition that rights are culture specific.

The communitarian argument overstresses the individualism of Western society and traditional thought. Even within Western liberalism, there are strands of analysis that assert the claims of the community (for example, Rousseau); and most Western human rights instruments allow limitations on and derogations from human rights in the public interest, or for reasons of state. Western courts regularly engage in the task of balancing the respective interests of the individual and the community.² Within liberal societies there are subtle differences in the approach to and the primacy of human rights, as becomes evident when one examines the differences among the United States, Canada, France and the United Kingdom. Furthermore, liberalism does not exhaust Western political thought or practice. Social democracy, which emphasises collective and economic rights, and Marxism, which elevates the community to a high moral order, are also important schools of Western thought. Finally, there is much celebration in Western political thought of civil society.³

Secondly, Asian governments fall into the easy but wrong assumption that they or the state are the "community."⁴ Nothing can be more destructive of the community than this conflation. The community and state are different institutions, and to some extent at odds with each other. The community, for the most part, depends on popular norms developed through forms of consensus and enforced through mediation and persuasion. The state is an imposition on society, and unless humanised and democratised (as it has not been in most of Asia), it relies on edicts, the military, coercion and sanctions. It is the tension between these two that has elsewhere provided the underpinning for human rights. In the name of the community, most Asian governments have stifled social and political initiatives of private groups. Most of them have draconian legislation, like the British colonial inspired Societies Act,⁵ which gives the government pervasive control over civil society. Similarly rights to assemble and march peacefully have been mortgaged to the government. Governments have destroyed many communities in the name of development or state stability, and the consistent refusal of most of them to recognise that there are indigenous peoples among their population, who have a right to preserve their traditional culture, economy, and beliefs is but a demonstration of their lack of commitment to the real community. The vitality of the community comes from the exercise of the rights to organise, meet, debate, and protest, dismissed as "liberal" rights by these governments. Nor is the tight regulation of society, as in China and Singapore, particularly Confucian. Confucius argues against reliance on law or coercion, and advocated a government of limited powers and function.⁶

Another attack on the community comes from the economic, market-oriented policies of the governments. Although Asian capitalism appears to rely on the family and clan associations,

there is little doubt that capitalism also weakens the community. Nor are its values or methods particularly communitarian. The moving frontier of the market, seeking new resources, has been particularly disruptive of communities that have managed to preserve intact a great deal of their culture and organisation during the colonial and pre colonial periods. The emphasis on the market and, with it, individual rights of property, is also at odds with communal organisation and enjoyment of property. (A further irony in that Asian leaders who allege their allegiance to communal supremacy and values are among the most ardent opponents of a Marxism that espouses the moral worth and authority of the community.) Market policies rely greatly on multinational capital and corporations that have brought new values and tastes and are increasingly integrating Asian economies and elites into a global economy and culture. Indeed it is these very considerations that prompted the Singapore white paper, but the contradictions of official policies largely escaped its authors. It totally ignored the impact, indeed the onslaught, of modern technologies on traditional communities.

A final point is the contradiction between claims of a consensual and harmonious society and the extensive arming of the state apparatus. The pervasiveness of draconian legislation like administrative detention, disestablishment of societies, press censorship, and sedition, belies claims to respect alternate views, promote a dialogue, and seek consensus. The contemporary state intolerance of opposition is inconsistent with traditional communal values and processes. Contemporary state processes in Asia are less hospitable to community politics than the much-derided adversarial processes of the West, which at least ensure a hearing for all parties.

Thoughtful Asians, who concede many of the above criticisms of a communitarian approach, nevertheless hold on to some important distinctions between the West and Asia, which they consider to be rooted in culture. There is first the distinction between duties and rights. An aspect of this is the tendency in the West towards formalism, the transformation of values as legal rights, and the consequent emphasis on the rights and prerogatives of an individual, based on a theory of competition and suspicion of authority. This leads to demands rather than concessions, to confrontation rather than reciprocity and accommodation. An emphasis on duties on the other hand leads to honour and peace, as well as stability. It is argued that the rights-based emphasis leads to the impoverishment of society, so that in the search for the protection of the citizen against the state, the community collapses and "nonstate" actors become the principal source of oppression and insecurity (making it unsafe to be on the streets of major metropolises after sunset). There is also the danger in formalising values as rights that the form may elude substance, so that the satisfaction of formal criteria hides realities that deny the values. As Professor Mazrui once pointed out, the West may have abolished child marriages, but the number of teenage pregnancies and one-parent families has vastly increased.

However, in the hands of an intolerant government, the concept of duty can become a justification as well as an instrument of authoritarianism. This is perhaps not inherent in the notion of duty, because duties are also laid upon rulers in the best Islamic and Confucian traditions, and indeed the notion of duty can be truly revolutionary. In practice, however this is often not how it is; duties vary from person to person until the system becomes reminiscent of feudalism with persons at the top of the hierarchy having rights and those at the lower reaches, duties. The emphasis on the fulfilment of duties, frequently betokening social, economic, or political subordination, tends towards conservatism and the perpetuation of inequalities-antithetical to the claims of equitable development advanced by many Asian governments. Furthermore the conflation between the state and community serves to strengthen the tentacles of the government over society, the notion of duties transferred from the community to the state changes its nature from intercitizen obligations and responsibilities to the much more problematic case of state-citizen relations. The West has to some extent separated civil society from the state, creating a neutral public area and space for communities, from which the commanding heights of the state may be controlled. In Asia, however, the tendency is towards the convergence of the two, regarded perhaps as necessary for the legitimacy of the state⁷ but ultimately destructive of the community.

Even if we concede that Asian cultures and religions are distinctive, and that these colour the perception and reality of rights, it is not clear why global debate has come to be between political and civil rights ("Western") and economic and social rights ("Asian"). Why should the communitarian approach suggest that economic and social rights are more important than political? It may be argued that traditional communities were hierarchically organised and that their cohesion depended on duties. But these communities were less concerned with "development," which is undoubtedly more of a foreign concept of harmony within the community. If the concept of human rights is not derived from Asian culture, then neither is economic development.

The same can be said of Asian religions, which are stereotyped as other-worldly (like most religions,) and more concerned with salvation in the next world than economic prosperity in this one. Ethics are more important than power, and asceticism and austerity are values approved by most of these religions. Apart from the somewhat ambiguous position of Confucianism (which is mistakenly today regarded as development-oriented rather than in its traditional role of preserving the status quo) there is little in Asian religions to support a privileged position for economic development. It is interesting that the most influential Christian church in Asia is Catholicism rather than the Weberian, development-driven Calvinism or a variant of it. Asian governments are therefore on shaky ground when they invoke tradition to justify the primacy of development. If economic rights are seen to flow from communal or collective rights, there is a misapprehension, for these rights are normally attributed to individuals, not groups. Collective rights are associated with such benefits as a clean environment, property as

commons, and a measure of equity-all of which are anathema to at least some Asian prime ministers.

If there is no substantial basis in community, culture, or religion for economic and social rights, then why do Asian governments place such rhetorical emphasis on them? They sometimes say that civil and political rights are meaningless if the people are poor and illiterate. There is, of course, considerable truth in this, but there is reason to be sceptical about the sincerity of these governments for they have done little to establish economic rights or promote civil rights in countries which have achieved great economic success. The more plausible reason is that the talk of economic and social rights diverts attention from the issue of civil and political rights. Governments are anxious to minimise challenges to their authority of legitimacy, which means (as it seems to them) the suppression or emasculation of political opposition. A preference for economic rights might also arise from the consideration that it is much harder to hold governments accountable for them. They are, for the most part, more matters of standards than precise rules and entitlements; their enforceability is problematic, and they are widely regarded as contingent on resources. In fact these governments dislike talk of economic and social rights, except when engaged in global debates-and many of them do not like talk of any rights at all.

It is not easy to establish how civil and political rights threaten economic and social rights. The juxtaposition these governments play upon domestically is not between these different rights, but between civil and political rights and economic rights development. It is economic development, not economic rights, that they emphasise. They are, however, content to seek the economic rights of states, the so-called developing states (as in their advocacy of the right to development). It is, of course, easy to understand why governments want economic development; it increases state resources, enables governments to establish larger armies, enhances the status of their leaders, and secures the support of the populace.

I conclude this section by reference to another distinction that flows from cultural differences-the role of the family. It is frequently said that the bedrock of Asian societies is the family, and it has become fashionable to ascribe social problems in the West to the breakdown of family life. In Asia mutual responsibilities within the family supposedly provide for the welfare of its members, ensure traditions of respect and rectitude, and promote social stability and economic development. The conversion of these values into individual rights undermines the basis of family solidarity. However, countries that are not known for their practice of individual rights have found that the family may well be weakening under the pressure of other social and economic changes. A particular irony is that a legislator in Singapore, known to enjoy government support, recently introduced a bill to give parents the right to sue their children for maintenance (and the children the defence that the parents mistreated them when they were young!). It is hard to imagine that such a bill would achieve its objective of maintaining family solidarity!

Concern with the erosion of family values is instructive in a number of ways. At one level it minimises the Asian claim for cultural distinctiveness, and therefore relativity of rights. At another level it provides another basis for relativity. Societies are constantly changing, and, with economic and social changes, there are also changes in the perception of what is important and valuable to a community or a group. In other words, an assessment of the priorities in human rights alters with the underlying economic transformations. The West too has had its communitarian phase; the community is still important there and the family is even now cherished, even if old solidarities are beginning to dissolve under economic pressures. Asian governments, which cheerfully and sometimes aggressively espouse Western notions of development and the market, are now beginning to find that they can no longer ward off its child-human rights.

The above analysis suggests that a useful perspective on human rights is drawn from history: the dialectical unfolding of rights representing social achievements and so on. This in turn suggests that the development and understanding of rights are contingent on a variety of factors, moral ideas as well as material conditions, and that differences in their perception are attributable to these ideas and conditions rather than to any inherent notion of culture or community. This approach does indeed provide a basis for reconciling so-called Western and Eastern perceptions of human rights. In my view this provides a better basis for global debate on this subject. The notion that distinct Western and Asian perspectives exist is inaccurate, ahistorical, and leads to unfruitful polarities. Equally it distorts the debate by suggesting that the key conflict is between the East and the West, rather than that it is within each. It detracts from the relevance and urgency of human rights discourse in Asia, where keen debate on appropriate models for representation, governance and accountability, and equity are essential. Asian intellectuals and activists need to rescue this debate from the present sterile phase and place it at the centre of national and regional politics.

If human rights have to be located in their social and economic context, what are the appropriate features that constitute the context for them in Asia? If one may generalise, the following specifics of the Asian situation stand out. The first point is that the function of human rights in Asia is quite different from that in the West. Human rights in the West have responded to the configurations of power and economic relationships as they have evolved over a long period. They are consequently consistent with those patterns and structures of authority and people's aspirations as well as expectations. There are no serious competing paradigms of political organisation. The role of human rights is to fine-tune the administrative and judicial system and fortify rights and freedoms that are largely uncontroversial.

The second point is that there are massive violations of human rights in Asia: of women and children, of lower castes and otherwise disadvantaged communities, of ethnic minorities, of workers. Violations range over the whole spectrum of rights-civil and political, as well as cultural, social and

economic. There are instances of mass killing, torture, arbitrary detention, and widespread disappearances; of whole communities being displaced from their traditional homes and extensive censorship of thought and expression. The state is a major culprit, brutalising whole populations; but massive violations also take place in and through civil society, sometimes with the connivance of the state, and frequently reflecting feudalistic and patriarchal dimensions of culture. Social conflicts, particularly those stemming from ethnic or caste differences, have politicised and militarised civil society in many states. These developments should caution us against overromanticising civil society.⁸

The third point is that despite these violations awareness of human rights is low. Explanations for this paradox may lie in the weight of oppression over centuries, a fatalistic acceptance of one's miseries, and obstacles placed in the way of those who try to make the downtrodden aware of the cause of their oppression. It certainly lies, in part, in the ethnic divisions of societies; ethnic consciousness can dull human rights consciousness, distinguishing "us" from "others" and facilitating justification for their oppression. A major challenge to human rights workers is undoubtedly this ethnic consciousness which supports a perception of outsiders as less than human. Another cause of denial of human rights consciousness may be wide-spread poverty. Poverty is a great cause of the denial of human rights. The international system refuses to accept this reality-largely for political reasons. It refuses to acknowledge that poverty destroys human dignity, and without human dignity there can be no human rights-or indeed the capacity to challenge the system of oppression.

Thus economic development is undoubtedly important. But not just any kind of economic development. Economic growth must be accompanied by a wide measure of egalitarianism, the protection of the rights of workers, particularly migrant workers, and democratic practices at workplaces. Nor must economic growth be undertaken at the expense of the land, customs, and the autonomy of long-settled communities. Unless these and other community concerns are safeguarded in the process of economic growth, development is perverse and adds to the violations of human rights dignity.

A further point about human rights in Asia is that violations are not challenged on an individual basis but on a group or class basis. This is particularly the case in multi-ethnic states. The protection of human rights is therefore pursued through the group. This fact, and the fact that the state is a major violator of human rights, suggests strategies that are different from the traditional Western approaches, which are legalistic and court-centered. Asian strategies cannot realistically be court-centered, however favorably the judiciaries may be disposed towards human rights (and for the most part they are not). Human rights awareness and mobilisation based on connections between the courts and their oppression are a fundamental starting point (connections which neither local governments nor the West are anxious to make).

Nor must the terrain of struggle be purely domestic. Despite the resistance of governments, the realisation of human

rights in each country is intimately tied to wider global forces. Even today many governments in the Third World are surrogates for external economic and political interests, and it is necessary to take the battle to the homelands of these interests, just as it is necessary to recruit foreign interests to put pressure on domestic governments that deny their people the right to participate in decisions affecting their own destiny.

Notes

1. A strategic question is how far one should use religion to legitimise rights. Religions can lend themselves to alternate propositions. Texts of most religions can be mined for contradictory interpretations. In these circumstances, is it best to separate the discourse of human rights from religion? One answer is no, on the assumption that since Asian people rely on religion for spiritual sustenance and sometimes political authority, rights should be anchored in religion. This may also counter the argument that human rights are foreign constructs by providing an indigenous base for them in Asian belief and values.

2. For, example, Will Kymlicka, *Liberalism, Community and Culture* (Oxford: Clarendon Press, 1989)

3. See Jean Cohen and Andrew Arato, *Civil Society and Political Theory* (Cambridge, Mass: MIT Press 1992)

4. Although, as I argue, lip service to the "community" is hypocritical, the real "community" which motivates politicians is parochial and clannish, pursuing its selfish interest at the expense of other communities, and is the basis of public corruption and graft-and therefore nothing to be proud of. An interesting light on "community" occurred in Hong Kong in April 1994, when two shoppers beat up a shop assistant, while her colleagues watched but did nothing to defend her. However, she bore no grudge against them, saying, "Even though I have known them for a long time what difference does it make? You cannot expect some one to help you. I am not their relative." (*Eastern Express*, 11-12 June 1994). See also Siu-kai Lau "Utilitarianistic Familism: The Basis of Political Stability" in Ambrose King and Rance Lee (eds.) *Social Life and Development in Hong Kong* (HSong Kong: The Chinese University Press, 1981) A similar conflation occurs in the *African Charter of Human and People's Rights*. The Charter was adopted in Nairobi

in June 1981. Its preamble refers to the "values of their historical traditions and the values of African civilisation which should inspire and characterise their reflection on the concept of human rights and peoples' rights."

5. Typically such legislation provides that a society has to be registered before it can operate. The government has the discretion to refuse to register a society and to deregister it. It has the power to seek information from the society about its membership, finances, and other affairs, and to control or prohibit political links with outside bodies.

6. As with religion, Confucianism has been used for political purposes so that its essence has become somewhat obscure. It is undisputed, however, that Confucius was against tough laws and strong punishments, believing in the virtue of rulers and their sense of duty. See V. Rubin, *Individual and State in Ancient China* (New York: Columbia Univ. Press, 1976) and S. van der Sprenkel, *Legal Institutional in Manchu China* (London: The Althone Press, 1962)esp. 2 and 3.

7. The argument here is that in non-western states, legitimacy does not come from the rule of law, constitutionalism, and the neutrality of state institutions, but from their heterogenous states, means the culture and religion of the majority community. See for example Neelan Tiruchelvam, "Development and the Protection of Human Rights" (1993, mimeo).

8. In India, for example, civil society is a major source of the oppression of millions of people, through murder and rape, bonded labour, and a web of discriminatory and punitive customs and practices. The framers of the Indian Constitution were well aware of these problems. Article 15 declared illegal discrimination on the grounds of caste, in, for example, access to wells, tanks, bathing ghats, roads and other places of public resorts. Article 17 abolished untouchability and its practice in any form. Article 23 prohibited traffic in human beings and forced labour, particularly the traditional form of bonded labour known as "beggar". There are various laws at the central and state levels to implement these provisions, particularly the Civil Rights Act of 1955 (expanded and remanded the Scheduled Castes and Scheduled Tribes Prevention of Atrocities Act in 1989). Despite these attempts, the social and economic position of these disadvantaged communities shows little improvement.

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