

AN EAST ASIAN APPROACH TO HUMAN RIGHTS*

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Is there, or can there be, a distinctively Asian approach to human rights? On one level, the answer must logically be no if human rights are those rights which everyone has simply by being human. Yet, cultural diversity is also a reality. As a matter of empirical record, rights, order and justice are obtained in diverse ways in different countries at different times. Japan is an Asian country that professes adherence to democracy and human rights in terms almost indistinguishable from the West. Nevertheless, the way in which Japan conceives and implements laws is different from the method employed by other Asian and Western countries. These differences can be attributed to Japan's culture and level of development.

I. THE DIVERSITY OF ASIA

Cultural diversity as an empirical fact points to the central

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difficulty of conceiving of a single Asian approach to human rights. Asia is a vast and diverse region. Different voices say different things with different motivations. The contrast is even greater if we take into account not just governments, but also non-governmental organizations, minority, ethnic and religious groups. Consequently, the debate over the proper approach to human rights is not just between Asia and the West, but also between and within Asian countries.

My emphasis is on the governmental perspective in the ongoing human rights debate with the West. From this viewpoint, an Asian approach to human rights is perhaps more a matter of process rather than particular outcomes. There is general disquiet across the region, not just governments, with allowing the West determine the international human rights agenda as it has for many years. Common sets of questions are being asked across Asia, even if there are no common answers.

In this article, I address four aspects of this complex debate: first, the central question of universality -- the heart of the human rights debate with the West; second, the relationship between development and human rights; third, the western reaction to this debate; and fourth, how the West and Asian governments can find a more common ground. Please keep in mind that what is presented here is only one Asian point of view.

II. THE IDEAL OF UNIVERSALITY

Are all human rights really universal? This question is often, somewhat crudely, posed in the form of a dichotomy between universality and cultural relativism, provoking fierce disputes with a pronounced theological flavor. I believe that this is a false and sterile dichotomy.

A. *Culture is No Excuse*

Too many in the West perceive cultural relativism as nothing

more than a disguise for dictators. It cannot be denied that gross violators of human rights are among those who advance this argument. There is a global culture of modernity of which the ideal of human rights is part. No traditional culture exists in a pure form anymore, anywhere. No country has rejected the Universal Declaration of Human Rights (hereinafter Universal Declaration). Recognition of diversity as an empirical fact cannot justify gross violation of human rights. Murder is murder whether perpetrated in America, Asia or Africa. No country claims torture as part of its culture heritage. Everyone has a right to be recognized as a person before the law.

B. Not Everything Is Really Universal

Some rights must be enjoyed by all human beings everywhere in a civilized world. All cultures aspire to promote human dignity in their own ways. In fact, universality as an ideal is not widely disputed, even in Asia. The hard core of rights, however, that are truly universal is smaller than some would assert. Most rights are still essentially contested concepts. There may be a general consensus, but this is coupled with continuing and no less important conflicts of interpretation. Rights will be implemented in different ways.

C. We Are Not All the Same

Universality is not uniformity. The extent and exercise of rights and freedoms is a product of the historical experiences of particular peoples and therefore, vary from one culture or political community to another, and over time. Many Asian societies are more group-oriented and more accepting of a wider sphere of governmental responsibility and intervention than is common in the West. Societal differences, however, are a reality even within the West. For example, the U.S. has no state church or religion while many European countries do. Are we to conclude that freedom of religion

is less protected in Europe than in the U.S.? This would be absurd.¹

Upon examination, the so-called "Asian challenge to universality" is often no more than a similar assertion of the freedom for all countries to find their own best social and political arrangements. Curiously, this fundamentally pluralist approach is often contested by otherwise liberal and tolerant Western individuals who would instinctively take a multi-culturalist perspective if similar issues were raised in their own societies.

D. All Norms Evolve

How rights were defined in Europe or America a hundred years ago is certainly not how they are defined today. Similarly, they will be defined differently a hundred years from now.

Almost fifty years after the Universal Declaration was adopted as a "common standard of achievement," the debate over the meaning of many of its thirty articles continues. The debate is not just between the West and Asia. Not every country in the West will agree on the specific meaning of every article. Not everyone will agree that all articles are fundamental rights. Nor will every one of the fifty states of the U.S. interpret the Universal Declaration in the same way. However, the multiplicity of national, state and local laws and practices in the U.S. is not decried as a retreat from universalism. On the contrary, the clash and clamor of contending interests is held up as a shining model of democratic freedom.

Universality is not a static concept. Rights, like all human norms, evolve in response to changing configurations of interests and needs. Irrelevant norms are discarded or modified. There is no

¹ To give another example, in October 1995 a British judge, in marked contrast to the way an American court handled the news media during the O. J. Simpson trial, threw out a case because of pretrial publicity. Are we to understand that British courts are unfair because they do not regard the administration of justice as a form of public entertainment? John Darnton, *The Press Be Hanged! British Judge Prefers Order in the Court*, N.Y. TIMES, Oct. 6, 1995, at A1.

reason to assume that the trend is, or ought to be, towards greater liberalism. The right to asylum, for instance, has been progressively restricted by most western countries in the last few years. If it had not, the very principle might have been discarded under the political, economic, cultural and social pressures of new mass population movements.

It is not difficult to trace a similar evolutionary process for many other rights and international norms. Yet, an attempt to reflect this commonplace process in a diplomatic document aroused fierce accusations of Asians undermining universality prior to and during the World Conference on Human Rights held in Vienna in June 1993.

Article 8 of the Final Declaration of the Regional Meeting for Asia of the World Conference on Human Rights, also known as the Bangkok Declaration of April 2, 1993, reads:

[Ministers and representatives of Asian governments] recognize that while human rights are universal in nature, they must be considered in the context of a dynamic and evolving process of international norm-setting, bearing in mind the significance of national and regional particularities and various historical, cultural and religious backgrounds.²

Western over-reaction to this simple description of reality -- one that explicitly recognized the ideal of universality -- was perhaps the single most important reason for the acrimony that characterized debate between the West and Asia at the Vienna Conference.³ It

² United Nations World Conference on Human Rights, U.N. Doc. A/CONF.157/PC/59 (1993).

³ The remarks of several speakers at the World Conference on Human Rights evidence the discord between the West and Asia. In his address on June 14, 1993, the U.S. Secretary of State, Warren Christopher argued that "... we cannot let cultural relativism become the last refuge of repression." US Department of State Dispatch, Bureau of Public Affairs, 4 (1993). American press commentary interpreted this as a response to the alleged challenge to universality by several Asian countries. See, for e.g., Elaine Sciolino, *US Rejects Notion that Human*

continues to poison the atmosphere and fuel misunderstanding.

E. The Problem with Universality

This controversy underscores the essential problem with universality as an ideal. Acceptance of the ideal prescribes nothing useful about how allegedly universal rights are to be implemented in the real world. Nor does it imply anything practical about how this

Rights Vary With Culture. N.Y. TIMES, June 15, 1993, at A1.

In his address to the Conference on the same day, the Foreign Minister of Indonesia, Ali Alatas, expressed his concern about media reports which gave: the impression as if the success of this Conference is being threatened by a clash of values between the developed countries of the North and the developing countries of the South, by a confrontation between the perceived universal, mostly Western, concept of human rights that stresses political and civil rights, and the purported "dissident" view, particularly of Asian countries . . .

Ali Alatas, Foreign Minister of Indonesia, Address at the World Conference on Human Rights in Vienna (1993) (available from the Indonesian Embassy in Washington, D.C.).

Even the Chinese delegation, which was identified as one of the prime advocates of cultural relativism, said no more than:

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

Liu Huaqiu, Head of the Chinese Delegation, Speech at the World Conference on Human Rights in Vienna (1993) (on file with the author). It is difficult to take issue with Mr. Liu's statement. Were it not so, slavery would still be acceptable in the U.S. and women would still be unable to vote.

dynamic process of international norm setting is to be managed.

Singapore has had differences of opinion with several western governments on capital punishment, corporal punishment and limits on the freedom of expression. How are such disagreements to be resolved? International law prescribes no single international standard that can be applied to any of these specific issues. For example, capital punishment is hotly debated, not just in the international community, but even within the U.S. wherein nine states are contemplating introducing corporal punishment. Several European countries have limited freedom of expression through such measures as the Official Secrets Act and stricter libel and contempt of court laws than exist in the U.S. The days are long gone when any single country can insist on its own practices as a "universal norm." Clearly no country can claim immunity in another country for its citizens because that country's norms are different. No country can have two sets of laws, one for its own citizens and another for foreigners.

This point is illustrated by the case of Dr. Christopher Lingle, an American citizen who lived and worked in Singapore. In an article published in the October 7, 1994, issue of the *International Herald Tribune*, he referred, *inter alia*, to "intolerant regimes in the region . . . relying upon a compliant judiciary to bankrupt opposition politicians." After reading this, the Attorney-General of Singapore instructed the police to investigate whether Dr. Lingle or any other party had committed contempt of court or criminal defamation. As part of their investigations, the police questioned Dr. Lingle twice. Although he was not arrested or taken to the police station, he was questioned in the university where he works. Dr. Lingle said that the police had treated him with "dignity and professionalism."

The *International Herald Tribune* publicly apologized to the government. Nevertheless, the *International Herald Tribune* and Dr. Lingle were tried in open court, convicted of contempt of court and fined for their actions. Some Americans responded by angrily accusing the Singapore government of carrying out a campaign of harassment against Dr. Lingle and attempting to intimidate him for exercising the basic freedom of expression. From Singapore's point

of view, however, the issue was solely whether Dr. Lingle's reference to the judiciary had risen to the level of either contempt of court or criminal defamation. In the context of the passage containing the reference to "a compliant judiciary," Dr. Lingle was obviously referring to the judiciary of a particular country. He must have known the judiciary he was targeting.

Dr. Lingle is free to express his own point of view. Freedom of expression, however, is not an absolute right. Similar to other countries, Singapore has limits to the right of expression. These limits are defined by laws which provide that contempt of court and criminal defamation are punishable by law. The laws are derived from British law. In Singapore, there are also clear legal limits to freedom of expression relating to race, language and religion.

Singapore differs from many western countries which allow their key public institutions to be attacked freely in the name of freedom of expression. We have firmly decided that this will *not* be the practice in Singapore. The Singapore government firmly believes that in order to preserve public faith in key institutions, such as the judiciary, it is of vital importance that their integrity be upheld. This includes recourse to the law when an individual impugns the integrity of any of these institutions, regardless of nationality. Consequently, the Attorney-General had a duty to uphold the integrity of the judiciary and to authorize investigations.

In protesting the action against Dr. Lingle, Americans -- whether they realized it or not -- gave Singapore the clear impression that they were in fact asserting that the U.S.' concept of freedom of speech gave immunity to an American citizen in Singapore from being investigated for possible contempt of court and criminal defamation of our judiciary.⁴

⁴ Many Americans have difficulty understanding the unique nature of their definition of the freedom of expression. America is probably the only country to have elevated freedom of expression to the status of an absolute right, superseding all others. In any case, I do not think it is only a Singaporean who would react with some bemusement to the kind of argument presented in Rodney Smolla's book, *Free Speech in an Open Society*. Smolla insists that even seemingly reasonable

F. Universality without Responsibility

A key concept missing in the debate is that of responsibility. This is often ignored when human rights in Asian countries are discussed by western pundits. Another problem with universality as an ideal is that there is no correlation with responsibility for actions taken in the name of this ideal.

Suppose, for argument's sake, that Singapore is somehow compelled to adopt a very liberal standard of freedom of speech that allows public institutions to be freely attacked and denigrated, or racist sentiments to be freely expressed, as happens in the U.S. Or suppose that Singapore is further compelled to abolish capital or corporal punishment. As a consequence it is possible that key institutions would weaken, racial tensions would be fanned and the lack of an effective deterrent would allow organized crime to become deeply entrenched. Singapore's economic development would then

regulation of speech tends to progress inexorably towards censorship. Non-Americans may perhaps be forgiven if they pause to catch their breath and wonder what happened to the virtue of common sense. See RODNEY SMOLLA, *FREE SPEECH IN AN OPEN SOCIETY* (1992). In fact, it is not only non-Americans who would react in this way. Cass R. Sunstein, for example, makes the case that the absolutist definition of the right to free speech is misguided and counter-productive. See CASS R. SUNSTEIN, *DEMOCRACY AND THE PROBLEM OF FREE SPEECH* (1993).

Even human rights activists and free speech advocates seem to have difficulty in understanding the uniqueness of the American standard. When the *International Herald Tribune* again apologized to the Singapore Government in a second and separate libel case, it came under severe attack from such public interest groups. Mr. Richard Simmons, President of the *International Herald Tribune*, defended his company's position by pointing out that the critics who were demanding that the paper try to impose America's liberal standards abroad were uninformed. He said that the *International Herald Tribune* had been advised by its lawyers that under the English libel law applicable in Singapore, it had no legal defense. Mr. Simmons further acknowledged that "[The *International Herald Tribune*] was found to have libeled people, a situation which happens with unfortunate frequency in a large number of areas in this country and in the world, and we will pay the price for that." William Glaberson, *Newspaper Decides Not to Fight Singapore Libel Award*, N.Y. TIMES, Aug 6, 1995, at A3.

begin to falter and fail. Singapore is a small city-state with no natural resources. Would western pundits then be prepared to take responsibility for bailing out Singapore, perhaps financing us for decades, making us the fifty-first state or allowing us to join the European Union (EU)?

My point is not that Singapore should never adopt a more liberal standard for freedom of expression or that we should never abolish capital or corporal punishment. It is simply that these are choices that Singaporeans must make for themselves. Only Singaporeans can be responsible for Singapore because they bear the risks of such social experiments. If enough Singaporeans disagree with the government on these issues, they will, over time, express themselves through the ballot box, change the government and force a modification of the law. They have not done so.

Furthermore, I am not arguing that national sovereignty precludes all international discussions on human rights. International law has clearly evolved to the point that how a country treats its citizens is no longer a matter for its exclusive determination. International human rights law co-exists uneasily, and in as yet an unresolved manner, within the fundamental principle of national sovereignty. It would thus be prudent to restrict such discussions to gross and egregious violations of human rights which do not clearly derogate national sovereignty. Attempting to expand the debate to areas where there are legitimate national differences of interpretation or implementation only exacerbates misunderstanding and prevents consensus.

III. DEVELOPMENT AND HUMAN RIGHTS

The relationship between development and human rights is another aspect of the debate that is often misrepresented. The crude argument that the enjoyment of human rights must await a certain standard of economic development is often attributed to Asians; to be sure, some Asians do make this argument. I do not agree with them and I do not think that those who advance this argument are the

majority.

It is certainly meaningless to speak of many human rights in conditions of abject misery. There are nevertheless certain core rights that ought not be derogated under any circumstances. For example, poverty cannot justify murder or torture. The relationship between development and human rights, however, is perhaps more subtle than is sometimes appreciated.

A. Stability and Growth

Repression is wrong and unhealthy. Our experience is that growth both promotes and is promoted by the ability of the individual to live with dignity.

What we dispute is the simplistic belief that the extension of individual political and civil liberties will necessarily and inevitably lead to economic development. Nothing is inevitable. Growth and stability are linked by a more complex and subtle dynamic: an unremitting search for an equilibrium between the rights of the individual, the claims of the community to which every individual must belong, and the no less urgent need for governments to govern effectively and for society to develop. This requires, on occasion, a firm hand and a limitation of some individual rights in the public interest. Our experience has convinced us that stability is necessary for growth and the extension of human rights.

No balance between individual liberty and growth can be valid for all countries and for all time. Every society must find its own appropriate equilibrium if it is to progress. Our fundamental assertion is pluralist -- the unthinking application of dogma of any kind leads to disaster.

Singapore's experience was described by Prime Minister Goh Chok Tong in a recent speech to the Centre for Development Economics at Williams College. His views on "The Role of Government in the East Asian Miracle" are relative to the instant

discussion and merit noting in great detail.⁵

Developing countries that attempt to follow the economic strategies of the East Asian countries often fail, not because they do not know what the right economic policies are, but because they lack the socio-political underpinnings to make such policies stick. It is in providing these underpinnings, where the role of government is most critical to the development process. And the most important of the socio-political underpinnings of economic development are political stability and good governance

What brings about political stability? The single most important factor is good governance. Good governance is built on three interrelated beams and pillars. They are democratic accountability, long-term orientation of policies and ability to achieve social justice.⁶

The first element, democratic accountability, implicitly requires long-term stability. The Prime Minister acknowledged in his speech that in order to attain this, "governments must govern with the consent of the governed."⁷ Singapore, similar to most western societies, has achieved this via "free, fair and clean elections."⁸ In Singapore, elections have been held an average of every four years during the last three decades and there is universal suffrage for all

⁵ Goh Chok Tong, Prime Minister of Singapore, Address at the Centre for Development Economics, Williams College, *entitled* The Role of Government in the East Asian Miracle, (Sept. 16, 1995) [hereinafter *The Role of Government in the East Asian Miracle*]. See also Professor S. Jayakumar, Foreign Minister of Singapore, Address to the 16th Plenary meeting of the 50th United Nations General Assembly, Oct. 3, 1995, U.N. GA A/50/PV.16 at 24-25.

⁶ *The Role of Government in the East Asian Miracle*, *supra* note 5.

⁷ *Id.*

⁸ *Id.*

citizens over twenty-one years old.

As to the second factor, the long-term orientation of policies, the Prime Minister noted how the approaches of Singapore and most western nations differ. These differences can be attributed to the different roles the governments fulfill in their respective societies. According to him, the function of the U.S. government has been traditionally limited to that "as a representative, to reflect and respond to the express preferences of the people" which can be "vulnerable to economic populism."⁹ In supporting his argument the Prime Minister noted the difficulty the U.S. government is facing with its handling its budget deficit. Accordingly, he emphasized that the U.S. government, unlike smaller developing nations, can withstand such prolonged periods of political gridlock due to its abundant resources and broad economic base.¹⁰

This is why, in Singapore, government acts more like a trustee. As a custodian of the people's welfare, it exercises independent judgment on what is in the long-term economic interests of the people and acts on that basis. Government policy is not dictated by opinion polls or referenda. This has sometime meant overriding populist pressures for "easier" economic policies. Indeed, implementing the right policies has on occasion meant administering bitter medicine to overcome economic challenges.¹¹

The Prime Minister further explained that this trustee model of government coincided with achieving democratic accountability. Given that the government "acted as an honest and competent trustee of the people," it has been voted in since every general election since 1959.¹² Thus, it has been able to take a long-term view

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

in addressing Singapore's economic problems.¹³

The ability to achieve social justice is the final element of good governance. According to the Prime Minister, this is accomplished in Singapore through "equal treatment of all groups and providing those who have fallen behind with the opportunities to catch-up."¹⁴ He emphasized the government's fairness to all groups despite ethnic, religious, economic and social affiliations and the citizen's acceptance of its multi-racist society.¹⁵ He further highlighted "the government's efforts to provide every citizen with an equal opportunity to compete and succeed" as an integral aspect of social justice in Singapore.¹⁶

¹³ "Long-term orientation has also been a feature of other East Asian governments. They too have been more willing to impose short-term sacrifice in order to gain long-term benefits. Ultimately, good governance is not just about having free and fair elections. It is about implementing policies for long-term public good even if such policies are unpopular in the short-term." *Id.*

¹⁴ *Id.*

¹⁵ "Government has been fair towards ethnic, religious, economic and social groups. It is not beholden to any special interest. This is important in any society, more so in a multi-racial one like Singapore. Everyday, children in schools recite a pledge to become '... one united people, regardless of race, language or religion' Multi-racism is not only a pledge; it is practiced." The Prime Minister further discussed in his speech how multi-racism has been one of the foundations of Singapore's political stability and social cohesion. *Id.*

¹⁶ "While emphasizing economic efficiency and meritocracy, the government has always been conscious of the need to prevent a gradual stratification of Singapore society characterized by class distinctions and hatreds. But our efforts to 'level up' society have always been motivated by the principle of equality of opportunity as opposed to equality of outcome. Everyone should have the opportunity to run the race, but not everyone will finish the race at the same time. This is why the government has heavily subsidized social infrastructure: education, housing and basic health care. But it has refrained from spending too much on social welfare: grants, unemployment benefits and subsidies for consumption. Excessive spending on social welfare, coupled with income redistribution through high taxation, erodes the work ethic, discourages enterprise and weakens the family unity. On the other hand, spending on social infrastructure provides equal opportunities for all, thereby facilitating social mobility." *Id.*

B. Values and Development

Consideration of development leads to a question of some current notoriety: the relationship between "Asian values" and the West. This is not a new issue. In one form or another it has engaged intellectuals and governments in Asia for almost two centuries. Asian values have been a balm for the cultural wounds inflicted by western colonialism. Talking about Asian values has also been a way to disguise the failure of some Asian societies to modernize.

The important question is not of the theoretical superiority of Asian values, or any set of values, over any other. It is not even about what is distinctively "Asian" about any particular set of values. In its current manifestation, discussion of Asian values has more to do with an on-going internal debate in many Asian societies. Having achieved a certain measure of economic success, the question being asked in many Asian countries, including Singapore, is how to sustain development over the long term, keeping in mind the pitfalls and dead-ends that many more developed societies and mature economies are now facing in their own development.¹⁷

Several Asian societies are searching for their own distinctive mixture of capitalism, state and society. In talking about Asian values, they are often only examining issues such as the responsibility of individuals to society, the role of the family and the maintenance of law and order. These issues are also currently being discussed and debated by significant segments of western societies who now feel that the exaggeration of liberal values and individual rights, devaluing the very notion of "values," has led to serious problems.¹⁸

¹⁷ Many recent discussions of the subject miss the point and treat it only tangentially. For a notable exception see DAVID I. HITCHCOCK, *ASIAN VALUES AND THE US: HOW MUCH CONFLICT?* (1994); see also *Capitalism and Democracy in, DIALOGUE* 2-7 (1993).

¹⁸ The Republican Party in the U.S. and the Conservative Party in the U.K. have raised many analogous questions. In an academic context, Professor Amitai Etzioni, for instance, has argued that in America and Europe the balance between rights and duties has swung too far to the former. For a recent interesting discussion on the devaluation of values see GETRUDE HIMMELFARB, *THE DE-MORALISATION*

C. Democracy and Development

The key question raised by the debate over Asian values is complex. As societies develop economically, must they necessarily follow the particular path of political development that many in the West would define as "democracy"? Many Americans instinctively assume as a matter of faith that they must. I do not agree, although I do not claim to have a clear answer. In fact, the point may be that there is no simple or clear answer.

Democracy is itself a slippery term subject to multiple meanings. Like many political terms, it bears no fixed connotation. Everybody claims to be "democratic."¹⁹ As societies become more developed economically, they become more complex. New interest groups emerge on the scene clamoring to be heard. Established relationships are re-ordered. Stability requires that political arrangements accommodate such new developments in some way.

This only serves to say that things inevitably change. Whether it necessarily leads to a particular political system is still an open question. Whether the specific political system that many in the West understand by the term "democracy" is intrinsically desirable, if it requires all societies to face the serious problems of governance confronted by the mature democracies, is also an open question.

D. Nothing Is Forever

This is not to say that governments should not be accountable to the people through periodic free and fair elections. Accountability is an essential condition for good government and growth, but this does not impel any particular set of political institutions or arrangements.

The question is simply what works, not what is prescribed by

OF SOCIETY (Alfred A. Knopf, ed., 1995).

¹⁹ See, for e.g., C.B. MACPHERSON, *THE REAL WORLD OF DEMOCRACY* (1966).

one political ideology or another. The first duty of governments is to govern fairly, and in a way that increases the general welfare. Communism failed not because it lacked a lofty ideal, but because in the final analysis it could not deliver. So too will any political system fail if it becomes, or is perceived to be, dysfunctional. No political system or ideal is sacrosanct. Liberal democracy is certainly not the "end of history."

III. THE WESTERN RESPONSE

Western response to the Asian human rights debate bears examination because, in my view, it has been disproportionately vehement in relation to what is actually being said by some Asians.

The universality and individuality of rights is deeply ingrained in western political culture and the western definition of its own identity. It is only to be expected that anything that is regarded as even mildly questioning these "idols of the tribe" would provoke a strong reaction. Still, the western response often seems insensitive to the nuances of different Asian voices and selective in what it chooses to highlight of Asian arguments. It often appears that many in the West are responding not so much to what is actually being said, as to their own worst fears and insecurities.

The end of the Cold War deprived the West of the convenient ability to define its identity in opposition to the Soviet bloc. Fighting global communism made it easy for Europeans and Americans to believe that their common values were true and beneficial not only for the West, but for the whole world. This cozy assumption has now evaporated. Economic success and the removal of the Cold War straight-jacket now allow Asian countries greater freedom to find their own way. The West is also freer to pursue its own values, but is not yet entirely comfortable with the post-Cold War world. Some in the West occasionally seem disquieted by the rise of several Asian countries as major international players that, while friendly to the West, have no wish to become good westerners, and are strong economic competitors. These problems are particularly acute for

those western societies that define themselves in relation to a universal mission.²⁰

Some have responded by trying to recreate the comfortable verities of the Cold War by postulating a "clash of civilizations." Others appear disheartened by the loss of economic competitiveness and seemingly intractable social and political problems. They seem to have lost the confidence to believe that their own way of life is worth living without seeing it as obligatory for the entire human race.

I believe that the debate on "Asian values" or "Asian human rights" has provoked such strong responses precisely because it resonates deeply and uncomfortably with a process of questioning once widely accepted values within many western societies. Positions on such issues as law and order, family values and the responsibility of individuals to society taken by some Asian governments have become entangled with internal partisan debates, particularly in the U.S. This is an unfortunate and unintended complication.

The Michael Fay case illustrates this entanglement. Michael Fay was an American teenager resident in Singapore. He was convicted of vandalism which, in Singapore, carries a mandatory sentence of corporal punishment. This aroused a storm of protests in the U.S. media and from the highest levels of the Clinton

²⁰ It is often argued that the promotion of democracy and human rights has always been a key goal of U.S. foreign policy because it is an essential part of American self-identity. See, for e.g., TONY SMITH, *AMERICA'S MISSION* (1994). This may well be true, but it is not a goal that has been pursued consistently. As Arthur Schlesinger, Jr. has reminded us, an emphasis on such moral absolutes leads inevitably to a double standard because there can be only one of a number of national interests and not the overriding interest to which all else is to be subordinated. Arthur Schlesinger, *National Interests and Moral Absolutes in THE CYCLES OF AMERICAN HISTORY* 102 (1986).

This is often ignored by American human rights activists and even, on occasion, by the U.S. government. But maybe, more important is the point that how Americans have conceived their own political culture has changed significantly in a way that perhaps many American do not sufficiently realize. See, for e.g., DANIEL J. BOORSTIN, *THE GENIUS OF THE AMERICAN POLITICS* (1953).

Administration. They saw corporal punishment as barbaric and inhuman. Yet, opinion polls consistently revealed that a significant proportion of Americans support corporal punishment.²¹

Two additional points are worth noting regarding the Michael Fay case. First, it revealed not just a gap between the political and media leadership and ordinary Americans, but a double standard so glaring as to make one suspect contempt for foreigners to be at its root. As pointed out earlier, defense of the ideal of universality often leads to intolerance in otherwise liberal individuals who would take a multi-culturalist perspective if similar issues were raised in their own societies. The storm of protest that greeted a white American sentenced to corporal punishment in an Asian society was not duplicated shortly afterwards, when a seventeen year old native American girl, Sorrel Horse, a member of the Warm Springs Indian Group in Oregon, was flogged in front of her anguished mother by a tribal "whipman." The girl never charged the police, never accused in front of an American court, and never found guilty of a crime. The U.S. media, human rights activists and American politicians were silent.²²

Second, one of the major tactics of American critics of Singapore in the Michael Fay case was to impugn Singapore courts and the police system as unfair and biased. This was also one of the themes of American critics in the Lingle case discussed *supra*. This contrasted starkly with the attitude taken by the Dutch Government when one of its nationals, Johannes Van Damme, was sentenced to death by the Singapore courts for drug trafficking. While making its

²¹ Of course, many of Singapore's critics sincerely believed that corporal punishment is wrong. I can respect this belief. I cannot, however, help but suspect that the note of hysteria that crept into some of their attacks betrayed the extent to which confidence in their own values was shaken by the distance that the Michael Fay case revealed between their beliefs of the political and media leadership and many ordinary Americans.

²² See Kevin Sinclair, *Canning of a Tribal Girl: American Liberals Flogged DoubleStandard*, THE STRAITS TIMES, Nov. 15, 1994 (originally printed in SOUTH CHINA MORNING POST).

opposition to the death penalty clear, the Dutch Government was careful to state:

The Dutch Government ascertained that the proceedings against Mr. Van Damme were conducted correctly and carefully. There is therefore no question of the Netherlands criticizing the judicial process in Singapore. The Government of the Netherlands recognizes the sovereign right of Singapore to apply its own laws.²³

The contrast between this entirely proper approach in a far more serious case and the hysteria over much lighter punishment given to the Michael Fay case is surely significant. Could the difference be because Europeans have more respect for their own system than do Americans, who therefore find it easier to believe that any court would be unfair? The controversy and media spectacle surrounding the trial of O.J. Simpson and the verdict in that case may well lead one to believe so.

IV. CONCLUSION: TOWARDS CONVERGENCE

It will take some time for western societies to sort out their internal problems and adjust psychologically to the post-Cold War world. Since cultural differences are a reality, I do not expect that the human rights debate between Asia and the West will be settled soon, if ever. Nevertheless, greater convergence is possible.

The key problem is to find a balance between an often ethnocentric and pretentious universalism and a paralyzing cultural relativism. This will require a modest and pragmatic approach that seeks to consolidate the common ground that can be found, while

²³ Hans Van Mierlo, Foreign Affairs Minister of Netherlands, Statement on the Execution of Johannes Van Damme (Sept. 23, 1994) (issued by the Royal Netherlands Embassy to Singapore.)

agreeing to disagree when necessary. It will require both sides to eschew self-righteousness of any variety, respect diversity and accept that disagreement is not always evidence of bad faith or malign intent.

For such an approach to work, we must confront a serious problem that is seldom acknowledged by the human rights community. This is the proliferation of ideals claimed or asserted to be rights. This proliferation merely multiplies the occasion for conflicts of interpretation or implementation without really enlarging the consensus on human rights. The very language of rights fuels sterile debate because it frames issues in stark, universalist and static terms, leaving little room for compromise. The rapid multiplication of international human rights instruments encourages a sterile formalism as more and more states are encouraged or compelled to accede to these treaties without the intention or capability to comply.

A focus on a more restricted but precise core of basic human rights that must be accepted irrespective of culture or development and that are fundamental enough to restrict the room for interpretation is a more productive approach. We can be sure that there will be argument over what constitutes an irreducible core. But this would be an argument of a qualitatively different kind, more susceptible to reasonable compromise. The non-derogable rights of the International Covenant on Civil and Political Rights, and perhaps somewhat more controversially, the right to development, could constitute this irreducible core.