

Asia and Human Rights

ed. by Tiziano Tosolini



Asian Study Centre

Xaverian Missionaries – Japan

ASIA AND HUMAN RIGHTS

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Contents

Introduction	3
BANGLADESH – SERGIO TARGA	9
From 1948 Onwards: Changes in Human Rights' Conceptualisation	11
Human Rights: Universalism Versus Cultural Relativism	18
Human Rights and Religions in Bangladesh	26
Conclusion	45
INDONESIA – MATTEO REBECCHI	51
Freedom of Religion in Pancasila and Constitution	53
The Amendments to the Constitution and the Ratification of ICCPR	56
Islam and Other Religions	58
The Emergence of Islamic Radicalism in Indonesia	62
Discriminative Legislation and Institutions	70
Institutions that Can Facilitate Discrimination	73
State Weakness in Protecting Minorities	77
Conclusion	79
JAPAN – TIZIANO TOSOLINI	87
An Overview of Human Rights and Asian Values	88
Human Rights in Japan	100
Japanese Buddhism and Human Rights	110
The Catholic Church and Human Rights in Japan	117
Final Observation	122
PHILIPPINES – EUGENIO PULCINI	127
Bishop Francisco F. Claver, SJ	130

137	José W. Wright Diokno
143	Groundbreaking Laws for Human Rights Enforcement in the Philippines
149	Final Considerations
157	TAIWAN – FABRIZIO TOSOLINI
157	Before 1945. A Historical Overview
167	The Last Seventy Years (1945–2013)
186	Silenced Voices
187	Further Perspectives
191	CONCLUSION
197	CUMULATIVE INDEX

Introduction

S. TARGA, F. TOSOLINI

Faithful to a tradition of curiosity and interest in the way some basic issues affect, and are affected by, the cultures of selected Asian countries, this year too the *Asian Study Centre* has chosen to focus its attention on the important topic of human rights and how they are received, implemented, and supported in the Asian context.

A first general result that emerged from our research reveals that all the countries discussed here (Bangladesh, Japan, Indonesia, Taiwan and The Philippines), despite some reservations, have formally accepted and signed international treaties and declarations related to Human Rights. Yet we have also observed that the question is not formal reception, but actual implementation. In this field, obviously, different countries exhibit different performances.

Not only, in countries with Islamic majorities (i.e. Bangladesh and Indonesia) there appears to be a growing polarisation, partly due to fundamentalist and foreign influence, on the actual

content of Universal Human Rights and their understanding as dictated by religion. With reference to this, criticism is levelled at the Universal Declaration of Human Rights (UDHR) also by representative voices of Asian cultural traditions as such. They stress the so-called Asian values against the western individualism that is supposedly encapsulated in the formulation of UDHR itself.

The paper on Bangladesh begins by dealing with the intractable question of the foundation of human rights. The universalism implied and required by the concept of human rights is pinpointed against the relativist stance of Asian cultural specificity. While both positions are recognised as philosophically untenable, universalism is acknowledged as pragmatically more suitable to defend and protect human dignity. Islam and Hinduism are then analysed as possible supporters of the concept of human rights itself. Despite a very poor record in the present, it is hoped that their internal dynamism may prove to be essential to the concept of human rights in future.

In a different perspective, the paper on Indonesia has chosen to focus on the right to freedom of religion and conscience, as a vantage point for framing the whole question of human rights in the country. The fall of Suharto in 1998, and the consequent introduction of a democratic system, have produced, as a side effect, the emergence of a degree of religious intolerance which is threatening peaceful coexistence. This has also weakened state institutions, which seem unable to control rising religious fundamentalism and, conversely, to protect the rights of religious minorities.

Like the paper on Bangladesh, the article on Japan begins by discussing the question of universalism and cultural relativism in the human rights concept. It then presents Japan's specific contribution to initiating the reflection on human rights in Asia as a response to the catastrophe caused by World War II. The paper clearly opposes traditional Asian criticism by spelling out that social harmony is preserved by the respect and implementation of individual human rights. However, the discourse on human rights does not seem to affect Buddhism or, even less, Shintō, while the Catholic Church in Japan seems to be more receptive and attentive to the issue.

In the paper on the Philippines, instead, the human rights question is dealt with by introducing two outstanding figures who fought for justice and democracy and managed to reconcile the universalism of human rights with Filipino traditional values. The paper presents the achievements of the Philippine legal system, which, from the dark times of Marcos, reformed itself by passing important legislation to protect and promote human rights.

The paper on Taiwan then shows that the basic human rights issues inherited from the relatively short history of the island are of a political and interethnic nature: the struggle of the Taiwanese for autonomy, and even independence from central governments perceived as external, and the relationship of the Han population with the Aborigines. The complex events that followed World War II, and the withdrawal of the Nationalists to the island, have combined with the issue of the international status of Taiwan, and the traditional Chinese doctrines of social harmony (the Confucian doctrines) to frame a

distinctive background, which needs to be taken into consideration when examining how human rights have been implemented in recent years.

Finally, we cannot but recognise that ours is only a preliminary attempt to deal with a complex and multifaceted topic. The five essays presented here complement each other to some degree, whilst leaving ample scope for further research and enquiry.

The authors wish to thank both the Xaverian Missionaries for their support and those who helped us to revise the English texts: Fr. Steve McKend sx, Fr. John Fagan sx, Prof. Brian Reynolds, Sr. Nancy Murphy RSCJ and Alberto Bertozzi. A special word of thanks goes to the Xaverian community of Izumisano, especially to Frs. Mauro Mollaretti sx for hosting our annual meeting in August 2013, and Giovanni Paolo Succu sx for the cover photograph.

Asia and Human Rights

BANGLADESH

SERGIO TARGA

*The recognition of the inherent dignity
and of the equal and inalienable rights of all members of the human family
is the foundation of freedom, justice and peace in the world.¹*

Even sixty-five years after its promulgation, the Universal Declaration of Human Rights (UDHR) maintains unspoiled all its value and importance. It is like a point of no return in the history of humankind, a kind of corner-stone which might be polished and adorned but cannot be done away with. Born out of the horrendous experiences that the Second World War brought about and by the consequent necessity felt by the then international community to absolutely avoid them in future, the UDHR remains as a bulwark against any belittlement of human beings and their inalienable and inherent dignity. This unfortunately has not been enough to safeguard and protect humankind from genocides, massacres and atrocities in

1. "Preamble" of the *Universal Declaration of Human Rights* at <www.un.org/en/documents/udhr/index.shtml>.

general; yet the UDHR has represented and does represent a sort of moral bastion with which any person or people, institution, organization or state alike, sooner or later, should come to terms. The establishment of a permanent International Criminal Court and of a consequent legal accountability for major violations of human rights (i.e. genocide, crimes against humanity, war crimes, etc.) may be considered as an outcome of a continuously growing awareness and consciousness of human rights at a universal level.²

However, what has been insightfully defined as “a magnificent articulation of our common morality,”³ has not been spared debate, discussion and criticism. As a matter of fact, the notion of human rights itself is not static but dynamic, so that a positive, constructive critique cannot but be helpful in further deepening the concept and our understanding of it. Indeed, there is a history of the concept of human rights so that today’s idea is no longer or not only that which was meant back in 1948. Beyond this natural, as it were, and historical unfolding of the concept of human rights, there is a certain debate, which, allowing for the good intentions, risks nevertheless undermining the foundations of the human rights’ construction to everybody’s peril. The reference here is to the critique moved generally by non-Western countries to the supposed Western ethnocentric bias present in the idea of human rights itself. The attack is, in other words, to the supposed universality of human rights which accordingly are thought not to represent humankind as such but only a part of it, the West. Universalism versus cultural relativism seems to be what is at stake here. In the name of cultural specificities and diversities the whole notion of human rights runs the risk of being deconstructed and, eventually, emptied of its morally impelling content.

Religions, in the Asian context but not only, despite a history of troubled relationship with the very idea of human rights, may come to our aid by finding convergences and commonalities with the concept of human rights and so fight off cultural relativism, which, more often than not, turns out to be just the political expedient of corrupt elites in order to rule and misrule over defenceless populations. While safeguarding the secular character of human rights’ conceptualisation, a positive role of religions is not only desirable but highly necessary in order to produce that kind of moral legitimacy that is found only in religious and cultural grounding.

Islam will do so if it manages to overcome the dichotomy between anthropocentrism and theocentrism, secular and sacred. Hinduism, will have instead to find in its multiform cultural and religious traditions elements supportive of and conducive to the establishment of human rights. Be that as it may, both religions will need to undergo a good degree of soul-searching while at the same time fighting off the lurking temptation of religious fundamentalism.

2. The International Criminal Court (ICC) was enacted with the Rome Statute on 1 July 2002. About its jurisdiction, competences, state parties, signatories etc. see the extensive article “International Criminal Court,” at <http://en.wikipedia.org/wiki/International_Criminal_Court>.

3. L. Henkin “Religion, Religions and Human Rights.” In *The Journal of Religious Ethics*, 1998, 26/2: 234.

The paper will proceed by presenting a brief résumé of the history of human rights as it unfolded from 1948 onwards particularly under the stimuli of globalisation. Such historical contextualisation will hopefully table the modern debates centring on the question of human rights. A second section will delve into the question of universalism and cultural relativism, with its corollaries of Western ethnocentrism and Asian values. A third section will then deal with the two major religions present in Bangladesh, Hinduism and Islam, in the attempt to highlight their present role and future possibilities *vis-à-vis* human rights. A conclusion will sum up the findings.

FROM 1948 ONWARDS: CHANGES IN HUMAN RIGHTS'S CONCEPTUALISATION

For the restricted purposes of this paper, the discourse cannot but necessarily be schematic and certainly non exhaustive. However, what is important here is to realise the dynamic nature of the concept of human rights by looking at the deep changes introduced to the concept in its 65 years of existence, particularly in their relevance to the Asian context. These changes can be summarised under three headings: changes in the content of human rights; changes in the players in both abusing and protecting human rights; and finally, changes in the justification of human rights themselves.⁴

Changes intervening at the level of content have originated from repositioning emphasis less on individuals' rights and more on groups or collective personalities'. It must be remembered that the UDHR had been a response to the atrocities committed by the Nazi-fascist regimes during the Second World War. In the attempt to safeguard the individuals from the unlimited power of states, the UDHR represented, as already mentioned, a sort of defensive bulwark. Yet, the UDHR constituted also a sort of break in the budding elaboration of human rights which had already started in the aftermath of the First World War. That first tradition, as it were, had been concerned with the rights of groups and ethnic minorities more than with individuals. This is perfectly understandable if we consider that the League of Nations, born out of the ruins of the Great War and the dissolution of great empires (the German, the Austro-Hungarian, the Ottoman and the Russian)⁵, was indeed concerned with ethnic groups being incorporated into new nation states. The change in emphasis embodied by the UDHR responded however to the conviction that "the very identification of groups as bearers of rights [could encourage] oppositional conflict among them,"⁶ as had been the case with Nazi-fascism. Obviously,

4. For the present section I basically follow the scheme proposed in S. B. Twiss, "History, Human Rights and Globalisation." In *The Journal of Religious Ethics*, 2004, 32/1: 39–70.

5. After the war the Austro-Hungarian and the Ottoman empires were completely dismembered and ceased to exist altogether. The German and Russian empires instead while dismissing imperial pretensions had to surrender much of their former territory. As a result the map of Europe had to be redrawn entirely making space for several new small state formations.

6. S. B. Twiss, "History, Human Rights and Globalisation," *op. cit.*, 42.

in the debate which led to the UDHR there were delegates who had voiced their concern for the rights of groups and minorities, yet these concerns were brushed aside by stating that the safeguarding of individuals' rights would have safeguarded by itself collective rights also.

Perhaps because of decolonisation, mainly occurring in the 50s and 60s, and of a deepening and on-going process of globalisation, the concerns for the rights of ethnic minorities and particularly of indigenous people resurfaced. Under the influence of representatives from former colonies and now independent, sovereign countries, and with the help of grass-roots movements increasingly extending their reach beyond their own home borders, from the second half of the 60s the Rights to Self-determination and to Development started to appear in international documents.⁷ Eventually in 1994 a "Draft Declaration of Indigenous Peoples' Rights" was formulated. In 2007 the latter was finally adopted by the UN General Assembly in its 61st session as the "Declaration on the Rights of Indigenous People."⁸ Such long overdue statements on collective rights had and have their detractors. While generally speaking states are suspicious of anything which may curtail their centralised power and institutions, there are indeed genuine concerns about statements on collective rights among human rights' defenders and activists too. The question at stake may summarily be put as follows: "Would not the recognition of collective human rights eventually result in oppression by indigenous communities of their own members?"⁹ The critique is certainly worth addressing, but it is a fact that the shift in emphasis from individual to collective represents a valuable addition to our comprehension of what human rights are.

Similarly to what is said for indigenous people, another outcome of the shift in emphasis noted above can be rehearsed also in the modern focus of human rights on gender discrimination. If the UDHR contented itself with a generic antidiscrimination statement, as included in Article 2, women's liberation movements, very active from the 60s onwards, contributed a lot to create a new sensitivity worldwide against the specific vulnerability of women generally and, in patriarchal societies, specifically. The increased universal awareness of gender discrimination culminated in three developments. In 1974 the United Nations adopted the "Convention on the Elimination of All Forms of Discrimination against Women" (CEDAW) which eventually came into force in 1981.¹⁰ Secondly, in 1995 the "Beijing Women's Conference"¹¹ signified the coming of age, as it were,

7. See for instance "The International Covenant on Civil and Political Rights" (at <<http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>>) and "The International Covenant on Economic, Social and Cultural Rights" (at <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>>) both of 1966, but in force from 1976.

8. The text of this important declaration can be found at <http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf>.

9. S. B. Twiss, "History, Human Rights and Globalisation," *op. cit.*, 45.

10. See the text of this convention at <<http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>>.

11. The texts of the Beijing Declaration and of the Platform of Action can be found at <<http://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf>>.

of all the women's liberation movements across the world which by coming together in Beijing started a cross-cultural debate on the localised meanings of women's rights and on their realisation in different cultural contexts. Last but not least, the increased awareness of women's rights worldwide had consistently engendered the creation of a myriad of Women's NGOs with the precise scope, particularly in developing countries, to help women achieve their political, cultural and economic rights. Bangladesh is no exception. Nijera Kori (We do it ourselves), Bachte Shekha (Learn to Live), Mohila Parishad (Women's Association), and Naripokkho (On Women's Side) are just some of the well-known Bangladeshi NGOs organised by women and for women.

The last element to be taken into consideration in our quest to qualify the changes in content intervening after 1948 in the notion of human rights has to do with the individuation of the right to health and to environmental protection. Actually, the Right to health was already the subject matter of the UDHR (see Article 25). Its newness resides in the process or refinement and distillation, as it were, from a concept of health defined as a mere absence of physiological illnesses to one in which it signifies "a state of complete physical, mental and social well-being, [where] an individual or group must be able to identify and to realize aspirations, to satisfy needs, and to change or cope with the environment."¹² Basically the development of the right to Health as to include the right to a healthy environment was brought about by the convergence of both the human rights and the environmental movements. This interesting development, which was simply not there in 1948, might go a good distance in countering one Hindu critique of universal human rights as being insensitive to and unaware of other sentient beings.¹³

Changes not only occurred at the level of actual content; they also happened in the context of those who were the practitioners of human rights, so to speak. Back in the 40s there was no doubt whatsoever that both abusers and protectors of human rights could not but be states and only states. "The whole point of the UDHR was to rein in abuses of state power by granting protection to individual persons, wherever they might be located."¹⁴ The whole exercise was indeed made difficult because the then state policies relied strongly on a near absolute concept of national sovereignty which made unthinkable the idea of "humanitarian intervention." What is more, the world which emerged from the ruins of the Second World War was fast becoming a bipolar one, fiercely divided between the two superpowers. The UDHR by making states themselves responsible for the protection of the human rights of their own citizens, managed, in theory at least, to render the concept of national sovereignty porous to other states, to which now gov-

12. WHO, "The Ottawa Charter for Health Promotion" at <<http://www.who.int/healthpromotion/conferences/previous/ottawa/en/>>.

13. See Hurights Osaka, "Human Rights and Cultural Values: a Literature Review," 10. At <<http://www.hurights.or.jp/archives/database/hr-cultural-values.html>>. This is a slightly different version of the article which appeared as Chapter 1 in Jefferson R. Plantilla and Sebastia L. Raj, eds., *Human Rights in Asian Cultures: Continuity and Change*, (New Delhi: Hurights Osaka, 1997).

14. S. B. Twiss, "History, Human Rights and Globalisation," op. cit., 51.

ernments agreed to be held legitimately accountable, at least for any serious violation of human rights occurring within their national borders. The possibility of so called “humanitarian intervention”¹⁵ although already theoretically inscribed in the letter and spirit of the UDHR, actually concretised only with the end of the cold war and with a growing globalised world. While the former event created the political context for such interventions, the latter gave cultural sanction through a world public opinion which globalisation made possible to harness. Eventually “continued massive human rights violations [drove] home to the world that internal state human rights abuses [were] of international concern and that domestic jurisdictions [were] limited by human rights.”¹⁶ On the same line of development the establishment of legal accountability for police officers, military personnel, government representatives, political figures etc. and whoever becomes guilty of human rights’ abuses may also be considered. The institution of a permanent International Criminal Court (ICC) in 2002 was a further step in order to ensure retribution to human rights violators wherever in the world.

But states are no longer the sole actors in the field of human rights. Transnational corporations are a modern innovation. Siblings of an economic globalisation, many transnational corporations and financial institutions¹⁷ often master more economic power than sovereign states themselves. These are indeed new dangerous players in the field of human rights, for the simple reason that international legislation on human rights is mainly geared, as we know, to deal with states. However, together with the risks come also new opportunities so that transnational corporations and businesses in general when dealing with long term investments in developing countries may actually play a positive role in acting and implementing strategies respectful of human rights. They may become agents of development compensating the economic advantages they extract from those countries by enforcing higher working standards, including fair wages and security and respect for the environment.

A recent example from Bangladesh may bear out the point. On 24 April, 2013 an eight-storey building situated in Savar a big centre just 20 or so kilometres from the capital Dhaka, collapsed to the ground.¹⁸ The commercial building housed a bank, 5 garments factories, shops and some apartments also. The rescue operation was halted on 13 May. Eventually, the death toll amounted to 1127¹⁹ while approximately 2500 people were injured. Most of the victims turned out to be from the 5000 garments workers who that morning had been forced to their work posts despite inspectors having warned of the structural instability of the building. The point here is that the disaster prompted the ratification of “The Accord on Factory and Building Safety in Bangladesh,” a five-year

15. Humanitarian interventions here mean all sorts of coercive methods brought to bear on offending states. They may be of a military or non-military nature. The latter includes economic sanctions too.

16. *Ibid.*, 52.

17. The reference here is particularly to the World Bank (WB) and to the International Monetary Fund (IMF).

18. See I. Ahmed, “Rescue Races Against Time.” In *The Daily Star*, 25-4-2013.

19. See P. Karmakar and S. Mollah, “A Few Expected Left.” In *The Daily Star*, 13-5-2013.

legally binding agreement between international labour organizations, non-governmental organizations and retailers engaged in the textile industry in Bangladesh.²⁰ Unfortunately, 1127 people had to die before some sort of safe working environment could be guaranteed.

In the same way in which economic globalisation brought about transnational corporations as newcomers on the scene of human rights it was and is again globalisation, this time from below, as it were, that ultimately caused large scale, grass-roots social movements to become active and important players in the same arena. It is they, I believe, who are becoming the real bulwark of human rights as powerful pressure groups on both states and transnational corporations alike. The Savar disaster mentioned above could not have obtained what it has without the intense pressure mounted both at home and abroad by people's displeasure, rage and indignation. Similarly, it was a youth movement coming out of nowhere that from the 6 February started protesting the life term meted out to war criminal Abdul Quader Mollah the day before.²¹ The youth literally occupied the Shahbagh intersection in Dhaka and from there, for nearly a month, vented their request: the death penalty to all war criminals. Hundreds of thousands of youngsters responded to the call that was originally given via internet and the response became so loud that the government gave in to the youth's request and amended the law which allowed for appeal in instances of too lenient a sentence in cases dealing with war crimes.²² Globalisation may indeed have created new human rights abusers but it has also created new protectors as well.

It remains to be seen what changes occurred in these 65 years at the level of the justification of human rights. This is not a mere intellectual exercise; the question in fact is very pertinent to the modern debate surrounding the issue of human rights: both supporters and detractors use it as a tool to either support or dismiss the universal applicability and relevance of the idea. However, before confronting the topic, it is necessary first to have a quick glance at the state of the question back in 1948.

The process which brought about the UDHR lasted a year and a half and it involved delegations from 56 countries. The delegates represented and were the bearers of very diverse cultural, religious and philosophical traditions. American liberalism, Soviet Socialism, Christianity in its Catholic, Protestant and Orthodox shades, together with Buddhism, Hinduism, Confucianism and Islam, the latter in both its moderate and radical forms, all were present and around the table of human rights. It is indeed amazing after all to

20. A good number of companies signed the agreement. A list of them may be found on the web site of Industrial Global Union at <<http://www.industriall-union.org/global-brands-pull-together-on-bangladesh-safety-deal>>. Unfortunately big American companies such as Walmart and Gasp Inc. did not sign the agreement.

21. See S. S. Preetha, "Thousands Join Shahbagh Sit-In." In *The Daily Star*, 7-2-2013.

22. See S. Liton, "Tribunal Free to Try Jamaat." In *The Daily Star*, 18-2-2013. The death penalty requested by the Shahbagh youth for all the war criminals is certainly not respectful of Human Rights standards; however the movement is here instantiated to show how even in a country like Bangladesh with a low level of RT, grass-roots social movements may become powerful.

notice that it took a relatively short time to come up with a very complex formulation such as the UDHR. The task was extremely complex and some delegations, particularly from South America,²³ attempted to push forward theistic and Thomistic validations to produce a theological or philosophical basis for the whole idea of human rights. Eventually these attempts were dismissed and the delegates, having verified the impossibility to come up with a shared philosophical justification, agreed to avoid any metaphysical or religious language. "Pragmatic agreement on practical norms protective of human dignity and welfare was deemed sufficient."²⁴ Noticeably, the practical consent which was and still is to a large extent at the basis of the UDHR was international, that is, cross-cultural and cross-religious traditions. Perhaps the still lingering experience of the unspeakable disaster that the war had been, helped the delegations in overcoming legitimate cultural and religio-philosophical diversities and concentrate instead on shared, practical values, the values that alone could safeguard humanity from the brutality which resulted in the lack of faith in human dignity and worth.

Does this international and pragmatic consent still hold good today? The processes of globalisation, as already noticed above, have indeed caused people to come to know and share almost anything on a global scale. Religious and cultural views, political and economic ideas are exchanged continuously and this has affected, as it were, the field of human rights as well. The intense interconnectedness brought about by globalisation and its technological tools has indeed brought home to individuals and peoples alike the understanding that human rights too cannot but be contextualised in their meaning, justification and practical realisations. In practice this has opened up the venue for farther deepening the human rights' concept. Today there are several theories put forward to try and give a rational base to such an important human institution. Of course a number of scholars still maintain, similarly to the original delegates in the Third Committee, that a pragmatic agreement and consensus on human rights is all we need to justify the legally binding concept. Apparently, such a position is pragmatically determined by the belief that any other metaphysical or epistemological discussions would just lead nowhere.²⁵

A possibly new kind of human rights' justification is represented by those who appeal to a kind of "moral intuitionism." Similar to the previous, classical justification, this view states that human rights do not need justification at all. The reason why this is so, however, diverges considerably. human rights do not need justification simply because they

23. In the 92nd meeting of the Third Committee held on 2 October, 1948 Mr. De Athayde of the Brazilian delegation said: "In order to safeguard the rights it proclaimed, the declaration should not be couched in too general terms. It should include, in the preamble, a reference to God as the absolute origin of the rights of man and of all rights" The record of this meeting can be retrieved on page 55. at <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/NL4/804/33/PDF/NL480433.pdf?OpenElement>>.

24. S. B. Twiss, "History, Human Rights and Globalisation," *op. cit.*, 57.

25. This pragmatic position is sometimes modified in the following way. The futility of metaphysical discussion is avoided either because outmoded and mythical or because history has proved the uselessness of appeals to abstract ideas such as human nature and the like. See Sumner B. Twiss, "History, Human Rights and Globalisation," *op. cit.*, 60.

“are known to be true on an intuitive basis, and we use them to assess the very adequacy of moral theories and justifications.”²⁶ In other words, crucial notions like that of human rights are sorts of moral postulates on which moral theories are drawn. This kind of concepts precedes theory and logic, as they constitute their building blocks. Notably, such an argumentation while avoiding any sensitive metaphysical language manages to produce an epistemic grounding to the theory.

Yet again, another set of human rights’ advocates tend to justify human rights by interpreting the international consensus surrounding it as a sort of “cross-cultural overlapping agreement.”²⁷ International consensus would then just be the result of a cultural convergence of different traditions which however show that they share a basic and similar sort of morality, despite a multiplicity of cultural justifications.

Finally, we cannot but mention what has been called the model of cross-cultural dialogue. This model builds on the positive insight of the cross-cultural overlapping agreement just mentioned above. Instead of just accepting the diverse cultural justification of shared practical norms, this approach attempts to pinpoint shared reasons for accepting those norms as well. Cross-cultural dialogue becomes here the main instrument for such a possible achievement and it works on the realistic view that cultures themselves are dynamic and always open to accommodation.

By way of a conclusion, it may be said that the justification models here presented do manage, in my very modest view, to show the intractability of the question. Indeed, if the pragmatic consensus model, by focusing on behaviour, attempts to avoid possible philosophically insoluble conflicts, on the other hand, by eschewing any cultural contamination it impedes also the creation of a human rights ethos which can only however be fashioned using cultural categories. The cross-cultural overlapping agreement, from another perspective, tries to fill up this shortcoming, but it runs the risk of ending up in a sort of cultural relativism. While moral intuitionism may be a nicely worded theory, as a matter of course it may just be considered a play on words to hide the “no way out” situation of human reason. Cross-cultural dialogue may perhaps turn out to be the best we can afford in order to look for a shared human rights’ justifiability. But cross-cultural dialogue is not in itself a justification but a way to a justification which does not however guarantee the non-existence of insurmountable cultural stumbling blocks.

Indeed, the UDHR embodies the crystallisation and distillation of humankind’s highest tradition of moral wisdom. It is true because we believe it to be so. While I am ready to admit, acknowledge and welcome whatever, theoretical or behavioural, religious or secular, metaphysical or philosophical inputs which may come in handy to guarantee and further establish the universal relevance and acceptability of the concept of human rights, I am growing increasingly aware of the fact that the attempt at its justification is more Western than anything else and does not correspond to “truly” Asian expectations.

26. S. B. Twiss, “History, Human Rights and Globalisation,” *op. cit.*, 61.

27. *Ivi.*

Bangladeshi and Asian people in general, unlike Westerners, have not yet lost the capacity to believe. To believe for them is as natural as to eat and drink. What perhaps they need is a theistic link to human rights, because, apparently, only God is worth believing in. In this respect, it may be worth mentioning that statements relating to the outmoded or mythical references of particular religious justifications may indeed be ethnocentric because such expressions actually reflect Western consciousness, not certainly an Asian one where even today what scandalises people is not that one may observe one religion instead of another but that one may have no religion at all.

Back in 1948, the international delegations working at the UDHR rightly had left out any theistic justification of the concept of human rights as possibly divisive and disrupting in terms of international consensus. Similarly and in the same line of thought today “the human rights movement’s insistence on the nontheistic (*sic*) foundations of the contemporary human rights idea reflects a quest for universal acceptance and universal commitment to a common moral intuition articulated in specific agreed-upon terms.”²⁸ Paradoxically, it may be this well-meaning secular formulation of the concept of human rights which is creating difficulties when forced, so to speak, upon profoundly religious Asian populations.

HUMAN RIGHTS: UNIVERSALISM VERSUS CULTURAL RELATIVISM

The debate on the universality of human rights has significantly increased particularly, I believe, because of globalisation’s fostered cultural awareness of peoples and individuals alike. This has certainly been received and incorporated in the legal culture of human rights as the Vienna Declaration clearly shows:

All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.²⁹

Notably, the article while acknowledging “the significance of national and regional particularities” together “with various historical, cultural and religious backgrounds” is

28. L. Henkin, “Religion, Religions and Human Rights,” *op. cit.*, 234.

29. “The Vienna Declaration and Programme of Action” (VDPA), Part 1, Paragraph 5 at <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/Vienna.aspx>>. The VDPA was the product of the World Conference on Human Rights held in Vienna from 14 to 25 June, 1993. It was adopted by the United Nations General Assembly on 20 December of the same year. It was this declaration which instituted the United Nations High Commissioner for Human Rights (see Part 2, Paragraph 18). The Conference was a restatement of Human Rights imperatives particularly in the new world scenario which opened up after the end of the cold war.

however adamant in restating “the universal, indivisible and interdependent” nature of human rights and “the duty of States to promote and protect all human rights and fundamental freedoms.” Not only, this “duty of States” is further qualified and radicalised by mentioning the unimportance of their possibly different “political, economic and cultural systems.” Ultimately, it may be surmised that the gist of the article is that while the discourse of local cultures is rightly given importance and weight, this cannot however be allowed to overshadow that historical achievement for humankind as a whole that the UDHR represents.

Yet the universality of human rights and the related concepts seem to be in question. Those who give all the importance to local cultural contexts and conditions seem to propound a comprehension of human rights culturally determined and thus only locally relevant. Accordingly, the resultant might be the coming into existence of as many human rights declarations as the number of peoples and their corresponding cultures. What is more, if we then consider not only cultural pluralism but also the pluralism of sub-cultures within one same culture, we would eventually and absurdly end up with as many human rights declarations as the number of people inhabiting this world. This extreme relativist position and all other milder ones rest essentially on a dichotomous view of cultural values between Asian countries and Western ones. It is this diversity which would justify different conceptualisations of human rights. According to Johnson³⁰ this diversity could be detailed as follows.

First, in Western tradition rights claims are founded on the individual’s status as such while in the Asian context they are anchored less on the individual’s and more on the status of the community or group he or she belongs to. This would determine a sort of pre-eminence of collective realities, i.e. family and society to name just the most important ones, over and above the individual as such.

Second, rights in the Western cultural milieu seem to be abstract attributes of human beings and as such previous to any socio-economic, cultural and political differentiation. In the Asian context there is concern, instead, about how much discretion there is for differential treatment of people because of achievement and ascription. That is, rights and their recognition appear to be dependent on considerations other than human nature. The caste system could be here a good instantiation of what ascription might mean.

Third, while the West is concentrated on rights the East appears much more concerned with and concentrated on duties. The way then in which rights and duties may be articulated does not seem to be convergent in the two cultural contexts.

Fourth, emphasis on rights themselves appears to be different too. Ostensibly, the West seems to lay much more stress on civil and political rights, also called negative rights

30. The reference here is to J. M. Glen Johnston “Human Rights in Divergent Conceptual Settings: How Do Ideas Influence Policy Choices?” as quoted in Hurights Osaka, “Human Rights and Cultural Values: a Literature Review,” op. cit., 3. The article of Johnston could also be found in D. L. Cingranelli ed., *Human Rights Theory and Measurement*, (London: MacMillan Press, 1988), 42–3, as quoted in Hurights Osaka, “Human Rights and Cultural Values: a Literature Review,” op. cit., 3.

in the sense that they curtail and restrain state power *vis-à-vis* its own citizens. This is not so in Asia where stress is put more consistently on socio-economic rights, also called positive rights because concentrated on the positive role of states in developing and fulfilling their own citizens' aspirations of wellbeing.

Fifth and last, all considered and not astonishingly, there appears to be a general Western cultural propensity to acknowledge rights as absolute as against a tendency in the cultures of the East to consider them, if not relative, at least, not so absolute. This might be the outcome of an Asian cultural sensitivity towards consensus and compromise (*mimangsha* in Bengali) rather than towards contention and conflict.

Indeed, cultural differences are there and to deny them would just be ridiculous. However it is also true that universal is not synonymous with homogeneous and even differences may be worked out to produce deeper consensus. Thus, the UDHR although clearly geared towards the protection of the individual does not propound the dissolution of communitarian bonds. Indeed the latter are implicitly implied in its listing of rights. For instance, the freedom of religion and of expression would just be meaningless if deprived of their social setting. Bielefeldt writes: "Although human rights clearly enlarge the scope of individual freedom, they are by no means merely individualistic. They are not meant to lead to an 'atomistic society' devoid of communitarian solidarity. Against the widespread confusion of human rights and Western individualism, human rights always imply a social dimension because human freedom can unfold only in relation to fellow persons."³¹ Put simply, human rights constitute criteria to build social realities which are respectful of human beings as such. Accordingly, what the UDHR does is obviously to oppose and reprimand any expression, cultural or otherwise, which may offend the intrinsic value of human dignity. Thus, authoritarian traditions within communities leading to discrimination of women, persecution of dissent, child marriage, widow burning, female genital mutilation etc., cannot but be deprecated and deeply contested. Obviously, such judgements on cultural practices always remain open to the critique of ethnocentrism. It is understandable, therefore, given the long history of cultural imperialism, why scholars and politicians and even patrons of human rights are quite hesitant in making them. However it must also be said that "making judgements is not synonymous with ethnocentrism *per se*."³²

Still, the apparent³³ differences in cultural values are generally crystallised in the accu-

31. B. Heiner, "Muslim Voices in the Human Rights Debate." In *Human Rights Quarterly* (Baltimore: John Baltimore Hopkins University Press, 1995), as quoted in Hurights Osaka, "Human Rights and Cultural Values: a Literature Review," op. cit., 4.

32. E. M. Zechenter, "In the Name of Culture: Cultural Relativism and the Abuse of the Individual." In *Journal of Anthropological Research*, 1997, 53/3: 336.

33. The discourse is necessarily tentative. In fact I am well aware that the cultural generalisations I made in trying to list these different values, expose me to at least a critique of essentialism while in the worst of cases I could be accused outright of cultural imperialism. What is more, I am also aware that this listing of different cultural values may avoid the above mentioned critique if it is verified against the actual people of

sation of Western ethnocentrism moved against the UDHR and other dependent legislation. Consequently, the norm of human rights at best could be considered a “Western concept with limited applicability.”³⁴ What is more, not only are human rights assimilated to Western individualism, but “paradoxically, those making these charges often identify international human rights law with US culture, which is hardly warranted in the light of the US estrangement from international human rights law,”³⁵ as I will attempt to show later on.

Indeed it may be conceded that the whole idea of human rights was born in the West and perhaps even out of its philosophical achievements. However, we cannot forget that the human rights compact was the outcome of positive thought as much as it was, indirectly, of horrendously criminal behaviour. Sadly and regrettably, it was the West which managed to fight two world wars in the span of only 30 years. But surely the birth place of the human rights’ idea does not necessarily imply or involve a Eurocentric or generally Western bias. If it were so, for the same logic we should accuse Einstein’s Theory of Relativity of being ethnocentric, for the simple reason of having been conceived and born in the West. As a matter of fact Senger is right in pointing out that the human rights of the UDHR are as “new to the West as they are for China,”³⁶ a newness which I would qualify as both cultural and political at the same time. The cultural newness of the human rights compact arises from its conspicuous absence in European history as recently shown by two world wars and colonialism. Its political newness, instead, is practically and continuously exposed by the incessant reticence, denial, omission and arrogance that even today characterise the internal and international dealings of some Western countries. A couple of examples may clarify the statement.

Despite the American rhetoric and propaganda which tries to portray itself as the champion and protector of human rights, it is a fact that the USA today are continuously reported as a violator of human rights on a global scale. So for instance, the military campaigns launched in Afghanistan and in Iraq were carried out outside of an international legal framework, with total disregard for universal human rights.³⁷ The Guantanamo

those cultures and not against the elites which often, speaking on their behalf, actually respond only to their own political interests.

34. A. Pollis and P. Schwab, “Human Rights: A Western Concept with Limited Applicability.” In A. Pollis and P. Schwab eds., *Human Rights: Cultural and Ideological Perspectives* (New York: Praeger, 1979), 1–18, as quoted in E. M. Zechenter, “In the Name of Culture: Cultural Relativism and the Abuse of the Individual,” *op. cit.*, 322.

35. A. E. Mayer, “Clashing Human Rights priorities.” In *Forum for Intercultural Philosophy* 6, 2005, paragraph 38. At <<http://them.polylog.org/6/ama-en.htm>>.

36. H. von Senger, “Chinese Culture and Human Rights.” In Wolfgang Schmale ed. *Human Rights and Cultural Diversity: Europe, Arabic-Islamic World, Africa and China* (Goldbach, London: Keip Publishing, 1993), as quoted in H. von Senger, “Human Rights and Cultural Values: a Literature Review,” *op. cit.*, 7.

37. See A. A. An-Na’im, “‘Difference in Power’ more than ‘Power of Difference’: Upholding the Universality of Human Rights against American and Islamic Jihad” (Geneva: The International Council on Human Rights Policy, 2002). At <http://www.ichrp.org/files/papers/67/118_Upholding_International_Legality_Against_American_and_Islamic_Jihad_Ahmed_An-Na-222im_Abdullahi_2002.pdf>.

prison is another example of suspension of human rights norms carried out arbitrarily by the USA without any sort of legal accountability. And recently the revelation by a certain Edward Snowden, a former employee of the Central Intelligence Agency (CIA) and former technical contractor for the National Security Agency (NSA), of secret schemes by both the UK and the USA for massive surveillance operations, something which obviously sparked great concerns and controversies among individuals and states alike.³⁸ Last but not least, we often see the USA's hypocrisy in its paradoxical alignment with some Muslim countries in selectively using provisions of international human rights law to simply further their own perceived interests.³⁹ Certainly, the solemn words in the Preamble of the UDHR continue to maintain their universal value for Asian countries as much as they do for Western ones; the UDHR continues thus to epitomise the "common standard of achievement for all peoples and all nations."

But who are the attackers or detractors of the universality of human rights? They are certainly not the poor farmers of Bengali villages! Dias identifies three subjects active against the universality of human rights: the proponents of the New World Order, the governments of developing countries and the elite of both religious and ethnic fundamentalist movements. These subjects are quite outspoken in favour of a position of cultural relativism simply in order to advance their self-serving interests. These may be served first by justifying the denial of human rights to some sections of their people; second, by denying new assertions of human rights by excluded groups such as women and indigenous peoples; third, by negating and destroying cultural pluralism; fourth, by imposing disabilities based on culture, religion, ethnicity, etc. upon minorities.⁴⁰ The issue at stake is that cultural relativism inevitably provides the logical justification for inhuman practices.⁴¹ A crude and deadly event brought about by religio-cultural determinants may bear out the idea.

The slightly dated story refers to Roop Kanwar, an eighteen year old Rajput widow who committed suicide (*sati*), as it were, by burning herself on the funeral pyre of her defunct husband in the village of Deorala (Rajasthan), back in 1987.⁴² At the time it was difficult to ascertain if Roop Kanwar freely ascended the funeral pyre or was forced to do so.⁴³ As a matter of fact the two legal proceedings for murder, abetting suicide and glori-

38. Among the many newspaper articles, see for instance E. Schmitt, "Snowden Revelations Will Continue, Assange Says." In *The New York Times*, 30 June 2013.

39. See A. E. Mayer, "Clashing Human Rights priorities," op. cit., 17.

40. C. J. Dias, "The Universality of Human Rights: A Critique." In *Lokayan Bulletin*, New Delhi, 1993, vol. 103, as quoted in Hurights Osaka, "Human Rights and Cultural Values: a Literature Review," op. cit., 7.

41. See E. M. Zechenter, "In the Name of Culture: Cultural Relativism and the Abuse of the Individual," op. cit., 330.

42. See "India Seizes Four after Immolation." In *The New York Times*, 20 September 1987. A Hindu traditional religious interpretation of the occurrence may be found in "Uproar over Rajput Sati." In *Hinduism Today*, December 1987. At <<http://www.hinduismtoday.com/modules/smartsection/item.php?itemid=472>>.

43. An independent team of journalists who carried out an extensive enquiry into the whole occurrence stated very sensibly that Roop Kanwar was actually murdered. "The team gathered from eye witness

fication of *sati* ended up with the absolution of all the accused. *Sati*, a gruesome Hindu rite of female religious suicide, was never practised on a generalised scale in India. However, the custom had reached a certain acceptance among high caste Hindus, particularly among the *kshatriya*, the warrior caste. The Rajput of Rajasthan are indeed *kshatriya* and the bearer of a renowned martial tradition. The point being made here is that the 1987 Deorala happenings sparked off a countrywide controversy. On the one hand, there were human rights groups, among which were a number of very vocal women's organisations, who strongly protested the event as barbaric; on the other hand, there were the Rajput and a good number of other people including police, judges, state officials, politicians etc. who claimed legitimacy for an act recognised as belonging to a pristine and original Hindu religious tradition. Indeed, not all police officers and political office bearers considered *sati* a crime as such "but rather the result of a distorted 'conservative' attitude" adding "that people responsible for such cases are not really criminals, they are just highly conservative."⁴⁴

Women's organisations, as already mentioned, tried to fight against *sati*, and the glorification of it that the inaction of the state and the activism of religious and political sycophants were spreading, by appealing to the state government. Obtaining no answer whatsoever, the women appealed to the High Court. The latter eventually prohibited both the glorification of *sati* and the celebrations to be held on the 13th day from its occurrence (16 September 1987). This, together with the arrest of six people linked to the *sati* (19 September 1987), further polarised the controversy. As a result the Rajput founded the Dharam Raksha Samiti (i.e. the Committee for the Protection of Religion) "to combat any legislation to ban sati and its glorification."⁴⁵ The women found themselves completely alone in their fight and had to bear the full brunt of the fundamentalists' onslaught. Political exponents of the BJP and other religious parties, in meetings and gatherings, attacked them directly labelling them as prostitutes with no honour, "women with no respect for the Hindu religion, with 'Western' ideologies and loose morals who frequented clubs, drank, and lived in Jaipur in air-conditioned houses."⁴⁶ Eventually the whole question boiled down to this: the supporters of *sati* portrayed themselves as the upholders of India's ancient tradition and culture, portraying at the same time their opponents, the women's groups, as anti-Indian, against their own culture and guilty of denigrating it around the world. As clearly quoted just above, the women were then accused of being

accounts which emerged in bits and pieces from the villagers, that, far from being voluntary, Roop Kanwar's *sati* was, in fact, the result of a combination of events and actions which indicate the helplessness of the teenaged girl!" The Women and Media Committee, Bombay Union of Journalist, "Trial by Fire: A Report on Roop Kanwar's Death," 11 December 1987, 6. At <<http://www.unipune.ac.in/snc/cssh/HumanRights/07%20STATE%20AND%20GENDER/06.pdf>>.

44. The Women and Media Committee, Bombay Union of Journalist, "Trial by Fire: A Report on Roop Kanwar's Death," op. cit., 8. Original emphasis.

45. Ibid., 10.

46. Ibid., 11. Original emphasis.

imperialist, influenced in their misconceived ideas by alien, Western cultural values, traitors of the true Indian tradition and identity.

To go back to where we had started off, the *sati* of Roop raises a number of highly important and relevant questions:

Would it matter and should it matter whether Roop Kanwar committed sati willingly? Would it be justifiable cultural practice if she committed sati voluntarily? Would it matter if she objected to her death? Does she have the right to reject the cultural practices of her culture or her ethnic subgroup, or is she bound, through the accident of her birth, by these practices no matter how unfair they are? Would sati be justifiable if it were supported by a majority of a group? [...] What if sati supporters were political opportunists using sati as a way to rally political support and to divide the Indian society along ethnic subgroups? What if women who support sati were mothers-in-law of sati victims? Does it matter that given the land inheritance system in India, a widowed woman has a legal right to inherit her deceased husband's land? Does it matter that the in-laws of a widowed woman have a significant economic incentive to dispose of her in order to retain ownership of the land, which is their primary, if not only, asset? Is an invocation of an ancient custom sufficient to legitimize the practice? Does the age of a sati victim matter? What if she is fully controlled by the family of her in-laws? What if she is a child? What if she is an older woman who has already lived most of her life and is considered an economic burden on her children? [...] Is sati legitimate if the woman consents to her own burning? Can her consent ever be legitimate? Can her consent ever be informed? If she lived her whole life in a small village and knew of no other role models for women, would she be considered capable of rendering an informed and voluntary consent? Is it relevant whether the sati victim is a child bride, through an arranged marriage, living since her early puberty in her in-laws' house with no income or decision-making power of her own? Is it relevant whether she has any practical options other than "voluntary" death by sati? Does it matter that if she were to refuse to die, she would be ostracized by the village, her in-laws would throw her out of the house, and she would have no place to go? Is it wrong for Indian feminists and human rights activists to invoke the universal human rights ideals in their fight against sati and other practices of torture or violence against Indian women? Are these Indian feminists betraying their national heritage by doing so? Are these Indian feminists and Indian human rights activists mindless victims of Western cultural imperialism? Is their judgment of Indian cultural heritage less legitimate than that of the supporters of sati?⁴⁷

The last question actually blows to pieces the whole issue of cultural relativism as the

47. Extract from E. M. Zechenter, "In the Name of Culture: Cultural Relativism and the Abuse of the Individual," *op. cit.*, 329.

new basis for a revised, culturally determined and only locally relevant notion of human rights. If cultural relativism is devised to save, as it were, cultural pluralism then the *sati* tragedy and its aftermath clearly show that not only it cannot preserve cultural pluralism but that cultural relativism practically destroys it. In fact if we consider that both those women's groups and the Rajput belong to the same Indian cultural milieu, pluralistic in nature, then the defence of *sati* put up by the cultural relativists as a matter of fact destroys that pluralism by choosing one tradition against many possible, and by identifying it as "the" true Indian one. In other words, the question is who, in a cultural relativist position, is entitled to be the legitimate representative of a culture and thus enabled to take decisions about it.

Lastly but relatedly, the choice between many possible cultural traditions remains always ambiguous, problematic and open to expediency. Thus as Zechenter rightly points out "appeals to selectively chosen ancient customs or religions should be more properly analysed as attempts to legitimize the political or religious agendas of various factions within a society."⁴⁸

All considered cultural relativism is established on a wrong notion of culture as something static and fixed once for all. But is it? Living cultures, because of their own living status, are models of continuous adaptation to the environment. In a meaningful way, cultures embody always new answers to adaptation's old questions. What is more if it is true that a culture is to an individual what an operating system is to a computer, then we must also recognise the capability of individuals and/or groups to change and modify their own operating cultural systems. If this were not so it would be impossible for an individual or group to change its culture, assume the culture of another, modify it, refuse it, fuse it with other elements etc. It would again be impossible to learn another language, to translate one's own language into another; it would be simply beyond human possibilities to understand people coming from different cultural backgrounds, times and places. Eventually, it is on this dynamic conception of culture that processes of cross-cultural agreement, international consensus building, inter-cultural and cross-cultural dialogues etc. seen in the previous section find their foundation and justification.

Indeed if the universality of human rights raises philosophical and other kinds of foundational arguments so does, however, its opposite relativist view. Nonetheless, the two positions cannot be held to be equally critical and untenable. From a pragmatic and experiential point of view it appears, in fact, that the universal idea informing the concept of human rights is best suited to safeguarding human dignity and all that it involves, as the *sati* tragedy sadly showed. I dare also believe that the same idea of universality does enter what in the previous section I have called humankind's practical tradition of moral wisdom. If "the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind" as the Vienna Declaration quoted at the beginning of this section suggests, this cannot interfere however with the

48. Ibid., 332.

conceptual level, the substance and content of human rights themselves. It is only at the level of interpretation and even more at the level of actual implementation where local cultural determinants might have a say.⁴⁹

HUMAN RIGHTS AND RELIGIONS IN BANGLADESH

In the following section I will attempt an enquiry into the possibilities of religion⁵⁰ becoming desirable defensive bulwarks of human rights while at the same time protecting and fostering their ethos by supporting their universal claim.

Indeed the vexed question of the relationship between religion and human rights has perhaps been determined by a number of misunderstandings originating from the similarities existing between the two. The first of these similarities has got to do with the fact that both religions and human rights are, in their own way, upholders and bearers of moral views. The second similarity refers to the claim to universality that both advocate. The third and last similarity, instead, refers to their analogous *modus operandi*: both require faith and trust. Perhaps it is because of these resemblances that the relationship between religions and human rights started off on a wrong footing. While religions have always contested the independence of human rights from any grounding in either theistic considerations or superior Law, human rights activists, on their part, have not spared religions from standing accused of violating human rights while in collusion with political power.

To be sure, “[t]he idea and the morality of religions differ from the idea and ideology of human rights in their sources and in the bases of their authority; in the forms in which their respective moral codes are given expression; and, to some extent, in elements of their respective moral codes.”⁵¹ While the discourse cannot but be general in that it does not refer to any particular religion, it appears to be obvious that religious ideologies rely on grand cosmic designs preordained by a supreme legislator, God. The latter has presented humanity with a moral code of behaviour, usually housed in more or less sacred texts. Apart from this, that supreme legislator may directly interact with people as for instance in Islam or may act through intermediaries as happens in Catholic Christianity. The important point to be considered here is that religions purport to be bearers of total systems of meanings, complete codes of conduct which invest the whole of human life in all of its dimensions and domains.

Conversely, the ideology behind the human rights compact positively steers clear of

49. See J. Donnelly, *International Human Rights*, (Colorado: Westview Press, 1993) as quoted in Hurights Osaka, “Human Rights and Cultural Values: a Literature Review,” op. cit., 9–10.

50. I generally use the term “religions” to indicate their plurality and yet their common framework. I am aware that any single religion may be distinguished between popular religion and the religion of theologians. In this context I do not emphasize the distinction although I try to consider concrete living communities instead of non-existent abstract theological definitions of what religions should be (but are not).

51. L. Henkin, “Religion, Religions and Human Rights,” op. cit., 230.

any theistic reference. What is more, it does not even consider itself as part of a grander superior cosmic design, being solely grounded in human experience. It recognises neither a supreme legislator nor sacred texts. Its origins are merely political and are consistent with the attempt to juridically give shape to the highest conceivable moral standards for humankind in order to achieve a good life. While the basis of religions' authority is represented by various ways to portray God's will or design, in the field of human rights the only foundation of authority is represented by the idea of human dignity. Henkin thus pertinently writes: "The content of human rights is defined by what is required by human dignity—nothing less, perhaps nothing more."⁵²

Obviously, the concept of human dignity is known and valued by religions also. Nevertheless the stress laid on it by the idea of human rights is unparalleled by religions. Human dignity in religious understanding is always the reflection, as it were, of God's dignity, that is, a derivative value overflowing from God's plenitude. Similarly, the rights coming out of a religious ideology do not seem to equal the importance and consistence human rights' activists apportion to them. A few examples may be helpful. The right to freedom of religion and conscience is generally acknowledged by religions even though in a restricted way. Thus, atheism is not an option for religions in the same way as apostasy is not. Similarly, freedom of proselytising is certainly accepted but only as long as it involves people of other creeds.

By the same token, the rights to equality and to non-discrimination may come under the fire of activists when religions divide people along ethnic, political, gender or even religious lines. But the clearest example of the ideological diversity separating religious morality from the idea of human rights may be found in the very idea of freedom as sustaining the whole idea of human dignity. "Religion, though recognizing freedom of will, makes no virtue of liberty, which it often equates with anarchy. The religious ideal has not been individual liberty, autonomy, but conformity to God's will and to divine law."⁵³

Once again it clearly appears that basic ideological diversity between religions and human rights is inherent in the theocentric orientation of the former as against a definitely anthropocentric direction of the latter.

To conclude this preliminary introduction, it may be noticed that some of the concepts previously ascribed to the Asian tradition and properly defined as Asian values are to be found again here this time not at the level of culture *per se* but at the level of religion proper. So not only do religions place conformity to God's will over and above individual freedom, they also lay stress on community as the means and end of religions' historical and cosmic visions. This is so for the "people of Israel," for the Muslim "*umma*," for the Christian "Church" and the Buddhist "*sangha*," to name but a few. Similar considerations can be reproduced, perhaps a bit tautologically, at the level of rights and duties. In as much as religions epitomise the pre-eminence of God and of his design, humankind can-

52. Ibid., 231.

53. Ibid., 233.

not but be characterised by its duty to conform to that design. Once again, in religions' emphasis is laid on man's duties more than on his or her rights.

Indeed, despite the many ideological and epistemological differences between religions and human rights, of late there seems to have taken place a discreet openness of religions towards the very idea of human rights. Needless to say, the discourse must necessarily be nuanced though: not all religions in fact behave in the same way, and, often, even the same religion acts differently from region to region. In the attempt to further pinpoint what the situation is in the context of Bangladesh, the following will deal with its two major religions, Hinduism and Islam.⁵⁴

Hinduism

Despite the displacement of Hinduism caused by the 1947 partition of the Indian Subcontinent, the latter continues to maintain a foothold in Bangladesh, even though its political relevance to the Bangladeshi polity is conspicuous only for its absence. Nonetheless, Hinduism is and remains an important cultural matrix of modern Bangladesh, no matter the denial of and opposition to such a statement by many of its present inhabitants.

The first problem we have to face in confronting the question of Hinduism and the idea of human rights has got to do with the understanding and definition of Hinduism itself. Historically, Hinduism did not develop in the sense of a unitary religion, theologically and ethically defined, in the same way as Christianity or Islam did. Hinduism, in fact, turns out to be "no more than an umbrella denominator for an extremely complex, pluriform, diversified, but long-standing cultural tradition, within which a bewildering plethora of religions and creeds can be distinguished."⁵⁵

To avoid getting lost in that "bewildering plethora" Holmstrom proposes to see Hinduism as the historical interplay of two kinds of religions and their associated morality and social structures. He distinguishes between "a religion that sanctifies the existing social order, values of submission and hierarchy and a relativist morality of closed groups [... and] a devotional religion that encompasses values of choice and equality and a tendency towards a universalist 'open' morality."⁵⁶ The two religions, as it were, are supposed to be operative in any Hindu community, being continuously articulated in an always unstable balance.⁵⁷ The point is that the former kind of Hinduism is not suitable to provide any kind of religious support to the conceptualisation of human rights.

54. According to the very latest demographic estimations compiled by the Central Intelligence Agency the population of Bangladesh should be of 163,654,860 (July 2013 est.). The latter would be constituted by 89.5% of Muslims, 9.6% of Hindus and 0.9% of others (2004). See "The World Facts Book," at <<https://www.cia.gov/library/publications/the-world-factbook/geos/bg.html>>.

55. C. J. G. van der Burg, "Traditional Hindu Values and Human Rights: Two Worlds Apart?" In A. A. Na'im, J. D. Gort, H. Jansen, H. M. Vroom eds., *Human Rights and Religious Values: An Uneasy Relationship?* (Amsterdam: Editions Rodopi, 1995), 110.

56. Ivi.

57. Behind this elaboration is traceable L. Dumont's conceptualisation of "man in the world" and

The Hinduism which sanctifies the status quo, proposing a closed group morality by giving all importance to hierarchy (type 1) is built around the complex concept of *dharma*,⁵⁸ the all-pervading reality not only of Hindu social life but of the cosmos as well. *Dharma* is, at the same time, an ontological and ethical notion which preordains the behaviour of everything and everybody according to an intrinsic and differentiated concept of substance. In other words *dharma* is “a differentiated duty built into the very nature with which a particular group of beings is born and related to a vast system of natural duties embracing all classes of beings in the world.”⁵⁹ It is particularly this “differentiated duty” with which members of particular groups, called castes (*varna*), are born which appears to clash with the universality of human rights. The question is not only that *dharma* deals exclusively with duties and never with rights but also that these duties might perhaps be fair in a caste society but they are certainly never equal. What is more, the regime of differential duties founded on *varna* results further modified by other elements too. *Varna* duties in fact change according to historical age, stage in life and gender.

According to Hindu elaboration, time (*mahayuga*) is divided in four cyclical eras (*yuga*) perpetually repeating themselves. Each *mahayuga* represents the creation (*sristhi*) and destruction (*pralaya*) of the universe. Each era lasts hundreds of thousands of terrestrial years. The present one is called *kali*, the last era of the present *mahayuga*, which precedes *pralaya* and thus a new beginning. For our discourse it is important to bear in mind that the division of time in four eras is not only quantitative but qualitative also, in that from *krita* to *treta* to *dvapara* to *kali* duties, virtues, achievements, *dharma* as such, are subjected to a process of continuous deterioration. Consequently and accordingly *varna* duties also vary.⁶⁰

But individual caste duties are modified also by the stages of life (*ashrama*) in which one finds himself in. *Upanayana* is the initiation through which each male of the twice-born (*dvija*) castes (*brahmans*, *ksatriya* and *vaisyas*) enter the first stage or *ashrama*, that of the student (*brahmacarin*). From here he will then enter the stage of a householder (*grihastha*). He will successively enter the stages of a forest hermit (*vanaprastha*) and finally that of the renouncer (*sannyasi*). Particular times and conditions discipline the movement from one stage to the other. Generally speaking, the *ashramas* are conceived as to officially repay the three debts (*rina*) with which each caste Hindu is born with. These are duties towards the seers (*rishi*), the forefathers (*pitri*) and towards the gods

“renouncer” (*brahman* and *sannyasin* respectively). See L. Dumont, “World Renunciation in Indian Religions.” In *Contributions to Indian Sociology*, 1960/4: 33–62. Although I do not feel at all comfortable with such a conceptualisation, I employ it for didactic purposes only. Moreover, I enlarge the definition of “type 2” Hinduism as to include also universalistic religious intuitions coming out from the Upanishads. See below.

58. This important Hindu notion is often translated in English as “religion, justice and duty.”

59. J. B. Carman, “Duties and Rights in Hindu Society.” In L. S. Rouner ed., *Human Rights and the World Religions* (Notre Dame: University of Notre Dame Press, 1988), 115–16.

60. *Manu* 1.85. W. Doniger with B. K. Smith, transl., *The Laws of Manu* (London: Penguin Books, 1991).

(*deva*). The debt towards the *rishi* is repaid in the first stage by learning the Vedas; the second debt is absolved by the householder stage in procreating sons. The third debt, that towards the gods, is repaid by practising austerities and performing other religious duties. It is to be borne in mind that *varna* duties of one stage are not the same *varna* duties of another stage.

Lastly, we cannot forget that *varna* duties differ on gender lines also. Unlike their caste brothers, twice-born women do not receive Manu's sympathy. Women as such sometimes are almost considered by Manu as belonging to a caste of their own (*Manu* 8,68). At other times, women are likened to *sudras*, the fourth and lowest caste of once-born Hindus (*Manu* 5,39). Again at other times women are held as morally insignificant and without autonomy, particularly in reference to males (*Manu* 8,111–112) or, even worse they are recognised as instigators of sin (*Manu* 2,213). "Given these views of women, it is not surprising that the Precepts of Manu does not insist that women undergo the same initiation (*upanayana*) ceremony, and observe the same four stages of life that men do."⁶¹

What we have called "type 1" Hinduism appears indeed not to offer any support to the conceptualisation of universal human rights. Not only does Hindu *dharma* preclude the universalism of duties and rights but also propounds the dissolution of humankind into as many kinds of human beings as there are in *varnashramadharma*. Moreover, so far we have been talking only of caste society and of the duties connected with it; but what about the millions of former untouchable people in the Indian Subcontinent who are not even deemed worthy of being part of the caste system but continue all the same to maintain duties towards it? Dalits constitute altogether another sort of humanity once again completely against the spirit and the letter of the idea of human rights.⁶²

That in this kind of Hinduism duties hold centre stage should no longer astonish anyone. This however may raise the question of the articulation of duties and rights in the Hindu context. *Varna*, we know, pre-ordains duties of groups among which the occupational ones are the very important. This means that any person in a caste society is supposed to know what his occupation is or should be. If we consider, for instance, the occupational duties of a *kshatriya* king, then we discover that he must rule and preserve the order of society (*Manu* 7,35; 8,418). This duty is paramount for him and the wellbeing of the kingdom depends on him, on his administering impartial justice, punishing criminals etc. The question is that "in none of the classical Hindu descriptions of the king's

61. J. W. Elder, "Hindu Perspectives on the Individual and the Collectivity." In I. Bloom, J. P. Martin, and W. L. Proudfoot eds., *Religious Diversity and Human Rights* (New York: Columbia University Press, 1996), 69. This article has been very helpful in providing the scheme for the issue of changes in *dharma* according to historical ages, stages of life and gender.

62. The question of former untouchable people or Dalits, would lead us far away from the topic at hand. A brief introduction to the issue may be found in Smita Narula, "The Entrenched Discrimination: 'The Case of India's Untouchables.'" (Geneva: The International Council on Human Rights Policy, 1999). At <http://www.ichrp.org/files/papers/160/112_-_Entrenched_Discrimination_-_The_Case_of_India_s_Untouchables__Narula__Smita__1999.pdf>.

duties does one find the notion that the subjects of a king are ‘entitled’ to justice. Even when the subjects feel the king has dispensed punishment wrongly, their charge is that the king has failed in his duty—not that the subjects have failed to receive some kind of justice to which they were ‘entitled.’”⁶³ Apparently in Hinduism someone’s duty does not create somebody else’s right.

Be that as it may, before taking into consideration the devotional and philosophical kind of Hinduism (type 2) we may verify if even in “type 1” religion there exists something which may be assimilated to the idea of rights as housed in the UDHR. According to Elder there are two “rights” which individuals, all of them, without distinction of caste or gender, may be entitled to. The first one refers to the right of a devotee to a god’s boon once he or she has performed the austerities (*tapas*) prescribed. The question is that “the gods cannot refuse to grant a boon to that individual—even if the gods know that the individual claiming the boon will use it for evil purposes.”⁶⁴

The second kind of right is derived from a law of the universe, the law of *karma*. Irrespective of caste, gender or age etc. the law of *karma* guarantees that any action performed, be it an evil or a good one, will produce rewards or punishments in this life or in any other future one. It is noticeably, these two “rights” are spiritual, as it were, because they impinge on the cosmos and the gods: both are expected to uphold them automatically. On the other hand, ancient Hindu tradition does not seem to know of “secular” rights as we would call them today. Whatever the case, it seems clear that even these two rights of the Hindu tradition, are quite distant from the spirit, if not the letter, of the modern concept of human rights.

If “type 1” Hinduism appears to be non-conducive, to say the least, to an ethical or theological convergence with the concept of human rights, “type 2” seems instead to offer more possibilities. As hinted at before, I consider this kind of Hinduism as the resultant of two basic components going back the first to the Vedic philosophical speculations of the Upanishads (c. 800–400 BCE) and the second to an early medieval tradition (from about 800 CE) of religious devotion. Both strands establish themselves on a philosophical and emotional universalism respectively, and while it has not always been the case, often they converge in the religious experience of single people, Mahatma Gandhi and Svami Vivekananda being two such cases.

The religion of devotion appears to rely on personal soteriologies more than on mechanistic cosmic laws or designs. In place of caste, this religiosity produces cross-caste groups where the automatisms of *varnashramadharma* are supplanted by voluntary devotion (*bhakti*) towards a chosen deity. If in “type 1” Hinduism conformity to one’s own *dharmic* duty is the *conditio sine qua non* of religious and social accomplishments, in “type 2” Hinduism, freedom, love and a certain egalitarian spirit are the ingredients of a new sectarian spirit in which even the individual, male or female, low caste or high

63. J. W. Elder, “Hindu Perspectives on the Individual and the Collectivity,” op. cit., 73.

64. Ibid., 70.

caste as the case may be, regains a degree of personal initiative and autonomy.⁶⁵ This latter consideration is quite important for our discourse: while “type 1” religion is very much local and related to particular, concrete determinants, the latter type is instead universal in outlook and appeal. In “type 1” Hinduism, only Indians and Hindus can, allow me the tautology, be or become Hindu. Non-Indians are just a kind of untouchables (*Manu* 10, 45-46). In “type 2” Hinduism these local and particular determinants are eliminated: even foreigners (i.e. non-Indians and non-Hindus) may join in.

This more or less “abstract,” extra-cultural, form of Hinduism seems to correspond most to the Western and Christian conceptions of religion, and therefore, since Svami Vivekananda’s famous speech at the 1893 Parliament of World’s Religions in Chicago, appeals to non-Hindu Westerners as an equivalent alternative.⁶⁶

And it is this same abstraction if not the extra cultural dimension of Upanishadic reflection which similarly establish the possibility of a universal brand of Hinduism free from the fetters of the *dharma* of institutional Hinduism, this time established not on devotion but on philosophical generalisations.

It is now high time to see how this “type 2” Hinduism can converge and support the conceptualisation of human rights. We will do this by presenting two important modern Hindu figures, Raja Rammohun Ray (1772?–1833) and Mahatma Gandhi (1869–1948), representing philosophical and devotional kinds of Hinduism respectively.

Raja Rammohun Ray was a reformer, and a great figure of the Bengali Renaissance. He is famous for many things but in this context we want to mention him in reference to just two of them. In 1812 he witnessed the self-immolation (*sati*) of his dead brother’s wife. While he had strived to reach the funeral in time to save his sister in law, he arrived late but from then on he started a campaign to stop the gruesome religious practice. He began writing in both English and Bengali against the *sati* custom. The custom was eventually banned by the East India Company on 9 December 1829. *Sati* was now a criminal act, assimilated to culpable homicide, punishable by Criminal Courts. Rammohun was both an upholder of universal human values while at the same time being a convinced Hindu.

In fact the pamphlets he wrote against the *sati* custom “derived their power of conviction by their appeal to reason, humanity, and because they set out to demolish orthodox arguments by showing them to be inconsistent with the ultimate values of the best Hindu scriptures.”⁶⁷ It was in order to reform Hinduism from polytheistic and idolatrous accretions that Rammohun just a year before (20 August 1828) had founded together with

65. C. J. G. van der Burg, “Traditional Hindu Values and Human Rights: Two Worlds Apart?” op. cit., 111.

66. Ivi., S. Vivekananda’s speech can be found at <<http://www.swamij.com/swami-vivekananda-1893.htm>>.

67. V. A. van Bijlert, “Raja Rammohun Roy’s Thought and its Relevance for Human Rights.” In A. A. An-Na’im, J. D. Gort, H. Jansen, H. M. Vroom eds., *Human Rights and Religious Values: An Uneasy Relationship?* op. cit., 101.

other likeminded Bengali friends, the Brahmo Somaj (the society of Brahmo, i.e. the unfathomable deity). This was a sort of theistic church, which would propagate a humanistic, rational, and monotheistic sort of religion.⁶⁸ For our purposes it is interesting to notice that some of the ideas which will find a proper systematisation in the UDHR and perhaps its universalistic outlook are traceable also in the 1830 Trust Deed of the Brahmo Somaj. The deed describes the Somaj's premises and prescribes their use in the following terms:

for the worship and adoration of the Eternal Unsearchable and Immutable Being who is the Author and Preserver of the Universe, but not under or by any other name designation [...] used for [...] any particular being or beings [...] and that no graven image, statue or sculpture, carving, painting, picture, portrait or the likeness of anything shall be admitted within the [...] premises and that no sacrifice, offering, oblation of any kind [...] shall ever be permitted therein, and that no animal or living creature shall within or on the [...] premises be deprived of life either for religious purposes or for food, [...] and that in conducting the said worship and adoration no object animate or inanimate that [...] shall [...] be recognized as an object of worship by any man [...] shall be reviled or [...] contemptuously spoken of [...], either in preaching, prayer or in the hymns or other mode of worship that may be delivered or used in the [...] Building, and that no sermon, preaching, discourse, prayer or hymn be delivered, made or used in such worship but such as have a tendency to the promotion of the contemplation of the Author and Preserver of the Universe, to the promotion of charity, morality, piety, benevolence, virtue and the strengthening the bonds of union Between [*sic*] men of all religious persuasions and creeds.⁶⁹

From a different perspective but within the same universalistic spirit, Mahatma Gandhi was convinced that a universal morality fed, as it were, by all world religions was indeed possible. Not only, he was also convinced that this view was supported by the Bhagavad-Gita,⁷⁰ and that the latter text itself was "a complete reasoned moral code, [...] the synthesis not only of Hinduism but of all religions."⁷¹ Gandhi thus highlights the way of action (*karmayoga*) as the way (*marga*) *par excellence*.⁷² *Karmayoga* however must be informed

68. Ibid., 104.

69. "The Trust Deed of the Brahmo Samaj," at < <http://www.thebrahmosamaj.net/samajes/trustdeed.html> >.

70. The Bhagavad-Gita is the 6th book of the great Indian epic the Mahabharata. The text is variously ascribed to a period spanning between the 6th and the 3rd centuries BCE. Although the Bhagavad-Gita does not belong to the corpus of the Vedas *per se*, from early times it has in practice enjoyed a quasi-Vedic status. Together with the Upanishads and the Brahma Sutra, the Bhagavad-Gita forms the triple cannon (*prasthanatraya*) on which *vedantin* teachers have to prove and justify their theories. See S. Targa, *Ethical Perspectives in the Bhagavadgita*. Unpublished MA Dissertation (London: School of Oriental and African Studies, 1997), 6.

71. Mahatma Gandhi quoted in R. Fernhout, "Combatting the Enemy." In A. A. An-Na'im, J. D. Gort, H. Jansen, H. M. Vroom eds., *Human Rights and Religious Values: An Uneasy Relationship?* op. cit., 120.

72. The Bhagavad-Gita speaks also of two other *margas*, the way of knowledge (*jnanayoga*) and the way of devotion (*bhoktiyoga*).

and performed with non-attachment (*anasakti*) and non-violence (*ahimsa*). This is what Gandhi, in essence, extracts from the Gita and puts at the basis of his universal morality. The difficulty is that *ahimsa* as such seems to be problematic in the context of the Gita. Briefly, the Bhagavad-Gita deals with a *dharmic* dilemma: Arjuna has to fight a war which will see the death of relatives and friends. For this reason he refuses to fight. His friend and charioteer, Lord Krishna, will eventually persuade him to carry out his duty of warrior, and slay his people. As a matter of fact, the context of the Gita is indeed anything but non-violent.

*I am Time grown old to destroy the world,
Embarked on the course of world annihilation:
Except for yourself none of these will survive,
Of these warriors arrayed in opposite armies.*

[...]

*Slay Drona and Bhishma and Jayadratha,
And Karna as well as other fine warriors—
My victims—destroy them and tarry not!
Wage war! You shall trounce your rivals in battle!*⁷³

Nevertheless, Gandhi with a help of a still unborn hermeneutics⁷⁴ tried to explain that the Gita not only calls to unattached struggle but also to a non-violent one. To do so he deployed a number of hermeneutical considerations. The first, the relationship between core and periphery in a text: a text must be interpreted according to the main idea it expresses. Contextuality is the second criterion Gandhi brought to bear on the Gita: not the letter of a text but its spirit. Apparently Gandhi had in mind the dialectic between core message and the different ways in which this is expressed historically. The Gita's author, accordingly, uses the war to explain the eternal fight going on in man's heart. The third and last motif in interpreting the Gita is personal, practical experience, that is, "the experience acquired in the practical application of the Gita determines the understanding of its message in different circumstances."⁷⁵

While Gandhi's interpretation deserves respect and appreciation, at the same time it shows its limits when we think that his murderer, Nathuram Vinayak Godse (1910–1949), used the same Bhagavad-Gita to justify his murder. A Hindu nationalist, Godse considered Gandhi responsible for the dismembering of India in 1947. What is more, Godse

73. J. A. B. van Buitenen tr., *The Bhagavadgita in the Mahabharata* (Chicago and London: The University of Chicago Press, 1981), 11,32; 34.

74. In Gandhi's time the hermeneutical discussion was barely starting in Europe. It is thus highly improbable that he knew of it.

75. R. Fernhout, "Combatting the Enemy," op. cit., 124. The preceding discussion on Gandhi's hermeneutics is mainly derived from this author.

could not bear what he saw as Gandhi's persistent appeasement policy towards the Muslims. Accordingly, he felt that Gandhi should be killed to allow India to defend itself and freely get on with her task of nation building, something which with Gandhi's presence could not possibly take place.⁷⁶ The question is that in his homicidal frame of mind Godse was apparently inspired by the Bhagavad-Gita's non-attachment theory of *karmayoga*. It is of little doubt that Godse's actions were spurred by verses like this:

when a man because of insufficient understanding looks upon himself as the sole agent, he is in error and does not see. He whose disposition is not dominated by his ego and whose understanding is not obscured, *does not kill and is not bound by his act* were he to kill off these three worlds.⁷⁷

Leaving wider conclusions to the end, it is however already apparent that the concept of human rights does not seem to find easy support and justification in Hindu tradition. While "type 1" religion is definitely the least conducive to the establishment of a universal morality, "type 2" Hinduism is certainly more favourable to it even though the dilemma of conflicting interpretations is not easily solvable. Yet, it is exactly this multiform strands that Hinduism is and the faith experience of its great men which may indeed open up new venues for the transformation of Hinduism itself and for a deepening comprehension of human rights.

Islam

While introducing Hinduism at the beginning of the previous section, I made a quick reference to "denial and opposition" that possibly many Bangladeshi today may feel towards Hinduism as an important cultural matrix of Bangladesh. Unfortunately that ill feeling towards Hinduism, and generally speaking, towards any ethnic or religious minority is a novelty not only for Bangladesh, heir to Bengal's tradition of religious and political tolerance,⁷⁸ but also for Islam as such. In fact "the Muslim world, when judged by the standard of the day, generally showed far greater tolerance and humanity in its treatment of religious minorities than did the Christian West."⁷⁹ Obviously the two novelties, as it were, are related and may be understood by considering local socio-political transformations together with the modern ambiguous global Islamic "renaissance." It is through the analysis of such determinants that the seemingly conflicting relationship of

76. See excerpts of "Nathu Ram Godse's Speech at the Trial," at <<http://www.jatland.com/forums/showthread.php?7324-Nathu-Ram-Godse-s-Speech-At-The-Trial>>.

77. J. A. B. van Buitenen transl., *The Bhagavadgita in the Mahabharata*, op. cit., 18,17. My emphasis.

78. Despite government propaganda to the contrary just a few days ago "Members of British and European parliaments at a seminar in London expressed grievances saying that ruling Awami League and main opposition BNP had failed to protect the minority communities of the country." Star Report, "AL, BNP fail to save minorities." In *The Daily Star*, 19-7-2013.

79. Ann Mayer quoted in H. Bielefeldt, "'Western' Versus 'Islamic' Human Rights Conceptions? A Critique of Cultural Essentialism in the Discussion on Human Rights." In *Political Theory*, 2000, 28/1: 107.

Islam, including its Bangladeshi brand, with the concept of human rights will hopefully and clearly emerge.

What I have called ambiguous Islamic renaissance has been determined by complex historical conditions both within and without Islamic societies. Khaled Abou El Fadl clearly captures the latter's present situation when he states that "[p]olitical realities—such as colonialism, the persistence of highly invasive and domineering despotic governments, the widespread perception, and reality, of Western hypocrisy in the human rights field, and the emergence and spread of supremacist movements of moral exceptionalism in modern Islam—have contributed to modes of interpretation and practice that are not consistent with a commitment to human rights." Consequently, he adds, "in the contemporary era there has been a systematic undermining and devaluing of the humanistic tradition in Islam, and a process of what could be described as a vulgarisation of Islamic normative doctrines and systems of belief."⁸⁰

Devout Muslims today when facing the question of human rights seem to come up with the following dilemma: in Islam apparently the distinction between secular law and sacred or religious law does not exist. What is more, for a true believer, "Islamic law is the epitome of Islamic thought, the most typical manifestation of the Islamic way of life, the core and kernel of Islam itself."⁸¹ Law and belief cannot be separated so that the human rights compact, being totally a secular proposition, cannot harness Muslim allegiance. Now, Islamic law does not descend directly from the Quran. The latter is certainly an important source for it but together with the *Sunna*, that is, the collection of sayings (*hadith*), judgements and actions of the Prophet and of his companions. It is this latter source of Islamic law which is a cause of continuous controversy because of the contested authenticity of some of the traditions therein, their applicability, meaning etc. The *Sunna*, in fact, offers "tremendous opportunity to find in Islamic law what one is looking for, often motivated by reasons totally unrelated to Islamic culture."⁸²

So the question of conflictuality between Islam and human rights starts out from a possible theological impasse to end up eventually being a political expedient at the service of non-Islamic interests. A brief look at the 1990 Cairo Declaration of human rights in Islam⁸³ may perhaps further instantiate the expediency often behind the declared incompatibility of Islam and the UDHR.

Even a superficial analysis of the Declaration reveals that the latter is only a way to restrict and contain human rights by giving them an Islamic flavour. Thus, Articles 24 and 25 respectively state:

80. K. A. El Fadl, "The Human Rights Commitment in Modern Islam." In Z. Anwar ed., *Wanted: equality and justice in the Muslim family* (Selangor: Musawah, 2009), 113.

81. J. Schacht quoted in J. S. Lupp, "Human Rights and Islam." In P. Makariev ed., *Islamic and Christian Cultures: Conflict or Dialogue?* (Washington DC: Council for Research in Values and Philosophy, 2001), 207.

82. J. S. Lupp, "Human Rights and Islam," op. cit., 208.

83. The text of this Declaration can be found at <<http://www.oic-oci.org/english/article/human.htm>>.

All the rights and freedoms stipulated in this Declaration are subject to the Islamic Shari'ah (24).

The Islamic Shari'ah is the only source of reference for the explanation or clarification of any of the articles of this Declaration (25).

This loose reference to the *Sharia* runs the risk of nullifying the whole concept of human rights. Not only, the *Sharia* represents the limit of the Rights, but single Islamic states become also their arbiters. If the UDHR was born to put limits to the power of states *vis-à-vis* their own citizenry, the Cairo Declaration does the opposite. It empowers states to apply human rights according to their own perceived Islamic interests and consequent *Sharia* manipulations. But is this procedure more Islamic than the declared non-Islamic concept of "Western" human rights? Thus Mayer lucidly asks: "Why granting the government of a modern nation state, an institution borrowed from the West and unknown in Islamic tradition, such great latitude in defining the grounds for denying and restricting rights should be deemed appropriate in a system based on Islam."⁸⁴ The question of course begs the answer and if we consider that during the 1993 Vienna World Conference on human rights it was countries like Iran, China, Cuba, Vietnam, Singapore, Malaysia, Syria, Indonesia, Pakistan and Yemen which strongly voiced their opposition to the universality of human rights then it is not surprising that all of them had stained records as far as their compliance with human rights was concerned.⁸⁵

However, while there exists indeed the sycophancy of autocratic regimes which instrumentally use Islamic culture according to their perceived politico-economic interests, we must also admit that in the modern Muslim world there is also a clear popular assertion of identity which sometimes may support an Islamist agenda. The point is that despite this popular assertion of identity, or perhaps, because of this need to affirm one's identity the modern Muslim world is right now shaken by waves of liberal and democratic ideas which have given form to the so called Arab Spring in the whole of the Middle East and North Africa. As a matter of fact Huntington's theory of the Clash of Civilisations⁸⁶ eventually boils down to being a clash mainly internal to Islam itself. Writes Lupp "[w]hile there is clearly public support for embracing the moral teachings of Islam, it is not clear that this should take a form inconsistent with liberal democracy."⁸⁷

There remains however an apparent incompatibility between human rights and Islam and this is related to the question raised initially. human rights respond to a secular conception of legislation, something which is apparently unknown in Islam. Thus there remains the task to ascertain if Islam may afford such rights from its own theistic perspective. It seems that concrete conflicts arise in basically four fields: the right to religious

84. A. Mayer quoted in J. S. Lupp, "Human Rights and Islam," op. cit., 210–11.

85. See Ibid., 211.

86. S. Huntington, *The Clash of Civilizations and the Remaking of World Order* (New York: Simon and Schuster, 1996).

87. J. S. Lupp, "Human Rights and Islam," op. cit., 216.

liberty; the equality of the sexes; the rights of minorities and the question of cruel and degrading punishments.⁸⁸ While the question of physical punishments (amputations, flogging, stoning, etc.) is already restricted to a small number of countries and does not seem to represent an insurmountable obstacle, the right to religious freedom, the equality between men and women and the second class citizen's status often given to minorities in Islamic societies seem more complex to tackle. The role of the woman in Islamic law remains problematic. The *Sharia* does recognise the equal dignity between man and woman but it does not recognise their equal rights. Similarly, despite Islamic historical tolerance for religions other than Islam, the *Sharia* does not recognise the right to abandon Islam for another religion. Apostasy, in several countries, is still reprimanded with capital punishment.

All considered, I believe that Islam is not incompatible with the values expressed in the UDHR. Some traditional interpretations appear to be a stumbling block on the way of fully accepting the idea of human rights itself. It is also true, however, that more and more new interpretations of the *Sharia* and of Islam generally are being put forward by Islamic scholars themselves.⁸⁹ It is this internal and continuous theological elaboration which may eventually end up eliminating any incompatibility between the human rights compact and Islam. It seems that further reflection and attention should be given to "the strong centralized state, which is a reality in most Islamic countries [...] Traditional Islamic culture did not have to deal with such an entity. The so-called Islamic human rights schemes fail to provide any realistic check on its power."⁹⁰

Apparently the Bangladesh story turns out to be a bit different from the previous general narrative, at least in that the Bangladeshi state cannot be said to be either strong or dictatorial. Yet it is its institutional weakness coupled with a would-be autocratic outlook which leaves it in the hands of not always holy Islamic forces. A brief historical excursus on Bangladesh's beginnings may enlighten the point being made.

Born out of a bloody nine months long struggle with Pakistan, of which, from the 1947 partition, it constituted the Eastern Wing, Bangladesh starts its journey as a secular and socialist republic. It may be argued however that the violent struggle which saw off Pakistan had also to do with a re-articulation of a peasant society fiercely divided between a ruling privileged urban class and powerless rural masses and their elites. The Awami League, the party which arose as the champion of Bangladesh's independence represented the interests of the nascent middle class and of the rural rich. This party gained massive support before, during and in the aftermath of the liberation war but although in power

88. See H. Bielefeldt, "'Western' Versus 'Islamic' Human Rights Conceptions? A Critique of Cultural Essentialism in the Discussion on Human Rights," op. cit., 103.

89. See J. S. Lupp, "Human Rights and Islam," op. cit., 218–19; see also H. Bielefeldt, "'Western' Versus 'Islamic' Human Rights Conceptions? A Critique of Cultural Essentialism in the Discussion on Human Rights," op. cit., 104–14. The latter author proposes a number of possible solutions to the compatibility issue between Human Rights and Islam.

90. J. S. Lupp, "Human Rights and Islam," op. cit., 219.

it did not manage a hegemonic status. In fact in 1975 a series of military *coups* toppled it establishing a military dictatorship which lasted until 1991. The new rulers “represented to a large extent a section of the military-bureaucratic oligarchy that had inherited notions of a divine right to rule from the Pakistan era.”⁹¹

The unholy alliance between the military and the former Pakistani Civil Service was caused by the feeling of having been side-lined and dislodged by the Awami League’s attempt to build a new power base. The *coups* redressed the issue and the establishment of the Bangladesh Nationalist Party afforded the former elites of Pakistani times a new political platform. Not really different from the Awami League, the BNP “represented a section, which, throughout the Pakistan era, had enjoyed political privileges and patronage of the state and felt deprived in the newly independent Bangladesh.”⁹² The Islamic right, who had fought against the secession of East Bengal from Pakistan and was ostracised by the Awami League regime, joined in and supported first the BNP and then the Jatio Party (JP). The latter was the creation of General Ershad, a military dictator who took over state power after the assassination of General Ziaur Rahman in 1981. Astonishingly, the AL, the BNP and the JP did not and do not house in their founding manifestos, as it were, very many ideological differences. Nor do the parties represent very different classes of people. Indeed the actual differences and conflicts among them are determined by questions of power sharing and all that this entails in terms of jobs, licences, clients, patrons, properties etc.⁹³ Even though the discourse must be differentiated,⁹⁴ these parties, lacking an overarching ideology with which to attract people, had and continuously have to resort to Islam as to their legitimising ideology. Thus already Ziaur Rahman had introduced Islamic elements in the secular Constitution of Bangladesh, substituting, for instance, secularism with “absolute trust and faith in almighty Allah.”

Ershad in 1988 made Islam the state religion of the country.⁹⁵ After the fall of Ershad and the celebration of general elections, in 1991 a democratic civilian government led by Khaleda Zia, the wife of Ziaur Rahman and the chairperson of the BNP, took over as prime minister. Since then, with up and downs, the democratic process has held good in the country, although it has continuously witnessed an increasingly and unhealthy polarisation of party politics between the BNP and the Awami League. The two parties in fact have alternatively occupied state power ever since.

With the exception of the very first few years of independence, Bangladeshi politics have been increasingly Islamised, initially by military regimes in search of political legiti-

91. M. Guhathakurta and F. Hasan, “Poverty, Development and Human Rights: Making Human Progress in Bangladesh,” 6, paragraph 22. The International Council on Human Rights Policy, Phuket, 2005. At <www.ichrp.org/files/papers/146/121_Guhathakurta_Hasan.pdf>.

92. *Ivi*.

93. *Ibid.*, 7, paragraph 27.

94. The reference here is to the Awami League which is supposed to be the bearer of a secular ideology.

95. *Ibid.*, 7, paragraph 25.

mation, and then by political parties themselves which apparently could not and cannot any more do without the services that Islamisation provides.

A first point of no return in this Islamisation was the political rehabilitation of the Jamaat-e-Islami party by the BNP which, back in 1991 had to get its external support to be able to form a government. This political resurgence of the Jamaat, a party instrumental in many atrocities during the liberation war, was farther established in the 2001 general election in which the party was an active member of the BNP political coalition. Since then, Jamaat and BNP have presented themselves as political allies. It is fair also to say, however, that even the Awami League, to press home its demand for a “Care Taker Government” back in 1995–1996 built an alliance with the Jamaat itself, showing that it is not enough to have a secular ideology to eliminate political expediency.

The question now is to see if and how the Islamisation of Bangladesh has affected the establishment of human rights in the country. In accordance with and as a consequence of what is already said above in this section, the degree in which human rights are actually realised in an Islamic society can be seen if we look at the situation of women in that society.

The starting point for this analysis can be the Convention for the Elimination of all forms of Discrimination Against Women (CEDAW) adopted by the UN in 1976 and which became an international treaty in 1981. Bangladesh ratified it at the time of Ershad on 6 November 1984. However, and this is the first element to be considered, the ratification was done with reservations.⁹⁶ Mayer comments: “[w]hen ratifying CEDAW in 1984 Bangladesh made remarks that it did not characterize as a reservation but that amounted to one, asserting that it did not consider:

as binding upon itself the provisions of articles 2, 13 (a) and 16.1 (c) and (f) as they conflict with Sharia law based on Holy Quran [sic] and Sunna.”⁹⁷

Indeed the objection of Bangladesh to article 2 was tantamount to rejecting the whole convention outright. Of course, it is acceptable to approve a treaty with reservations but the latter cannot bear on the actual substance of the treaty. Instead “[t]he reserva-

96. Reservations were expressed by Bangladesh on the following articles of the convention: Article 2. States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women. Article 13.1. States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular: [a] The right to family benefits. Article 16.1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women; [c] The same rights and responsibilities during marriage and at its dissolution; [f] The same rights and responsibilities with regard to guardianship, wardship, trusteeship, and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount. The Text of CEDAW can be found at <<http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>>.

97. A. E. Mayer, “Islamic Reservations to Human Rights Conventions: A Critical Assessment.” In *Recht van de Islam*, 1998/15: 25.

tions made by Bangladesh, Egypt, Libya, and Tunisia were so sweeping that critics have claimed that they are not compatible with the object of CEDAW, which is to free women from systematic subordination because of sex.”⁹⁸ In 1996 the then Awami League government withdrew reservations on article 13 but kept those relating to articles 2 and 16. Unfortunately the high expectations nested on the Awami League government coming to power in 2008 did not materialise in the elimination of Bangladesh’s reservations on the two CEDAW’s articles. Again during the 48th Session of the Committee on the Elimination of Discrimination against Women, the Bangladeshi representative maintained, to the UN official’s dismay, the country’s reservations adding that “[i]t was to be hoped that, in the remaining three years of the current Prime Minister’s mandate [i.e. Sheik Hasina of the Awami League], action could be taken to withdraw the reservations, in particular the reservation to article 2; article 16, paragraph 1 (c), was somewhat more problematic.”⁹⁹ Of course it was only a vain hope.

This perhaps long digression serves the purpose of showing how over the span of nearly 30 years, neither military (Ershad), nor Islamic (twice Khaleda Zia, BNP-Jamaat), nor secular governments (twice Sheik Hasina, Awami League) have been able to overcome supposed Islamic objections to the equality of the sexes. If on the one hand these 30 years of Bangladeshi history have seen huge improvements in the general status of women,¹⁰⁰ on the other hand they also witnessed a growing and increasing entrenchment of Islamic objections to women’s global liberation, which unfortunately was not only expressed in the aseptic spaces of the UN but also on the less hygienic streets of Bangladesh.

We may begin by considering the uproar that Taslima Nasreen caused in Bangladesh about 20 years ago. Taslima, a controversial writer¹⁰¹ and a physician, in 1993, after the publication of *Lojja* (Shame), a novel about the persecution of a Hindu family by Muslims during the liberation war, had her life changed.

She was accused of subverting the cultural and religious values of the state and hence was depicted as a traitor to the state and religion, *rashtradrohi* [traitor of the state] and *dharmadrohi* [traitor of religion].¹⁰²

98. A. E. Mayer, “Cultural Particularism as a Bar to Women’s Rights: Reflections on the Middle Eastern Experience.” In M.-A. Hélie-Lucas and H. Kapoor eds., *Dossier 16* (Srinagar: Women Living Under Muslim Laws, 1995), 24. At <<http://www.wluml.org/sites/wluml.org/files/import/english/pubs/pdf/dossier16/D16.pdf>>.

99. “Summary Record of the 969th meeting.” *Committee on the Elimination of Discrimination against Women*, Held at the Palais des Nations, Geneva, on Tuesday, 25 January 2011. At <<http://daccess-ods.un.org/access.nsf/Get?Open&DS=CEDAW/C/BGD/6-7&Lang=E>>.

100. Tomanna Hoq Riti, “Bangladeshe Manobadhikar Poristiti Porjalocona.” In *ASK Bulletin*, March 2013. At <http://www.askbd.org/Bulletin_Mar_13/Manobadhikar.php>.

101. Taslima had been accused by women’s groups in Bangladesh of “derailing the feminist movement.” Her language, style and above all, her head-on attacks to established customs and superstitions, alienated many in Bangladesh, both in the general public and in civil society. See T. M. Murshid, “Women, Islam and the State.” In M.-A. Hélie-Lucas and H. Kapoor eds., *Dossier 16* (Srinagar: Women Living Under Muslim Laws, 1995), 80. At <<http://www.wluml.org/sites/wluml.org/files/import/english/pubs/pdf/dossier16/D16.pdf>>.

102. *Ibid.*, 79.

Her writings were carefully manipulated so that she was accused of blasphemy, of being against men, of insulting God, of discrediting the country, of creating communal feelings, of advocating free sex etc. Eventually, in October 1993, an Islamist group from Sylhet, the Sahaba Soldiers, offered a reward for her death; the same request of death would be replicated the following year once in Bogra and another time in Khulna.

The BNP government then ruling could not but appease the Jamaat party with whose help it was governing. Initially, it afforded Taslima with protection, eventually, on 4 June 1994, it arrested her on charges of making inflammatory statements. The Awami League itself, then in the opposition, did not offer Taslima any support, probably not to anger the Jamaat with whom it was trying to launch a movement for the “Care Taker Government” amendment. The sensation that all this caused around the world gave Taslima the chance of exile in Sweden at the end of 1994.¹⁰³

Indeed the Taslima affair and the ambiguous way in which political forces, both the ruling parties and the opposition, dealt with it, emboldened Mullahs and Islamist leaders who now felt that they could ask for even more. Thus “[t]here were demands for the introduction of blasphemy laws as in Pakistan, for the execution of all atheists and apostates (nastik and murtad), for the ban on all publications by such people, for Ahmadiyas to be decreed non-Muslims etc.”¹⁰⁴ Huge demonstrations accompanied these requests.

Leaving aside Taslima, we may now leap forward to the present day. We had already the chance to mention the huge youth demonstrations which engulfed Dhaka from the 6 February, 2013. As we know the youth felt that a life sentence to Abdul Quader Mollah was not enough to make up for his criminal war record. Be that as it may, the demonstrations of the Shahbagh youth indirectly provoked a relatively unknown Islamist group to enter the fray and counteract the youth demands. The Hefajat-e-Islam Bangladesh, a *madrasa* based organisation, made two large showdowns, which indeed left a mark on both Dhaka city dwellers and Bangladesh at large.

The first confrontation took place on 6 April, 2013. Hefajat then organised a long march which ending in Dhaka brought to the capital hundreds of thousands Islamists, mainly madrasa students and their teachers. The long march, as it was called, gave the government two-week’s time to implement a 13 point manifesto they had prepared. Despite the obstacles that the government and other non-government organisations tried to put in the way of Hefajat, the latter managed to hold a huge gathering in Motijheel, Dhaka. The BNP and Ershad’s Jatio Party joined in lending support to the movement.

At that gathering speakers came down hard on liberal thinking, accused the youth in Shahbagh of promiscuity and adultery, and contested the obscene songs and dances shown on television; even the government was accused of being non-Islamic and of sup-

103. Information on Taslima can be found in Krishna Dutta, “She Who Makes Holy Men Fume,” 27–2–1995. At <<http://www.timeshighereducation.co.uk/96825.article>>.

104. Tazeen Mahnaz Murshid, “Women, Islam and the State,” op. cit., 81.

porting atheists.¹⁰⁵ The second showdown took place on 5 May, 2013. Again hundreds of thousands of white clad Islamists came down on Dhaka. The organisation apparently had promised to carry out a peaceful *gherao* (surrounding) of the capital to press home their 13 point demands and protest what it called the “atheist bloggers” of Shahbagh. Eventually however it turned very violent after police tried to block a procession at Nayapaltan.¹⁰⁶

In the night a joint operation of security forces flashed out Hefajat men from the city. Islamist propaganda took the opportunity to depict the operation as a massacre of unarmed and devout Muslims by a non-Muslim government.¹⁰⁷ What happened that night remains unclear since journalists were not allowed in during the flushing out operation. It seems however improbable that a massacre of the dimensions spoken of by the Islamists could have taken place. The government acknowledged a death toll of 27.¹⁰⁸

Once again as in the case of Taslima Nasreen, both the government of Sheik Hasina (Awami League) and the opposition BNP played foul. The opposition was amazed at having found such an unexpected ally and uncritically took it on board for its own political agenda. Ershad himself, a member of the ruling grand coalition, sensing danger, opportunistically boarded the Hefajat wagon inciting the people “to save the country from those speaking against Islam and Prophet Muhammad (sm).”¹⁰⁹ The government and the country itself never expected the reactions of Islamist forces to be of such an extent. They were unprepared and when confronted with Hefajat they got scared. After the long march of 6 April, the Home Minister, Muhiuddin Khan Alamgir, thanked the Hefajat for having held a peaceful meeting.¹¹⁰ In an attempt to appease Hefajat, the government on 3–4 April arrested 4 Shahbagh bloggers.¹¹¹ Sheik Hasina herself on the eve of the Hefajat shutdown in May sympathetically addressed the Hefajat’s 13 demands as if to say “we have already implemented many of them!”¹¹² The result was similar to that obtained at the time of the Taslima affair. The government failed to appease the Islamists and at the same time disquietened its own secular supporters.

Now a quick look at the 13 points manifesto:

1. Reinstate the phrase “Absolute trust and faith in the Almighty Allah” in the constitution as one of the fundamental principles of state policy;¹¹³

105. See Staff Correspondent, “Gov Given Three Weeks.” In *The Daily Star*, 7–4–2013.

106. See Star Report, “Hefajat Strikes Horror.” In *The Daily Star*, 6–5–2013.

107. “Hefajat-e Islam in a press release yesterday claimed that 2,000 of its leaders and activists had been killed and 2,500 others had been injured during the joint operation carried out by members of Police and Rapid Action Battalion and Border Guard Bangladesh. They also claimed that the law enforcers took away many bodies on Dhaka City Corporation vehicles.” Sashidul Hasan, “Puzzling claims.” In *The Daily Star*, 7–5–2013.

108. See Star Report, “27 more killed.” In *The Daily Star*, 7–5–2013.

109. Jhalakathi Correspondent, “Save Country from Those against Islam.” In *The Daily Star*, 10–3–2013.

110. See Staff Correspondent, “MKA thanks Hefajat.” In *The Daily Star*, 7–4–2013.

111. See Staff Correspondent, “Three Bloggers Arrested.” In *The Daily Star*, 3–4–2013; “Blogger Asif arrested.” In *The Daily Star*, 4–4–2013.

112. See Staff Correspondent, “PM Responds to Hefajat Demands.” In *The Daily Star*, 4–5–2013.

113. As already mentioned above, this expression had been introduced into the Constitution by General

2. Enact a law providing for capital punishment for maligning Allah, Islam and Prophet Muhammad (pbuh) and smear campaigns against Muslims;
3. Stop all propaganda and “derogatory comments” about Prophet Muhammad (pbuh) by the “atheist leaders” of the Shahbagh movement, bloggers and other anti-Islamists; arrest them and ensure stern punishment to them;
4. Stop attacking, shooting, killing and persecuting the Prophet-loving Islamic scholars, madrasa students and people united by belief in Allah;
5. Release all arrested Islamic scholars and madrasa students;
6. Lift restrictions on mosques and remove obstacles to the holding of religious programmes;
7. Declare “Qadianis” non-Muslim and call a halt to their publicity and conspiracies;
8. Stop foreign cultural intrusions including free-mingling of men and women and candlelit vigils, and put an end to adultery, injustice, shamelessness, etc. in the name of freedom of expression and conscience;
9. Stop turning Dhaka, the city of mosques, into a city of idols, and stop setting up sculptures at intersections, colleges and universities;
10. Scrap anti-Islam women policy and education policy and make Islamic education mandatory from primary to higher secondary levels;
11. Stop threatening and intimidating teachers and students of Qawmi madrasas, Islamic scholars, imams and khatibs;
12. Stop propagating hatred among the younger generation of Muslims by misrepresentation of Islamic culture in the media;
13. Stop anti-Islam activities by NGOs, evil attempts by Qadianis and conversions by Christian missionaries in the Chittagong Hill Tracts and elsewhere in the country.¹¹⁴

Amazingly, despite the fact that 20 years have elapsed from the happenings related to Taslima Nasreen, today’s Islamists are voicing the same kind of demands using even the same language. The demand for a blasphemy law, for the punishment of atheists, the scrapping of anti-Islam women policies, declaring the Qadianis¹¹⁵ non-Muslim, restriction of freedoms etc. are scary modern Islamic voices which do not seem to foster or support a healthy concept of human rights. Against any expectation, Islamists, thanks to the appeasement policies of both the BNP and the Awami League have increased their numbers and their strength. The local administrative elections just held in the country had

Zia. However, in 2011 through the 15th constitutional amendment, the same expression had been removed and replaced with the original ‘secularism’ by the present Awami League government.

114. See Staff Correspondent, “Gov Given Three Weeks.” In *The Daily Star*, 7–4–2013.

115. Qadianis have been previously referred to as Ahmadiyas (Ahmadiyya). The two designations refer to the same people. This religious group was founded in India by Ghulam Ahmad (1835–1908) of Qadian (a city in the Punjab, India) from whom the two designations derive. While they consider themselves as Muslims, the Ahmadiyyas or Qadianis are actually persecuted by other Muslims who do not consider them as such.

shown that dirty politics enveloped in a religious garb do pay,¹¹⁶ and this does not bode well for the future. Zechenter may be right in holding that “religious fundamentalism is nothing more than patriarchal attitudes and cultural traditions disguised as religious norms,”¹¹⁷ yet it is a fact that this disguise is dangerous and produces victims.

Although Taslima Nasreen or the Hefajat-e-Islam kinds of events seem to take up much space in the news and the papers, they do not exhaust all that there is to say on Islam. Bangladesh is home to many, perhaps the silent majority of truly religious and benevolent people.¹¹⁸ It is they who should come forward and face their brethren.

Finally, what is said for Hinduism above may forcefully be restated here for Islam too. It will be the lived out faith experience of great Muslim believers which will show the way beyond vulgarisation and politicisation of the Islamic creed. As already said above, the struggle within Bangladesh between Islam and Islamism is on, an internal struggle certainly, which however can be helped from the outside. Recollecting El Fadl’s words, the West could try and, at least, remove the reasons for the “widespread perception, and reality, of Western hypocrisy in the human rights field.” This would certainly be a great step forward.

CONCLUSION

The paper has attempted to focus on the relationships between the concept of human rights and religions in Asia, particularly in Bangladesh. To do so it has been necessary to contextualise the argument in its wider modern debate.

A first section, starting out from the statement of human rights as a dynamic concept, has attempted a reconstruction of the concept’s development and changes from its introduction in 1948. Globalisation processes have then been recognised as the important and general context in which these changes have taken place. The latter have been identified on three levels: changes in the content of human rights particularly in their shift from individual to collective; changes at the level of players, so that not only states but both transnational companies and movements have now a say in the field of human rights; and, finally, changes in the manner in which human rights find justification.

Significantly, this history brings up two considerations. The first, a secular justification of human rights may not be consistent with Asian religio-cultural sensitivity. The second,

116. When many thought that secularism, because of the present Awami League government, was taking serious roots in the country, the administrative election in a number of municipalities showed unmistakably that the ruling party was clearly trailing behind the opposition, strongly backed by Hefajat, Jamaat and like-minded parties. See Ananta Yusuf, “Mixing Religion with Politics.” In *The Daily Star*, 12–7–2013. See also Staff Report, “Triumph of ‘Atheist’ Card.” In *The Daily Star*, 17–6–2013.

117. E. M. Zechenter, “In the Name of Culture: Cultural Relativism and the Abuse of the Individual,” op. cit., 340.

118. It is difficult to reference this silent majority, exactly because it is silent. However here and there sometimes there are reflections and articles in which Islam as a faith more than a political ideology is discussed. See for instance S. A. Khan, “A Land of Many Muslims but Little of Islam.” In *The Daily Star*, 25–7–2013.

the debate surrounding changes in the human rights compact clearly brings up the question of its universality and significance for the whole of humanity.

The second section of the paper has attempted an enquiry into the reasons which oppose the universality of human rights, Western ethnocentrism being one of them. Facing the question of cultural relativism in its various formulations, it is recognised that such positions do not do justice to culture intended as a dynamic and living organism, always "on the move," in continuous adaptation with its environment. If philosophical or theological foundations appear to be insufficient to justify either universalism or relativism, the paper, however, decidedly chooses universalism as itself part of humankind's tradition of practical morality. As US Secretary of State, Warren Christopher, once asserted "we cannot let cultural relativism become the last refuge of repression."¹¹⁹ The paper in fact recognises that it is universalism only which can better protect human dignity. Cultural particularities may also intervene at the level of interpretation or even more at the level of implementation; they cannot certainly modify the substance or content of human rights.

The third and last section tries to enquire into the possibility of religious traditions coming to the help of the human rights compact, particularly in the context of Bangladesh. Hinduism and Islam are then respectively analysed. Hinduism in its multiform composition shows both the possibility and the impossibility to be of help and support to the concept of human rights. Much will depend on the faith elaboration and interpretation of great men, the like of Rammohon Ray and Gandhi. Islam in its more monolithic configuration presents perhaps more difficulties.

Its deleterious contraposition to the West, together with its modern vulgarisation, in striking contrast with its past humanistic tradition, shows an Islam, to say the least, weary of the idea of human rights. However, while it is suggested that the West should strive to eliminate its own prejudices towards and interferences with Islam, and so removing a reason for Islam's mistrust, the latter itself will have to sort out its own interpretation, in a struggle which appears to be wholly internal to it. In the context of Bangladesh while Hinduism does not seem to play any political or public roles, Islam reflects the contradictions pointed out in the Islamic world generally. The fact that in Bangladesh the politicization of Islam takes place in a weak polity, perhaps, augments difficulties. It has been shown in fact that here the state is at the mercy of Islamic voices, true or false that they may be.

Despite the apparent failure of religions to become props to the concept of human rights in Bangladesh (and elsewhere), it remains that "convergence, *approchement* of religion and human rights, is not an idle dream but a justifiable hope."¹²⁰

Religions in fact may provide the idea of human rights with a bridge between rights and duties, individual and communitarian, material and spiritual. This will not just come

119. Quoted in J. S. Lupp, "Human Rights and Islam," *op. cit.*, 211.

120. L. Henkin, "Religion, Religions and Human Rights," *op. cit.*, 238.

about by itself but will be the outcome of a degree of soul-searching that all religions should undertake. Eventually, cross-cultural and inter-cultural dialogues might do the trick.

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INDONESIA

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Since the 1945 proclamation of independence, Indonesian history has experienced major violations of Human Rights, especially, under the Suharto government. Among them, the worst one was Suharto's anti-communist repression which occurred after the never-clarified *coup d'état* attempt in 1965, and which resulted in no less than 500 thousand victims, and the subsequent discrimination against those who were allegedly affiliated with the Communist ideology. In transition times, just after Suharto's fall, more bloodshed took place in East Timor after the 1999 referendum that resulted in the creation of the independent state of Timor Leste.¹

Looking at these tragic facts, it seems strange to acknowledge that, conversely, the right of freedom of religion was quite well guaranteed during both Sukarno's and Suharto's tenure. In particular, Suharto succeeded in controlling interreligious conflicts

1. K. Christie and D. Roy, *The Politics of Human Rights in East Asia* (London and Sterling, Virginia: Pluto Press, 2001), 142–47.

by promptly repressing them at their beginning. In Suharto's time, interreligious, ethnic and social conflicts were categorized under the acronym SARA, standing for "ethnic, religious or social groups," and they were harshly dealt with. For this reason, fundamentalist and intolerant movements did not have the space to operate with impunity during the *Orde Baru* (Suharto's government) era.

Paradoxically, after the fall of Suharto in 1998, the advent of democracy and the consequent improvement in freedom of expression, have given radical groups the possibility to organize, to publically express their ideologies and to take action. Statistics clearly show that the dictatorship of Suharto was better able to control interreligious intolerance and violence related to the following democratic governments.² The current situation in the Middle East, as an outcome of the so-called Arab Spring, only confirms that sometimes democracy is unable to protect minority groups. Then, it is not by chance that radical organizations arose after Suharto's fall. For example, the FPI (Islamic Defence Front) was founded in 1998 in Jakarta, the GARIS in 1998 in Cianjur, Tholiban in Tasikmalaya in 1999, Majelis Mujahidin Indonesia in Yogyakarta in 2000, and the Forum Umat Islam (FUI) in Jakarta in 2005.³ The terrorist bombing attacks on Christian churches around the year 2000 and, even more, the interreligious conflicts in Moluccas and Sulawesi at the beginning of the second millennium,⁴ that cost thousands of victims, confirm this view.

The purpose of the paper is not to analyse single events in which religious freedom has been violated in Indonesia. Rather, its scope is to try to understand the elements that can facilitate or directly cause violations of interreligious freedom in the Indonesian context. Therefore, the paper will reflect on the Indonesian Constitution and on the attitude of Islam towards other religions. Then, the discourse will consider Islamic fundamentalism and the attempt to enforce Shariah in civil legislation. The final part of the paper will refer to those institutions that can facilitate the right to religious freedom or, on the contrary, *de facto* support its violation.

Special attention will be reserved to Islam as one of the elements that heavily influence interreligious relationships in the country, since approximately 88% of Indonesian population are Muslims. Moreover, at the present time, Islamic fundamentalism is playing an important role in destabilizing interreligious harmony in the country. To be fair, it must be admitted that Islamic fundamentalism is not the only expression of religious radicalism in the country. In some cases, Christian fundamentalism too, performing arrogant and disrespectful proselytism, is a potentially disturbing element in interreligious relationships. Nevertheless, in the Indonesian context, its influence is rather insignificant, compared to that of radical Islam.

2. E. Sontaky, ed., *Syariat Islam Urgensi dan Konsekuensinya* (Jakarta: Penerbit Komunitas Nista, 2003), 117.

3. See I. Hasani and B. Tigor Naipospos, eds., *The Faces of Islam Defenders: Religion Radicalism and its Implications on Assurance for Religious/Belief Freedom in Jabodetabek and West Java* (Jakarta: Pustaka Masyarakat Setara, 2010), 28.

4. See *Asia News*, at <<http://www.asianews.it/notizie-it/Molucche-e-Sulawesi,-cresce-la-tensione-5601.html>>.

FREEDOM OF RELIGION IN PANCASILA AND CONSTITUTION

In spite of being the country with the largest number of Muslims in the world, Indonesia has never been a confessional state based on the Islamic law, the Shariah. Being aware of the multi-religious composition of Indonesian society and the concrete risk of future interreligious conflicts, Sukarno and Hatta—respectively the first president and vice-president—opted for the definition of Indonesia as a non-religious but also non-secular/non-atheistic nation. They were concerned both to accommodate the religious soul of most Indonesians, which does not fit with a mere secular conception of the state, and the necessary respect towards religious minorities. Sukarno and Hatta found in the Pancasila (the Five Principles) the favourable ideological tool to give consistency to such a project.⁵

It is widely acknowledged that Pancasila has contributed greatly to building harmony among the diverse ethnic and religious groups, which constitute the multiform Indonesian society. During his visit to Jakarta in 1989, John Paul II attested that

The philosophy of Pancasila which has inspired and guided your national growth very fittingly recognises that the only firm foundation of national unity is respect for all: respect for the differing opinions, convictions, customs and values which mark Indonesia's many citizens.⁶

The reason for such a successful outcome can be found in the Indonesian cultural background. As a matter of fact, the principles of Pancasila, formalized at the moment of the declaration of independence, are rooted in ancient Indonesian traditions and culture, especially that of Java. The term “Pancasila” was introduced to Indonesia by Buddhism during the thirteenth century. Later, King Kartanegara (1268–1292) promoted the practise of its principles, whilst Pancasila was finally introduced into the literature during the kingdom of Hayam Wuruk (1350–1389). Therefore, Pancasila is not an ideology created *ex-nihilo* by the founding fathers, aimed at supporting the advent of the new-born nation's project, but truly represents the compilation of those ethical values which, from time immemorial, have belonged to the Indonesian people.⁷

The path towards the adoption of Pancasila met with some obstacles, especially with regard to the first *sila*, namely the “belief in one God”. Some Muslims, who were members of the committee in charge of Pancasila's formulation, endorsed the so-called “Jakarta Charter,” advocating the insertion of the words “with the obligation to practise Islamic law for Muslims.” This endeavour to introduce Shariah into Pancasila immediately invited

5. See A. Suaedy, ed., *Islam, The Constitution, and Human Rights: The Problematics of Religious Freedom in Indonesia* (Jakarta: Wahid Institute, 2010), 33.

6. Speech delivered in Jakarta at Istana Negara 9.10.1989. Insegnamenti di Giovanni Paolo II: XII, 2, 1989, 826, quoted by W. Chang, *The Dignity of The Human Person in Pancasila and the Church's Social Doctrine: An Ethical Comparative Study* (Quezon City, Philippines: Claretian Publications, 1997), 1.

7. See W. Chang, *The Dignity of the Human Person*, op. cit., 9; 19.

the reaction of the nationalists, especially the Christian nationalists,⁸ who strongly protested on the basis of the Christians' contribution in the struggle for independence. The obligation of Shariah for the Muslims was perceived as an attempt to promote discriminating regulations in the multi-religious Indonesian society, if not the first step towards the implementation of the Islamic State. In the end, the Jakarta Charter was rejected and Pancasila was ratified together with the Constitution on August 18, 1945, in its definitive formulation as its first point states: "the Belief in the One God," without any mention of Shariah.⁹ Therefore, the five points of the Pancasila, which are put as the preamble to the Indonesian Constitution, are: 1) Belief in the One and only God; 2) just and civilized humanity; 3) the unity of Indonesia; 4) democracy, which is guided by the inner wisdom in the humanity arising out of deliberation amongst representatives; 5) social justice for the whole of the People of Indonesia.

The Constitutional text refers to the topic "religion" in Chapter IX, article 29, which states: "1) The State shall be based upon the belief in the One and Only God. 2) The State guarantees all persons the freedom of worship, each according to his/her own religion or belief."¹⁰ The Constitution, asserts that everyone enjoys the same rights in religious matters. Everybody is free to choose his or her own religion and cannot be coerced by others, since religious freedom represents an inalienable right of every person. Besides, the Government and all citizens are obliged to protect the harmony and mutual respect among different religions, so that every individual can enjoy the right to worship and express his or her faith. Any restriction on this right, including the limitations in building houses of worship, contradicts this constitutional principle.

Basically, article 29 of the Constitution states the same principle that is expressed by article 18 of the 1948 Universal Declaration on Human Rights (UDHR), which asserts:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.¹¹

8. Strong criticisms were addressed by Johannes Latuharhay, a Protestant lawyer graduated from Leiden University, and Ki Bagoes Hadikusumo, Muslim, who saw the Jakarta Charter's formulation as not representative of the multi-religious composition of Indonesian society. The Christians of the Eastern Regions also strongly refused the Jakarta Charter. See W. Chang, *The Dignity of the Human Person*, op. cit., 16–7. See also N. Madjid, *Islam Agama Kemanusiaan, Membangun Tradisi dan Visi Islam Indonesia* (Jakarta: Paramadina, 2003), 4–5.

9. The Pancasila formulation has never been changed ever since, in spite of the fact that the Constitution went through 4 amendments (1999, 2000, 2001, 2002) and a new attempt at reintroducing the Jakarta Charter's formulation occurred in parliamentary discussion in 2002. See S. Musdah Mulia, *Islam dan Hak Asasi Manusia: Konsep dan Implementasi* (Yogyakarta: Naufan Pustaka, 2010), 38–9.

10. English translation of the Indonesian Constitution, at <<http://www.embassyofindonesia.org/about/pdf/IndonesianConstitution.pdf>>.

11. Universal Declaration of Human Rights, at <http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf>.

Nevertheless, despite the similarities, some differences between the constitutional text and article 18 of UDHR must be pointed out. Firstly, the UDHR appears more universal: believing in God is considered a right, whilst both the Pancasila and article 29 of the Constitution make it compulsory for all citizens. Consequently, all forms of atheistic activities are forbidden.¹² Several times this fact was used as a political tool in order to curb political enemies or to discriminate against minority groups.

The most tragic event on this regard, was the repression of the Communists (1965). Atheism became one of the main pretexts on which Suharto's propaganda relied in order to mobilize the masses, especially religious movements such as Nahdlatul Ulama, to fight the enemies of both the Nation and God.¹³ Moreover, the belief in one God, clearly does not match with theological conceptions of certain religions, such as Hinduism and Buddhism, which in Indonesia were compelled to be considered "monotheistic" religions.¹⁴

Article 29 of the Constitution mentions the term "belief" (*kepercayaan*) alongside "religion." This word looks like a meaningless addition, but unfortunately, it has provided the basis for the distinction between religion and belief that has produced some critical consequences. In the Indonesian context, separating religion from belief has become the justification for the further distinction between officially "recognized" religions, namely Islam, Catholicism, Protestantism, Buddhism, Hinduism, and Confucianism (the latter was recognized only on 2000)¹⁵ and the "unofficial" ones, including numerous native religions which are spread all over the Archipelago. Besides, even if the Constitution guarantees the right to embrace a belief outside the six official faiths, actually, the "unofficial" religions undergo discrimination or are even banned.¹⁶

Assuredly, if the Indonesians were free to choose their own faiths without any pressure, many people would leave the official religions to embrace their traditional beliefs once more.

Another matter to consider is the right to convert to a different religion. The UDHR recognizes the right to change religion as a non-derogable right inherent to all human beings and therefore it cannot be suspended under any circumstances. In fact, the Indonesian Constitution guarantees the right to embrace the religion of one's choice, but

12. See W. Chang, *The Dignity of the Human Person*, op. cit., 56–7.

13. See A. Sahal, "Islam, Maaf dan PKI," *Tempo*, 2000, April 9.

14. According to Siti Musdah Mulia, article 29 of the Constitution defines Indonesia as religious State based on the belief in one God. However, the article does not state that the concept of religion should be based on the belief in one God, in which case the State should restrict religious freedom of those who are not monotheist, that goes against the second part of the same article. Siti Musdah Mulia thinks that the norm of the belief in one God applies merely to the State and not to individuals. Thus, the State must carry out its duties in favour of the Country by taking inspiration from religious values, whilst the second part of article 29 guarantees the largest freedom to individuals on matters of faith. See S. Musdah Mulia, *Islam dan Hak Asasi Manusia*, op. cit., 34–5.

15. See <http://www.bbc.co.uk/indonesia/laporan_khusus/2011/04/110407_agamakong.shtml>.

16. Under the rule of *Orde Baru*, more than one hundred indigenous religions and sects were banned. See S. Musdah Mulia, *Islam dan Hak Asasi Manusia*, op. cit., 41.

does not explicitly say whether a person can change his or her religion once this choice is made. In this respect, it is interesting to notice that the 1950 *ad interim* Constitution guaranteed the right to convert to a different religion. The 1950 Constitution lasted only several months during the period of time in which Indonesia became a Federal State (1949–1950).¹⁷ *De facto*, the strongest obstacle against the right of conversion is currently represented by the prohibition to convert from Islam (*murtad*) to other religions.

THE AMENDMENTS TO THE CONSTITUTION AND THE RATIFICATION OF ICCPR

The original 1945 Indonesian Constitution is widely appreciated for the emphasis on human rights and democracy. Nevertheless, some scholars and legal experts believe that some improvements were necessary, also because the original Constitution was issued as a provisional document to be ameliorated in the future. According to Mohammad Mahfud, the former head of the Constitutional Court, the original text was weak on Human Rights issues, and practically allowed authoritarian forms of government as, in fact, happened in Sukarno's and Suharto's times. Both governments could claim to have been ruling according to the Constitutional mandate, while limiting, or patently violating the fundamental rights of Indonesian citizens. For this reason, some amendments to the 1945 Constitution were necessary to support the transition to democracy after Suharto's fall in 1998.¹⁸

Four amendments were added to the Indonesian Constitution between 1999 and 2002. Some important changes were made about the president and government's authority in relation to the Parliament's, and on the redistribution of powers inside the State's institutions. In the year 2000, the second amendment added the xA chapter to the Constitution, 10 articles (28A–28J) in all, which were specifically aimed at inserting the spirit and the themes expressed by the 1948 Universal Declaration of Human Rights into the Constitution. Through these changes and improvements, the Constitution has finally come to broadly guarantee respect for the fundamental rights of Indonesian citizens, insofar as its implementation, both in legal results and concrete policies, will adopt and realize the Constitutional mandate.¹⁹

Regarding the specific topic of freedom of religion, some important improvements were made through the amendments, especially those regarding chapter xA. The current constitutional formulation better guarantees the right to embrace a religion or a belief, and the right to worship freely according to one's faith (28E). According to Ahmad Suaedy, if the Constitution broadly guarantees the freedom of religion, including the right to choose it freely, this means that every citizen also has the right to convert to a different

17. See A. Suaedy, ed., *Islam, The Constitution, and Human Rights*, op. cit., 34.

18. See M. Mahfud, "Politik Hukum HAM untuk Ketatanegaraan Baru." In S. Marzuki, *Tragedi Politik Hukum HAM* (Yogyakarta: Pustaka Pelajar & Pusham UII Yogyakarta, 2011), x–xii.

19. See S. Marzuki, *Tragedi Politik Hukum HAM*, op. cit., 201–4.

religion. Therefore, the state does not have the right to outlaw conversion, even though conversion might be forbidden by one of the religions present in the country.

Following the spirit of article 18 of 1948 Universal Declaration on Human Rights, article 28I of the Constitution currently lists freedom of religion among the fundamental rights of every person, and therefore it acknowledges a non-derogable right. The Constitutional text states:

The rights to life, freedom from torture, freedom of thought and conscience, freedom of religion, freedom from enslavement, recognition as a person before the law, and the right not to be tried under a law with retrospective effect are all human rights that cannot be limited under any circumstances.

This means that freedom of religion cannot be limited or suspended by anybody, including the State, even in emergencies.²⁰

Nevertheless, the Constitution seems to be quite inconsistent on this point, because in fact it allows restrictions to freedom of religion “based upon considerations of morality, religious values, security and public order in a democratic society”, as is stated in article 28J (2). Unfortunately, the formulation of the article sounds quite ambiguous and it has often been misinterpreted, or even manipulated, in order to discriminate against religious groups labeled as “deviant.” According to the 2013 report by Human Rights Watch, the article 28J

sets out legal duties that in practice are being used to curb religious freedom, particularly of religious minorities... By 2010, Indonesia had at least 156 statutes, regulations, decrees, and by-laws that restrict religious freedom, many of them justified by reference to article 28J (2).²¹

Besides the amendments to the Constitutional text, another important step towards the implementation of freedom of Religion in Indonesia was the ratification of the International Covenant on Civil and Political Rights (ICCPR), through law No. 12/2005. Indonesia came to this ratification quite late, because the ICCPR was legalized by United Nations in 1966, i.e., 39 years earlier. Currently, the Covenant is ratified by 95% of the 192 of member states of the United Nations.

According to the Covenant, the rights of freedom of thought, conscience and religion must be protected and guaranteed. Verse 1 of article 18 of the Covenant states:

Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in

20. See A. Suaedy, ed., *Islam, The Constitution, and Human Rights*, op. cit., 36.

21. See E. Pearson and P. Kine, eds., *In Religion's Name: Abuses against Religious Minorities in Indonesia* (United States of America: Human Rights Watch, 2013), 27–8.

public or private, to manifest his religion or belief in worship, observance, practice and teaching.

The right of freedom of religion is acknowledged by the ICCPR as one of the human rights, coherently with the article 18 of Universal Declaration of Human Rights. Therefore, freedom of religion is considered a non-derogable right. Article 18 of ICCPR also guarantees the freedom of embracing the religion of one's choice, including the right to be atheist or to convert to a different religion. Moreover, verse 2 of the same clause forbids coercion in religious matters.

Similarly to article 28J of the Indonesian Constitution, some restrictions to freedom of religion are allowed by article 18 verse 3 of ICCPR. Nevertheless, the Covenant strictly limits such restrictions by regulating only the expressions in worshipping: "Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others."

Therefore, freedom of religion must be guaranteed in every circumstance, although the manifestation in worship and in the external expression of faith can be regulated under certain grave circumstances.²²

By ratifying the Covenant in 2005, Indonesia has made the ICCPR valid law in Indonesia. This means that the State did not only make a formal agreement on some moral principles. Rather, Indonesia has committed itself before the international community to the obligation of implementing the contents of the Covenant at legislative, administrative, judicial and practical levels. Consequently, the Indonesian legislation too must be revised in those points that do not match with the indications given by the Covenant.²³

In summary, despite some discrepancies in the Constitutional text, the current formulation of the Indonesian Constitution, alongside the ratification of ICCPR, upholds: 1) freedom of religion as a human right; 2) the right to choose one's religion without coercion; 3) the right to convert to a different religion; 4) finally, that restrictions to freedom of religion apply only to the expressions of faith.

ISLAM AND OTHER RELIGIONS

It is not possible to think about Indonesian society without taking into account Islam and its strong influence in shaping the social and political picture of the Archipelago. Indonesia has the biggest Muslim population in the world, and despite the fact of not being

22. See A. Suaedy, ed., *Islam, The Constitution, and Human Rights*, op. cit., 30–1.

23. The General Commentary on article 2 of the Covenant states: "The Committee considers it necessary to draw the attention of States parties to the fact that the obligation under the Covenant is not confined to the respect of human rights, but that States parties have also undertaken to ensure the enjoyment of these rights to all individuals under their jurisdiction." Quoted in A. Suaedy, ed., *Islam, The Constitution, and Human Rights*, op. cit., 19.

an Islamic Country, Islam is very influential on social and cultural issues, as well as on legislation, politics and concrete policies. Moreover, the separation between Islam and politics is also inconceivable in almost every Muslim environment.

Since the Prophet's time, Islam has never been for the mere spiritual guidance of its followers, but rather Islam has always inspired the renewal of society, politics and culture. Islam is a revolutionary force, which, since its beginning, struggled for the construction of a more just and fraternal society, where everybody enjoys the same rights and is able to attain to his or her wellbeing.

Islam is *rahmatan lil 'alamin* (blessing for the whole universe) and therefore religion cannot be confined to the solely spiritual *milieu*.²⁴ For these reasons, if we try to understand the implementation of the right of freedom of religion in Indonesia, Islam must be taken into consideration as one of the main elements that strongly influence interreligious relationships within Indonesian society.

Since its origins, Islam has dealt with multiculturalism and interreligious relationships. Islam developed in a multi-religious milieu, consisting of polytheistic beliefs alongside Christian and Jewish traditions. The Prophet himself personally experienced positive relationships with the believers of other religions and many verses of the Holy Quran uphold a tolerant and inclusive vision of other faiths.²⁵

The Holy Quran does not allow the believers to force people to embrace Islam. The true faith must be the fruit of the free choice of the individual, a decision taken personally in front of Allah and according to one's conscience. This idea is expressed in the verse that says: "Let there be no compulsion in religion." (QS. *al-Baqarah* [The Cow][2]: 256). The Muslims are called to preach the Message, rather than to force people to convert to Islam. If the others turn a deaf ear to the call of faith, then they are personally responsible for their behaviour: "Therefore do thou give admonition, for thou art one to admonish. Thou art not one to manage (men's) affairs." (QS. *al-Ghasyiah* [The Overwhelming, The Pall][88]: 21–22) and again: "If then they run away, We have not sent thee as a guard over them. Thy duty is but to convey (the Message)." (QS. *al-Syura* [Council, Consultation][42]: 48).

Surprisingly, a multi-religious society seems to be consented to by God. Therefore, it is not in accordance to the will of God that all people will embrace Islam, because the conversion to true faith is reserved only for those who are predestined: "If it had been thy Lord's will, they would all have believed,—all who are on earth! Wilt thou then compel mankind, against their will, to believe! No soul can believe, except by the will of Allah."

24. One of the most inspiring Islamic Documents on the theme of brotherhood, justice and equal dignity of all mankind is the Sermon of Arafah, which is also the last discourse of the Prophet before dying. See <http://www.themodernreligion.com/prophet/prophet_lastsermon.htm>; see also D. Effendi, "Menyimak Kembali Pesan Abadi Agama-Agama." In J. B. Oentoro, ed., *Indonesia Satu, Indonesia Beda, Indonesia Bisa: Membangun Bhinneka Tunggal Ika di Bumi Nusantara* (Jakarta: Gramedia Pustaka Utama, 2010), 139–69; N. Madjid, *Islam Agama Kemanusiaan*, op. cit., 209–10.

25. See A. Suaedy, ed., *Islam, The Constitution, and Human Rights*, op. cit., 78–9.

(QS. *Yunus* [Johan][10]: 99–100).²⁶ The Holy Quran seems also to accept religious pluralism as the normal situation in which the believers are called to live. This idea is expressed by the Sura *al-Kafirun* (The Disbelievers), especially in its last verse: “To you be your Way (religion), and to me mine” (QS. *al-Kafirun* [The Disbelievers, Atheists][109]: 6).

Some verses of the Holy Quran uphold peaceful interreligious relationships. The Holy Quran invites People of the Book (Christian and Jewish), to reach an agreement in order to live together in peace, by finding a “common word” (*kalamatun sawa*) (QS. *Al-’Imran* [The Family of Imran][3]:64),²⁷ and also asks the Muslims to do good to those non-Muslims who have not fought against or expelled the believers (QS. *Al-Mumtahanah*, (The woman to be examined) [60]:8–9).²⁸

According to Islam, the revelation of God’s will has occurred throughout human history even before the descent of the Holy Quran, which has finally brought to perfection the previous traditions. Therefore, both the Torah and the Gospel are given by God himself, as guidance and also as judgment criteria on human faith. Consequently, the Holy Quran shows a surprisingly liberal attitude regarding the other religions of the Book: the Jewish and the Christian should not be compelled to conduct in accordance with the Holy Quran’s decrees, but rather they will be judged on the basis of the commandments they find in their respective Scriptures.²⁹

It was We who revealed the Law (to Moses): therein was guidance and light... And in their footsteps we sent Jesus the son of Mary, confirming the Law that had come before him: We sent him the Gospel: therein was guidance and light, and confirmation of the Law that had come before him: a guidance and an admonition to those who fear God. To thee We sent the Scripture in truth, confirming the scripture that came before it, and guarding it in safety: so judge between them by what God hath revealed, and follow not their vain desires, diverging from the Truth that hath come to thee. To each among you have We prescribed a Law and an Open Way. If God had so willed. He would have made you a single People, but (His Plan is) to test you in what He hath given you: so strive as in a race in all virtues. The goal of you all is to God” (QS. *Māida* [The Table Spread][5]:44–48).

Finally, the Holy Quran not only assures respect and tolerance to the Christian and the Jews, but it even considers them to be Muslim, namely submitted to Allah, insofar as they live according to the will of God: “And dispute ye not with the People of the Book... but say, ‘We believe in the Revelation which has come down to us and in that which came

26. See also QS. *al-Hud* [The Prophet] [11]:118–19.

27. This verse inspired the open letter of 138 prominent Muslim leaders scholars addressed to Christian leaders on Oct 13, 2007, on the theme of interreligious dialogue between the three monotheistic religions, *The Common World between Us and You*. See <<http://www.acommonword.com/the-acw-document/>>.

28. See S. Musdah Mulia, *Islam dan Hak Asasi Manusia*, op. cit., 11.

29. See N. Madjid, *Islam Agama Kemanusiaan*, op. cit., 92–3.

down to you; our God and your God is One; and it is to Him we bow (in Islam)''' (QS. *al-'Ankabūt* [The Spider][29]:46).³⁰

These examples taken from the Holy Quran undoubtedly show the inclusive attitude of the Holy Book towards other religions. Such teachings should be enough to put an end to intolerance and suspicion inside a multi-religious society, but unfortunately, it seems that still many people, including Muslims, are not aware of such broadmindedness. According to Siti Musdah Mulia, there is a lack of socialization of such values, so that the inclusive and tolerant teachings of the Holy Quran are still broadly unknown.³¹

After having pointed out the inclusive attitude of the Holy Book towards non-Muslim faiths, it is worthwhile to take into consideration two other problematic issues related to freedom of religion, which Islam has dealt with since the beginning, namely the respect for minorities and the conversion from Islam to other religions.

Since Medina's time, Islam experienced coexistence with non-Muslim communities in the same social environment, in particular Jewish and Christian communities. An Islamic tradition reports that the Prophet himself welcomed some Christian priests in Medina. They spent some days together in the Medina Mosque discussing theological matters, such as the function of Isa (Jesus) as Prophet and on the unicity of God. The Christian guests even slept and prayed, according to their faith, inside the same Mosque.³²

According to early traditions, non-Muslims living inside Islamic society were accepted and also protected. They were called *dzimmin*, a word that stands for "protected people". The Prophet himself forbade the Muslims to damage non-Muslim houses of worship or to disturb the *dzimmin*. Nevertheless, the non-Muslims were under the obligation to pay a special tax (*jizah*) in exchange for protection and, on the whole, they were not acknowledged as having the same rights as the Muslims: in fact they were second-class citizens.³³

However, we must also avoid the mistake of judging the *dzimmin*'s conditions in Medina at the time of the Prophet on the basis of today's cultural parameters and human rights' awareness. Rather, the commitment to protect religious minorities should be considered a noticeable step forward in respecting the rights of the weak compared to pre-Islamic customs and conditions in Medina at the time of the Prophet. Such tolerant attitudes should inspire equal treatment and status for everybody in today's societies.

The second important issue is about the right to convert to a different religion. Apostasy (*riddah*, *murtad*) is normally considered one of the worst sins that a person can commit. In Islamic tradition, apostasy can assume a variety of forms such as denying the existence of God, rejecting His characteristics, rejecting God's Messengers, rejecting the

30. Ibid., 103 (footnote 1).

31. See S. Musdah Mulia, *Islam dan Hak Asasi Manusia*, op. cit., 11; for more Quranic quotations on inclusivity of Islam see N. Madjid, *Islam Agama Kemanusiaan*, op. cit., 138–45.

32. M. Monib and B. Islah, *Islam dan Hak Asasi Manusia dalam Pandangan Nurcholish Madjid*, op. cit., 190–91.

33. A. Suaedy, ed., *Islam, The Constitution, and Human Rights*, op. cit., 93.

status of Muhammad as Prophet, rejecting the principles of Islam, or embracing what is forbidden.³⁴ According to the Holy Quran, *riddah* refers to those people who have left Islam to embrace other religions or to become non-believers. Allah does not permit people to leave Islam, and therefore their unavoidable eschatological destiny will be hell. However, the Quranic verses do not describe in detail the boundaries for calling a person apostate. Therefore, we must conclude that the one who can establish whether a person is *murtad* or not, is only God, and that conversion is a private affair between humans and God himself. The punishment for apostasy is God's prerogative only.³⁵

A more radical attitude towards the apostates can be found in the *hadiths* (sayings or acts ascribed to the Prophet). One of them reports that the Prophet ordained to kill thieves who had also left Islam by cutting their hands and feet, after gouging out their eyes. Other *hadiths* report that the Prophet sentenced to death people who left Islam, but in some other cases he acted differently. After the conquest of Mecca in 630, some apostates were sentenced to death because of their crimes against the Muslim community—they were thieves—, but the other infidels were given amnesty. Therefore, it is clear that in several situations the Prophet himself approved the killing of the apostates.

Nevertheless, it is important to underline that the death penalty was imposed because of the crimes perpetrated by the infidels, and not mainly because of their status as *murtad*. Moreover, such facts must be also contextualized, because they occurred in time of war, hostility, intimidation and frequent infiltrations by the enemies of the Muslims. Leaving Islam in such context when virtually all the Muslims were soldiers called to fight for the establishment of Islam, meant, not only committing apostasy, but also desertion, betrayal, and shifting to the enemy's side, putting in danger the future of Islam itself.

Finally, it is worth mentioning a famous *hadith* (this tradition is only in the *hadiths* and not in the Holy Quran) that is often quoted by the Islamists in order to justify their intolerant conduct. The *hadith* states: "Whosoever converts religion, kill him". Ahmad Suaedy comments it as follows: "Experts have discovered weaknesses in the transmission of this *hadith* to the extent it can no longer be used as justification for imposing the death sentence on apostates." Once again, apostasy is forbidden by both the Holy Quran and the *hadiths*, but this does not mean that the punishment for this severe sin is left to humans. The punishment is reserved to God on the judgment day.³⁶

THE EMERGENCE OF ISLAMIC RADICALISM IN INDONESIA

It is broadly acknowledged that Islam reached Indonesia and spread there in a peaceful way. Islam was brought to the Archipelago mainly by Indian and Chinese traders, and

34. Ibid., 80.

35. Ibid., 81.

36. Ibid., 84 and M. Monib and B. Islah, *Islam dan Hak Asasi Manusia dalam Pandangan Nurcholish Madjid*, op. cit., 192.

Sufi preachers.³⁷ On the whole, the process of diffusion of Islam through the Archipelago did not generally arouse great conflicts, and it must be admitted that the spread of Islam was much faster and easier than the diffusion of Christianity, even though Christian missionaries probably reached Indonesian islands before the Muslims.³⁸ Moreover, Christian evangelization found strong support in the colonial powers (Dutch and Portuguese), whilst Islam spread without collaborating with foreign rulers. Thereby, Islam is not generally perceived as a “foreign religion” as are Protestantism and Catholicism, which by many are still considered “western” and “imported” religions.

One of the main elements that probably facilitated the success of Islamic mission in Indonesia, especially in Java, was the disposition of Sufi Islam to adapt to local customs and mentality. Being more interested in spirituality rather than in Shariah, the Sufi teachings broadly matched the traditional Javanese attitude, which is naturally inclined to contemplation and mysticism. Besides, Islam was able to take in the expressions of local traditions. The *wayang kulit* stories (shadow puppet stories) were adapted and used as means for teaching Islam. The mosques adopted the traditional Javanese architecture.

Islam allowed and promoted the pilgrimage to the graves of those clerics who were venerated as saints. For these reasons, Islam was quickly integrated into the local culture, and was able to take the heart of the Indonesian people.³⁹ However, such ability to adapt to local customs has also raised suspicion and rejection by the radical and conservative Islamic groups, that label Indonesian Islam as syncretic and impure. For this reason, several attempts to purify Islam in Indonesia has been made by radical and puritan movements throughout Indonesian history.

Transnational Radical Movements in Indonesia

Some of the radical groups active in Indonesia have an international background.⁴⁰ One of the main inspirational sources of radical Islam in Indonesia is represented by the Wahabi ideology, which originated in Saudi Arabia in the eighteenth century as the result of the alliance between two figures: Ibn ‘Abdul Wahab, who played the role of religious inspirational leader and renewer, and Muhammad Ibn Sa‘ud, who played the part of political ideologue. In 1746 they declared Jihad and started fighting for the purification of

37. See A. Azra, *Islam in the Indonesian World: An Account of Institutional Formation* (Mizan, Bandung 2006), 10–25.

38. In Barus, North Sumatra, a Church, probably Syrian Nestorian, was built in 645. The big diffusion of Islam in Indonesia occurred only during the Thirteenth Century. On the Barus Church see H.J.W.M. Boelaars, *Indonesianisasi: Dari Gereja Katolik di Indonesia Menjadi Gereja Katolik Indonesia* (Yogyakarta: Kanisius, 2005), 60.

39. On the Sufi orientation of Islam in Indonesia, see N. Madjid, *Islam Agama Kemanusiaan*, op. cit, 25–30; T. Michel, *Islam in Asia* (Estella: Editorial Verbo Divino, 1991), 17.

40. On transnational radical movements see A. Wahid, ed., *Ilusi Negara Islam: Ekspansi Gerakan Islam Transnasional di Indonesia* (Jakarta: Gerakan Bhinneka Tunggal Ika, the Wahid Institute, and Maarif Institute), 60–112.

Islam from any form of impurity. 15 years after the proclamation of jihad, they had already conquered most of the Arab territory, including Mecca and Medina.

The conquest of the Holy Land and the imposition of Wahabism under threat of the sword, has had strong consequences ever since, also in Indonesia. In fact, thenceforth all the *haji* pilgrims underwent Wahabi indoctrination, bringing back home the spirit to fight for the purification of Islam. Because of the hajis, Wahabism quickly spread inside the Islamic world and started fighting Sufism, Shia, and other Islamic currents, which were deemed to be syncretic, impure, misleading and heretical.

In Indonesia, the influence of Wahabi ideology firstly appeared during the *Padri* revolution in West Sumatra (1804–1837). Imam Bonjol, who is counted among the National Heroes, and other Muslim pilgrims were strongly influenced by Wahabism during their pilgrimage to the Holy Land. On their return to Sumatra, they started the struggle for the purification of what they considered “impure” Islam in the area, by killing the Sufi masters and imposing a more Arabic oriented Islam.⁴¹

The second major attempt to purify Indonesian Islam is represented by the Muhammadiyah Movement founded in 1912 by Ahmad Dahlan in Yogyakarta. This movement, at this time the second largest Indonesian Islamic organization (29 million of adherents),⁴² aims to reform Islam, according to Wahabi ideology, by purifying it from the cultural contaminations which Islam went through along the centuries in the Archipelago. The Muhammadiyah’s reformatory endeavour is in fact the attempt to reorient Indonesian Islam to ancient Arabic traditions. Therefore, despite being labeled as “modernist” because of their reformist spirit, Muhammadiyah’s idea of reformation is not really oriented towards novelty, but rather to bring Islam back to the original customs and culture of Medina during the time of the Prophet.⁴³

Responding to Muhammadiyah’s attempt at purifying Indonesian Islam, another movement, the Nahdlatul Ulama (NU), was founded several years after (1926). In contrast to Muhammadiyah, Nahdlatul Ulama promotes the preservation of the traditional Indonesian Islam, and this is the reason why, they are acknowledged as “traditionalist.” Counting more than 40 million adherents, at present NU is the largest Muslim Organization in the world.⁴⁴ At present, the Wahabi-Saudi can rely on oil money for supporting the spread of Wahabi ideology at the global level. Indonesia is not an exception: every year a large amount of money flows from Saudi Arabia to Indonesia for the construction of mosques, boarding houses, schools and universities, all Wahabi oriented.

Another transnational group is the Ikhwanul Muslimin (Islamic Brotherhood). This movement was founded by Hasan al-Banna in Egypt in 1928. Ikhwanul Muslimin was

41. See A. Wahid, ed., *Ilusi Negara Islam*, op. cit., 92–5; R. Saputra, ed., *Ketika Kebebasan Beragama Berkeyakinan, dan Berekspresi Diadili* (Padang: LBH Padang, 2013), 39–49.

42. Official Muhammadiyah Website, at <<http://www.muhammadiyah.or.id/>>.

43. Even though Muhammadiyah is oriented towards the Wahabi ideology, on the whole the movement must be counted among the moderate and tolerant Islamic groups in Indonesia.

44. Nahdlatul Ulama Official WebSite, at <<http://www.nu.or.id/>>.

raised in the context of western colonies in the Middle East. Hasan al-Banna fought against the foreign rulers, but also wanted to oppose the decadence of Islamic civilization, by teaching a purer Islam. The Ikhwanul Muslimin were also inspired by Fascism that was ruling Italy at the time, especially adopting its vision of totalitarianism and centralized power. Independence was the occasion for the Ikhwanul Muslimin to achieve their political aspirations, but in fact they did not gain power in Egypt.

Then, the founder of the Movement, Hasan al-Banna, was killed in 1949. Sayyid Qutb, the al-Banna's successor led the Movement towards a further radicalization against their political enemies. During the Nasser regime, the Ikhwanul Muslimin remained in the opposition as a revolutionary force inside Egyptian society, and only recently, after the Arab Spring, they have gained power. The ideology of Ikhwanul Muslimin has arrived in Indonesia too, and at present has its own political expression in the PKS party (Prosperous Justice Party), which has joined the ruling Yudhoyono's coalition.

The struggle for the purification of Islam in Egypt was very similar to that of the Wahabi's in Saudi Arabia, and therefore during the 60s, the two groups started joining their forces for the spread of their ideology in the world, taking advantage of the financial support coming from Riyad, especially after the rise of oil prices which occurred in the 70s. On the other hand, the Ikhwanul Muslimin provides the ideology for the formation of radical leaders.

Finally, it is worth mentioning the movement Hizbut Tahrir. This organization was founded in Jerusalem by Taqiuddin al-Nabbani in 1952 as a radicalization of Ikhwanul Muslimin's ideology, which was considered too moderate and accommodative towards the West. Hizbut Tahrir struggles for the purification of Islam, for the restoration of the international Islamic Caliphate and pan-Islamism. The Movement is at present forbidden in several countries (but not in Indonesia) and its headquarters are located in England.

Indonesian Radical Islamic Groups

Besides the transnational movements, some other fundamentalist organizations are operative in Indonesia. Like the international radical movements, they aim at the radicalization of Islam and the enforcement of Shariah, and some even struggle for the transformation of Indonesia into an Islamic state. As we have seen above, these groups apparently were able to organize and develop themselves after Suharto's fall, taking advantage of the freedom given by the enforcement of democracy.

Historically, the new radical movements have roots in old hardline organizations, such as Masyumi, Darul Islam and DDII (Council of Islamic Mission Indonesia). Masyumi was established in 1949 in Yogyakarta as the Muslim Union Party, and included members of Muhammadiyah and Nahdlatul Ulama as well. Its ideology was that of establishing the Islamic state, and, being incompatible with the Pancasila, it eventually was prohibited by Suharto. The Darul Islam was a radical Islamic organization, embracing the military way, aiming at the establishment of the Islamic state too. The movement was proclaimed in 1945, but ended in 1962, after its founder, Kartowuwiryo, was sentenced to death. The

third movement, the Dewan Dakwah Islam Indonesia (DDII), was established in 1977 by Masyumi. Its attitude is more missionary oriented rather than political, and responds to the issue of Christianization in Indonesia. DDII proposes the theme of the “Islamic Resurrection” and focuses on education. It has base camps in boarding schools, mosques, and universities. Some of its members have shifted to other more radical organizations, including terrorist ones.⁴⁵

The large number of hardline organizations in Indonesia makes it impossible to inquire into all of them, and therefore our consideration will be limited to the most representative, namely the FUI, the FPI and the GARIS.

The FUI (Islamic People’s Forum)⁴⁶ is a radical Islamic group born after Suharto’s fall. This movement is a cross-organization, with members coming from different radical Islamic organizations (the FPI, the GARIS, the MMI) and joining together under its umbrella. This organization struggles for the disbanding of heretical sects, such as Ahmadiyah, and opposes the groups professing liberal Islam. Several actions were performed by the FUI, including the one that, in April 2008, gathered together some hundred-thousand people in Jakarta, and which is considered to be the biggest demonstration against Ahmadiyah in the world.

The FUI supported the fatwas issued by the Majelis Ulama Indonesia (Indonesian Ulama Council) against the Ahmadiyah sect. Because of the FUI’s support, another fatwa was issued by the same Council against the ideas of pluralism, liberalism and secularism. It is also worth considering that the transnational movement Hizbut Tahrir has had a strong influence on the FUI. The FUI general secretary was also the leader of Hizbut Tahrir Indonesia, and oftentimes people identify the FUI with the HTI itself. The ideological principles of this movement are: 1) Islam is the Ideology; 2) Shariah is the only law; 3) Islam is the only solution to problems; 4) fighting together to enforce Islam; 5) fighting to defend and unite Islam under one Islamic leadership or *Khilafah Islamiyah*.

The second organization we take into consideration is the FPI, the Front Pembela Islam (Islamic Defenders Front). This movement was established in Jakarta in 1998 by Habib Rizieq Shiyab, the son of an Arab-Indonesian family. His father encouraged the Arabs to fight against the Dutch and for this reason he was sent to prison. Habib Rizieq Shiyab himself was imprisoned twice.

The first time he was convicted for insulting state authorities and for provoking the FPI to violently attack some nightspots in 2002–2003. The second time, he was accused of being the leader of the attack against the peaceful demonstration which was taking place in Monas square on 1 June, 2008, organized by the AKKBV (The National Alliance of Freedom of Religion and Belief) to uphold the right of religious freedom for minorities. During the attack, that occurred some steps away from the Presidential House, more than 60 people were injured, some of them seriously.

45. See I. Hasani and B. Togor Naipospos, eds., *The Faces of Islam Defenders*, op. cit., 30–5.

46. Ibid., 123–33.

The members of the FPI are of different social backgrounds. The élite consist of the ulama and *habaib*, who occupy the ideological role, followed by the intellectuals. After the leaders, there is the so-called *laskar*, the paramilitary troop, consisting of lower social class people with low educational backgrounds. Finally, there are the ordinary members, who join the FPI because they approve of its ideology or because they are attracted by the preaching of the FPI *ulamas*. The enrolment requirements for ordinary members are very basic: ability to read the Holy Quran, basic knowledge of Islam and of its principles, and the *syahadat* (the profession of faith).⁴⁷

The FPI began as an anti-immorality movement, performing dozens of sweeps in nightclubs. In 2002, 20 sweeping actions were carried out during Ramadhan. After one of them, one of the FPI members was killed, probably in an act of revenge. In 2005, the FPI changed its target, becoming anti-Ahmadiyah and anti liberal Islam. In 2004 the FPI forcibly closed the center of Ahmadiyah in Mubarak, Parung, West Java. Lately, the FPI was also involved in several actions against Christian churches.

It is the FPI that put pressure for the issuing of the Joint Decree for the banning of religious propagation activities of Ahmadiyah in 2008. This decree has become the justification for several further violent actions against the Ahmadis. The FPI also has strong relationships with political parties, individual politicians and even important state functionaries, including members of the Police and of the Army.⁴⁸ During the presidential election campaign in June 2009, the FPI officially supported the Kalla and Wiranto candidature, because of their commitment to disband Ahmadiyah.⁴⁹

The last group of hardliners is the GARIS, an acronym standing for Gerakan Reformis Islam (Islamic Reformist Movement). The organization was founded by H. Chep Kemawan, a real estate developer and plastic recycling entrepreneur. Almost all the GARIS activities are funded by H. Chep Kenawan's personal wealth. He was also involved in the foundation of the Bulan Bintang (Moon and Star) Party, but he quit in 2001. The movement opposes apostasy and heretical sects. The GARIS attacked Ahmadiyah in four villages in Cianjur in 2005. During the attack 43 houses, 4 mosques, 3 madrasas, 5 stalls and stores were destroyed. In 2007 the GARIS demonstrated and prevented a convention of the Catholic Holy Trinity community, in Lembah Karmel, Cianjur.

There are some common characteristics of the hard-line movements active in Indonesia. Firstly, a survey by the SETARA Institute on radicalism in Jakarta and West Java, surprisingly indicates that the common perception that radical Islamic organizations come from new-Wahabi and modernist groups (such as Muhammadiyah), is not completely true.

47. Ibid., 96; 136.

48. See E. Pearson and P. Kine, eds. *In Religion's Name: Abuses against Religious Minorities in Indonesia* (Unites States of America: Human Rights Watch), 19 and I. Hasani and B. Togor Naipospos, eds., *The Faces of Islam Defenders*, op. cit., 138.

49. See I. Hasani and B. Togor Naipospos, eds., *The Faces of Islam Defenders*, op. cit., 112.

In West Java, the traditional *pesantren* (boarding houses), which generally are affiliated with Nahdlatul Ulama, that is commonly considered tolerant and pluralist, have given their support to radical groups and also have become the mass base for the recruitment of their members. A survey held by the Malindo Institute in West Java in 2007, showed that the majority of *pesantren's* leaders approved the violent acts against the Ahmadiyah, who is perceived to be misleading and thus, according to them, must be disbanded. They also approved the demolition of Christian churches built without permission.⁵⁰

The doctrine of the radical movements can be summarized in several points,⁵¹ the first of which is to uphold Shariah.⁵² The radicals attempted to impose the Shariah on Muslims, through the insertion of *Piagam Jakarta* in the Constitution, on the occasion of the amendments between 1999 and 2002, but the attempt failed. Nevertheless, the policy of giving more autonomy to local governments has opened the door to Shariah, which is currently enforced in several areas through local regulations (*Perda*).⁵³

The second point is the struggle against immorality and weak faith, related to a *hadith* that states: "To maintain what is right and forbid what is wrong." The struggle for moralisation turns into actions against gambling, prostitution, alcohol, misleading sects, different interpretation of the Holy Books etc. The third is the assumption that most Christians have bad intentions towards the Muslims, namely to convert the Muslims to the Christian faith. The most popular verse among the radical leaders in this respect is taken from *al-Baqarah* [2]:120: "And never the Jews and Christians will be pleased with you unless you follow their Din (Creed)".⁵⁴

Regarding the strategy of the hard-line groups in enforcing Shariah, we can divide them into three categories. The first one is the group of those who refuse to compromise with the political system, such as the HTI (Hizbut Tahrir Indonesia). Normally they are not violent, even though they have been involved in some violent events, and some of their members join in underground and terrorist organizations. The second kind of hard-liners enter the political arena by means of Islamic parties. One of them is the PKS (Justice and Welfare Party), which in fact represents the political expression of the transnational *Ikhwanul Muslimin* (Islam Brotherhood) movement. The third category is represented by

50. Ibid., 99–101.

51. Ibid., 101–3.

52. Habib Rizieq, founder of the FPI, asserts that Allah, Who is the creator of the universe, has the right to create the regulations of his creation. He is the One who has the right to decide the limits of human norms, and, consequently, human beings must be obedient to the divine law, that is Shariah. See I. Hasani and B. Togor Naipospos, eds., *The Faces of Islam Defenders*, op. cit., 102.

53. See K. Zada, *Syariat Islam: Melihat Sudut Pandang Normatif-Kontekstual-Politik* (Jakarta: Unpublished Conference at Wisma Xaverian, Jakarta, 27 April, 2013).

54. See I. Hasani and B. Togor Naipospos, eds., *The Faces of Islam Defenders*, op. cit., 101–3; 178–80. Some practical implications of the fundamentalist doctrine are: to adopt the literal interpretation of the Holy Quran and *hadiths*, to not separate between religion (private) and state (public) domains, to refuse the democratic system which is perceived as too secular, to oppose freedom of religion, including the right to convert or to be atheist, and to fight against everything which is not Islamic. Ibid., 16.

those groups, or individuals, that struggle to introduce the fundamentalist agenda inside moderate Islamic organizations (Nahdlatul Ulama and Muhammadiyah) or in the governmental structures, in order to influence the making of laws and norms.⁵⁵

Finally, it is worthwhile to consider the composition of radical movements and the motivations which push people to embrace radicalism. As we have seen above in the case of the FPI, most of their members are not highly-educated. With the exception of their leaders, ulama and ideologues, the members are recruited by means of a simple test. They are required to be able to read the Holy Quran and to answer questions on the basic knowledge of the principles of Islam. It seems also, the poor classes are attracted by radicalism because it offers a simple set of suitable religious patterns, such as the literal approach to the Holy Scriptures that does not rely on complicated theological and philosophical speculations. They also easily believe that fundamentalism could be the solution against the moral decadence produced by secularization.⁵⁶

According to Franz Magnis Suseno, the mass of radical movements mostly consists of poor people, who strive to survive with a daily income less than 2 us\$. For them, who are living in poverty, values such as tolerance and paying attention to the others, are simply “too expensive.” Modernization and dehumanizing urbanization, which is not favourable to the weak, makes them become “hard” and easily attracted by fundamentalism. In addition to that, international conflicts like the situation in Palestine, give the impression to the Muslims of being under siege, playing the role of victims.⁵⁷

In summary, religion does not seem to be the main factor that triggers the emergence of radicalism. It is rather the disappointment in the secular economic-political system that is considered to have failed in providing certainty, and a feeling of safety and prosperity, that pushes simple people to embrace fundamentalism. They see in radical Islam the only alternative able to give solutions so that “The only way out... is to ‘return’ to the basic values of Islam, namely Al-Qur’an and Hadist.”⁵⁸

Therefore, people join hard-line movements not mainly because of theological or spiritual purposes, but rather because they believe that the radicalization of Islam and the concrete implementation of Shariah will transform the unjust society into a sort of “earthly paradise,” where the weak also will achieve prosperity. In this way, religion is in fact manipulated and transformed into mere ideology—the alternative to Communism and Capitalism—which is limited to political and social purposes.⁵⁹

55. See A. Suaedy, *Fundamentalisme Islam di Indonesia* (Jakarta: Unpublished Conference at Wisma Xaverian, Feb 23, 2013).

56. See I. Hasani and B. Togor Naipospos, eds., *The Faces of Islam Defenders*, op. cit., 29–30.

57. See F. Magnis Susento Interviewed by *Prisma*, in I. Hasani and B. Togor Naipospos, eds., *The Faces of Islam Defenders*, op. cit., 13, footnote 8.

58. I. Hasani and B. Togor Naipospos, eds., *The Faces of Islam Defenders*, op. cit., 15.

59. Ibid., 16.

DISCRIMINATIVE LEGISLATION AND INSTITUTIONS

Despite the fact that the Constitution and the ratification of ICCPR undoubtedly guarantee religious freedom in Indonesia, it must pointed out that several laws do not go in the same direction. Under the pressure of fundamentalism, the Indonesian Government, both at central and local levels, has issued a number of legal decisions that, as a matter of fact, can trigger religious discrimination or even violent actions against minority religious groups. These regulations can be considered a sort of hard-liners' "plan B" aiming at the implementation of Shariah within Indonesian legislation, after the unsuccessful attempts to introduce Islamic Law into the Constitution.

The 1965 Blasphemy Law

The first example of discriminative legislation is the 1965 Blasphemy law,⁶⁰ which was based on a previous decree issued by the President Sukarno under the pressure of conservative Muslims. The law is introduced in article 156a of the Criminal Code which states that acts or expressions of feeling that have the character of "hostility, hatred, or contempt against a religion adhered to in Indonesia... shall be punished up to a maximum imprisonment of five years."

In other Countries, the blasphemy law, rather than promoting mutual respect among religions, in fact becomes a weapon in the hands of radicals to fight deviating sects or minority religions. Besides, the law becomes discriminatory because it never happens that such a regulation applies to majority groups. According to the report of Human Rights Watch, since 2005 more than a dozen people have been prosecuted for blasphemy in Indonesia and oftentimes the radical groups have referred to the Blasphemy Law for legitimatizing their violent acts against their targets.⁶¹

The official explanation of the decree clarifies that the religions embraced by the people of Indonesia encompass "Islam, Christianity, Catholicism, Hinduism, Buddhism and Confucianism." On the basis of this statement, there is the common perception that Indonesia acknowledges some "recognized" religions while it does not officially recognize others. This assumption becomes discriminatory. Followers of "unofficial" religions find it hard to obtain their identity cards or other personal documents, including wedding certificates, because they are considered "without religion." Therefore, they often falsely declare themselves to be affiliated with a "recognized" religion, just to overcome such a difficulty.

60. On the Blasphemy Law see, E. Pearson and P. Kine, eds. *In Religion's Name*, op. cit., 28–32.

61. Among the others: the Muslim preacher Yusman Roy, imprisoned in 2005 for two years for reciting Muslim prayer in Indonesian language; Lia Eden and other two leaders of a spiritual group called "Eden Community" imprisoned for more than two years, claiming to have received revelations from the Angel Gabriel; Antonius Richmond Bawengan, a former Catholic and preacher, imprisoned for distributing a leaflet that desecrates Islam; Alexander An, a Minangkabau civil servant sentenced for administrating an "atheist" Facebook Group; Tajul Muluk, a Shia cleric in Sampang. E. Pearson and P. Kine, eds *In Religion's Name*, op. cit., 29; 60–2.

Fortunately, the Constitutional Court has recently declared that this interpretation is incorrect. The Court ruled that the right interpretation of the statement is not that Indonesia officially recognizes only six religions, but rather that “Indonesia recognizes whatever religions its citizens believe in,” and that “it only protects six religions from blasphemy.” Henceforth, the distinction between officially recognized and unrecognized religions in Indonesia must be considered unquestionably unconstitutional.⁶²

In October 2009, several organizations, led by the former president Abdurrahman Wahid, challenged the Blasphemy Law at the Constitutional Court. They argued that the law violates the constitutional rights to freedom of expression and religion. The debate in court was harshly disturbed by the presence of hard-line activists insulting and threatening petitioners and witnesses. The verdict of the Constitutional Court was to not abrogate the 1965 Blasphemy Law because it does not violate the Constitution.

The Court amazingly argued that such a law is still necessary for avoiding horizontal conflicts among religious groups, although facts clearly demonstrate the contrary.⁶³ The only dissenting voice inside the Constitutional Court was the one of Maria Farida Indrati, who argued that “the Blasphemy Law should be found unconstitutional because it explicitly discriminates against religious minorities and would force individuals to abandon traditional and minority beliefs against their will.”⁶⁴

The Decrees on Houses of Worship

The second example of legislation which can induce to discriminatory treatment of minorities, are the two decrees, issued respectively in 1969 and 2006, on the permission to build houses of worship.⁶⁵ In fact, these decrees restrict the freedom of religion and especially discriminate against Christian communities that need to build their churches. In some sporadic cases, the decrees have been used to obstruct the construction of Mosques in Christian areas.

The joint decree of 2006 was issued by the Minister of Religious Affairs and Minister of Home Affairs as “Guidelines for Regional Heads and Deputies in Maintaining Religious Harmony, Empowering Religious Harmony Forums, and Constructing Houses of Worship.” The regulation amended the previous 1969 decree, but essentially confirmed regional governments in their role of licensing the construction of houses of worship. According to the new decree, the permission for building a house of worship should be given based on “real needs” and the “composition of the population” in the area. The requirements are: 1) the list of 90 people who will use the house of worship. The list

62. Ibid., 29.

63. See Margiyono, ed. *Bukan Jalan Tengah: Eksaminasi Publik Putusan Mahkamah Konstitusi Perihal Pengujian Undang-Undang Nomor 1 PNPS Tahun 1965 Tentang Penyalahgunaan dan/atau Penodaan Agama* (Jakarta: The Indonesian Legal Resource Center (ILRC), 2010), 165.

64. See E. Pearson and P. Kine, eds. *In Religion's Name*, op. cit., 32; a comprehensive analysis of the Judicial Review on Blasphemy Law can be found in Margiyono, ed. *Bukan Jalan Tengah*, op. cit.

65. On the two decrees on Houses of Worship, see E. Pearson and P. Kine, eds. *In Religion's Name*, op. cit., 32–6.

should be endorsed by the village head; 2) support letter from at least 60 people living in the areas. The letter should be endorsed by the village head; 3) recommendation from the local Ministry of Religious Affairs; 4) recommendation from the local Religious Harmony Forum (FKUB).⁶⁶ As soon as the signatures are collected, but even before the recommendation has been received, the local government should provide a temporary location for worship. The mayor or regent should issue the decision on the permit to build the house of worship within 90 days. In the meantime, a temporary place can be used for worship, with the approval of the mayor or regent.

In fact, the decree becomes an obstacle to the construction of houses of worship. The bureaucratic procedure is quite complicated, and even though it can be easy to collect signatures from the members of the church in construction, and also the signatures of 60 other people living in the neighbourhood, oftentimes the process is stopped by the governmental officials or the Religious Harmony Forum. This can happen even though the requirements are largely fulfilled.

In several cases, the applicants are still waiting for the governmental response after more than 20 years.⁶⁷ Often, the applicants are obliged to make use of bribery, paying a considerable amount of money to the functionaries and also giving financial support for the construction of mosques and other public buildings in the neighbourhood, to get the permission issued. In the meantime, the community that uses a temporary building for worship becomes vulnerable to the anger of radical movements.

In March 2013 a Protestant church was demolished by the local police because it was built without permission, even though the congregation had been using the building for more than 10 years and had already applied and fulfilled the permit requirements for a long time.⁶⁸ In the case of the Protestant GKI Yasmin Church, the Mayor of Bogor revoked his recommendation for the building permit of their church, even though it had already been issued. Amazingly, such injunction goes against a previous verdict handed down by the Supreme Court that sided with the Yasmin community.⁶⁹

2008 Anti-Ahmadiyah Decree

In July 2005 the MUI (Indonesia Ulama Council) reissued the 1980 fatwa against the Ahmadiyah, which was accused of deviating from the principles of Islam, because the Ahmadis venerate their founder, Mirza Guhlan Ahmad, as “Prophet.” As a consequence of the fatwas, Islamist groups assaulted the theological college in Parung, Bogor regency, and other Ahmadiyah communities in East Lombok and in several places in West Java.

On April 16, 2008, Indonesia’s Coordinating Board for Monitoring Mystical Beliefs

66. Article 14 of the Decree. See E. Pearson and P. Kine, eds. *In Religion’s Name*, op. cit., 35.

67. This is the case of the Catholic Church, in Kampung Duri, Jakarta, which recently has been targeted by fundamentalists, who want to forbid the use of a temporary building for worship.

68. See <<http://www.tempo.co/read/news/2013/03/22/083468626/Robohnya-Gereja-Kami>>.

69. See E. Pearson and P. Kine, eds. *In Religion’s Name*, op. cit., 51–3.

in Society (Bakor Pakem), a subdivision of the Attorney General's Office, recommended banning Ahmadiyah as a deviant sect. A peaceful rally promoted by pro-religious freedom activists took place in Jakarta in June 1, of the same year, in order to protest and to pressure the government against the announced ban of Ahmadiyah. The rally was attacked by Islamists. In the assault, more than 60 people were badly injured. However, on 9 June, 2008, the Religious Affairs Minister Basyuni, Home Minister Mardiyanto, and Attorney General Supanji signed the decree,⁷⁰ ordering Ahmadis to "stop spreading interpretations and activities which deviate from the principal teachings of Islam," including "the spreading of the belief that there is another prophet with his own teachings after prophet Muhammed."⁷¹

After the decree was signed, local governments followed, issuing their own regulations against Ahmadis. Jemaah Ahmadiyah Indonesia reported that in 2011 five provinces (Banten, East Java, West Sumatra, and South Sulawesi) as well as 22 mayoralities and regencies had issued anti-Ahmadiyah regulations. Ahmadiyah activities were banned in East and West Java in 2011, as well as in West Sumatra, including spreading their teaching by means of traditional or electronic media.

Indonesian officials claim that the decree was meant to avoid further anti-Ahmadiyah violent acts. The Ministry of Religious Affairs argues that even in the past violent attacks against Ahmadis had occurred, and so there was the need to rule on the Ahmadiyah issue. Nevertheless, the SETARA Institute reports that violence against Ahmadis has noticeably increased in the last years after the decree was signed.⁷² Unfortunately, once again the moderates were silent in defending minorities. According to the report of Human Rights Watch

neither the NU nor Muhammadiyah organizations officially opposed the 2008 anti-Ahmadiyah decree. Even though both officially oppose the use of violence against Ahmadiyah, their silence on the decree is said to have been influential in its passage.⁷³

INSTITUTIONS THAT CAN FACILITATE DISCRIMINATION

Besides legislation that can trigger abuses in religious matters, there are also some Institutions, both government and quasi-government ones, that *de facto* facilitate religious discrimination in Indonesia. The institutions *per se* are not discriminatory and are meant to be helpful tools for promoting tolerance and harmony, but, as a matter of fact, they are often infiltrated by hardliners who make use of such structures to implement their

70. On the Anti-Ahmadiyah decree see Ibid., 36–8.

71. See E. Pearson and P. Kine, eds. *In Religion's Name*, op. cit., 37.

72. Ibid., 36–8.

73. Ibid., 18.

agenda. The Government is also weak in cleaning up such institutions and, in some cases, even seems to endorse the assignment of important functions to hard-liners. Moreover, the state has even become the direct perpetrator of abuses in several instances. In the case of the demolition of the Protestant Batak Church in Setu, Bekasi, and in the sealing of the Ahmadiyah mosque in Bekasi, intolerant and violent acts were not primarily performed by radical groups, such as the FPI, but rather by the local police under orders of governmental authorities.⁷⁴

Ministry of Religious Affairs

Under the Dutch rule, an office of Islamic affairs was set up under the request of the Muslims and was appointed to provide religious education and guidance, organize the *Haji* pilgrimage, and organize an Islamic court. The Ministry of Religious Affairs⁷⁵ was established in 1946. At present, it consists of seven directorates, three of which deal with Muslim issues, whilst the others relate to Catholics, Protestants, Hindus and Buddhists, respectively. The Ministry of Religious Affairs has branches in every province and regency, and in it 2010 employed 230,000 people. The same Ministry runs 1675 primary Schools, 1418 middle schools, 748 high schools and 20 universities.

In 2011–2012 the Ministry enjoyed a US\$ 4.1 billion budget that is the fourth largest after the Ministry of Defence, the Ministry of Public Works, and the Ministry of Education. Its budget is even larger than that of the National Police or the Ministry of Health. The Ministry of Religious Affairs also controls the annual allocation for the *Haji* pilgrimage. According to the 2013 Human Rights Watch report, “If both sources of funds are combined, the Ministry of Religious Affairs controls more funds than any other government agency in Indonesia.”⁷⁶

The Ministry of Religious Affairs has strong influence on policy and plays an important role against organizations it deems to be heretical. In 1969 and 2006 the ministry signed the decrees on building houses of worship.

Currently, the Minister of Religious Affairs is Suryadarma Ali, the chairman of the Muslim-based United Development Party (PPP), who was appointed in 2009. The minister supported a campaign against Ahmadiyah in 2011, deeming them to be deviant and guilty of practicing blasphemy against Islam. He asked the president to ban the Ahmadis in Indonesia. In 2011 the same minister was involved in supporting an MUI anti-Shia edict and also actions against Shia in Sampang village, in the Madura Island, since 2009.⁷⁷

74. See <<http://www.tempo.co/read/news/2013/03/22/083468626/Robohnya-Gereja-Kami>> and <<http://the-star.com.my/news/story.asp?file=/2013/4/19/reutersworld/1304191206-ahmadiyah-sect-under-siege-in-indonesia>>.

75. On the Ministry of Religious Affairs, see E. Pearson and P. Kine, eds. *In Religion's Name*, op. cit., 39–42.

76. Ibid., 49. In June 2012 the Corruption Eradication Commission announced an investigation on suspected corruption within the Ministry, for misappropriation of funds set aside for purchasing Qurans. See Ibid., 41.

77. The Shia community in Sampang was attacked three times since December 2011. The third time, on 26 August, 2012, the community was attacked by a 500-person mob. The village was almost completely burned

Recently, he insensitively blamed minorities for politicizing and overexposing to the media their difficulties in building houses of worship, arguing that Muslims, in non-Islamic areas, also find obstacles in building mosques.⁷⁸

Bakor Pakem

The Coordinating Board for Monitoring Mystical Beliefs in Society (Badan Koordinasi Pengawas Kepercayaan Masyarakat, Bakor Pakem)⁷⁹ was established in 1961, in order to provide “oversight in respect of religious beliefs that could endanger society and the state.” Previously, a body having the same assignment was set up by the Ministry of Religious Affairs in 1952. This institution works under the Indonesian Attorney General’s Office, and works closely with the Ministry of Religious Affairs, the police, the military, and local governments.

The Bakor Pakem plays an important role in putting pressure on the government to ban religious sects and organizations. In the last three decades the Bakor Pakem has called for the banning of more than 30 religions, including the native religion Agama Djawa Sunda (1964) and the Jehova’s Witnesses (1976). Ahmadiyah was targeted several times by Bakor Pakem. Under Yodohyono’s presidency, Bakor Pakem has called for the ban of Ahmadiyah and Shia. Bakor Pakem was also involved in the prosecution of the Shia cleric Tajul Muluk (Sampang), the Ahmadiyah mosque guard Hasan Suwandi, and the alleged atheist Alexander An in West Sumatra.

The authority of Bakor Pakem is questioned by Human Rights organizations, which argue that the law does not explicitly authorize the creation of such a body and besides, that its function should be limited to prevention and guidance when dealing with certain mystical beliefs.

Indonesian Ulama Council (Majelis Ulama Indonesia, MUI)

The MUI⁸⁰ is the highest clerical institution in Indonesia. It is a quasi-governmental body that can issue fatwas and advise the government on policies related to Islamic matters. The MUI is funded by the Ministry of Religious Affairs and by local government budgets. The central board in Jakarta consists of 273 members, and its chairman is usually chosen from among the Muhammadiyah or the Nahdlatul Ulama. Its members come both from moderate movements as the two just mentioned, and from radical groups, such as the Majelis Mujahidin Indonesia, the Hizbut Tahrir Indonesia and the Front Pembela Islam

down and one person was killed. At present, Sampang Shia members are still living in a temporary shelter. The Shia cleric Tajul Muluk was also imprisoned for two years, convicted of blasphemy. On the Sampang issue, see E. Pearson and P. Kine, eds. *In Religion’s Name*, op. cit., 60–1; Komisi untuk Orang yang Hilang dan Korban Tindakan Kekerasan (KontraS), *Kekerasan Jalan Terus: Laporan Tahunan Komisi HAM di Indonesia 2012* (Jakarta: KontraS), 26–7.

78. M. Aritonang, “Minister: Christians Bring Discrimination on Themselves.” In *The Jakarta Post*, April 2, 1.

79. On Bakor Pakem see E. Pearson and P. Kine, eds. *In Religion’s Name*, op. cit., 42–3.

80. On the MUI see E. Pearson and P. Kine, eds. *In Religion’s Name*, op. cit., 43–7.

(FPI). Ahmadiyah and Shia members have never taken part in MUI. On the contrary, the MUI has declared both groups heretical. The MUI has no institutional oversight, and the procedure for joining the organization is not clear.

Historically, the MUI has roots in the Ulama Council which was set up by the Indonesian military in 1958 in order to stabilize the situation in West Java against the Darul Islam movement. The same council was soon established in several hot areas, such as West Sumatra, South Sulawesi and Aceh, in order to control the Islamic movements that were struggling for the creation of Islamic states. Finally, President Suharto established the national body of the MUI to be the bridge between Muslim movements' aspirations and the state.

Over time, the MUI's functions have considerably expanded, and at present the MUI issues fatwas on several issues, *halal* certifications, Islamic Sharia-based bank monitoring and supervision, Sharia finance mediation, etc. In 2005 the MUI issued a fatwa against pluralism, secularism, liberalism, interfaith prayer, interfaith marriage and misleading interpretation of religious texts. President Yudhoyono endorsed the MUI by declaring that the government would have to work together with the Ulamas in dealing with religious matters.⁸¹ However, in spite of the fact that the MUI has been transformed into a special body that is highly regarded by the state, the authority of the MUI and of its fatwas are questioned. In fact, in religious matters, the MUI must be considered as authoritative as other mass organizations such as Muhammadiyah dan Nahdlatul Ulama, that have the power to issue fatwas as valuable as the MUI's. This is why on several occasions prominent religious leaders have openly opposed the MUI's fatwas, asserting that not all Muslims are bound by the MUI's decisions.⁸²

The MUI has a strong influence and has sometimes the power to change the law and to direct policies in Indonesia. The institution works closely with the Minister of Religious Affairs. In 2005 the MUI reissued the 1980's fatwa against Ahmadiyah. The MUI declared that Ahmadiyah is heretical and misleading. In the fatwa the government was said to be obliged to forbid the spread of Ahmadiyah's teachings, to ban the sect, and to order it to close its buildings. Formally, the MUI rejects violence, but, as has happened in the case of the Ahmadis, some radical groups felt justified by the MUI's decree to perpetrate violent acts against religious movements.

The MUI is also active through its branches in the provinces, which are empowered to issue local fatwas. This is the case of the fatwa that banned the Al Qiyadah sect in 2007. The local MUI office in Sampang regency issued an anti-Shia fatwa in 2012. The fatwa

81. The president declared: "We want the MUI to play a central role in matters pertaining to Islamic faith, and it will thus be clear that it represents the government in all regions, and the government and state should follow the edicts from the MUI and the ulama," speech by President Susilo Bambang Yudhoyono (SBY) at the MUI General Assembly, at the Presidential Palace, 26 July 2005) in A. Suaedy, *Islam and Mainstreaming of Intolerance in Indonesia under SBY: Influences on the Fate of Minorities* (Melbourne: Unpublished Presentation at the Asia Institute, University of Melbourne, Nov 29, 2012).

82. See S. Musdah Mulia, *Islam dan Hak Asasi Manusia*, op. cit., 74–5.

was followed by the one issued by the provincial East Java MUI asking the central MUI to declare Shia heretical and to pressure the government to ban Shia in Indonesia.

Regarding the blasphemy law, several times the MUI fatwas have been inappropriately used for legitimating the prosecution of alleged blasphemy, although they have no legal validity. The MUI also shares responsibility for the opposition to the building of Christian churches, as in the case of the protestant HKBP Filadelfia Church.⁸³ The MUI prevented the congregation from building their church despite a Court had ruled in favour of the congregation and ordered the regent to issue the permit. In Bogor, the MUI supported the decision of the mayor to seal the GKI Yasmin Church, although the Supreme Court had issued the decision to allow the congregation to use the Church.

Religious Harmony Forum (FKUB)

The Religious Harmony Forum (Forum Kerukunan Umat Beragama, FKUB)⁸⁴ is a body established by the 2006 decree on houses of worship. This committee must be set up in all Provinces, cities and regencies. The FKUB is meant to be a consultative forum that advises the local government on the construction of houses of worship and to facilitate harmony among the religions present in the area. The composition of the FKUB must guarantee the presence of minority religious groups.

We have seen above that the FKUB recommendation is necessary to obtain the permission to build houses of worship. However, in several cases, it is the FKUB that makes it difficult for minority communities to get the permission to build their houses of worship. This is the case of the HKBP Filadelfia Church in Bekasi and the Catholic Church in Parung, Bogor Regency. On February 2013, the FKUB Bekasi supported the closure of three churches in the same day.

STATE WEAKNESS IN PROTECTING MINORITIES

Several reports of Human Rights situations in Indonesia blame the government for being directly or indirectly responsible for not protecting minority religious groups from violence and discrimination. The State apparently is weak in enforcing the law and prosecuting the perpetrators of violence. Sometimes, the victims are even criminalized. The 2013 report of Human Rights Watch *In Religion's Name* states: "The unwillingness of Indonesian authorities to forcefully intervene to prevent violence against religious minorities or prosecute those responsible can make the government responsible for continuing abuses."⁸⁵

According to the Wahid Institute annual report on Religious Freedom in Indonesia,

83. On the HKBP Filadelfia Church see Komisi untuk Orang yang Hilang dan Korban Tindakan Kekerasan (KontraS), *Kekerasan Jalan Terus*, op. cit., 27–8.

84. On FKUB see E. Pearson and P. Kine, eds. *In Religion's Name*, op. cit., 47–9.

85. Ibid., 71.

in 2012 there were 274 episodes of violation of religious freedom and almost half of them due to State actors, primarily the police.⁸⁶ Therefore, it seems that, rather than protecting citizens and their fundamental rights, oftentimes the security forces commit violations or at least side with the perpetrators of intimidation and violence. In several cases the police are responsible “by omission,” because they do not effectively protect the citizens. This is the case of the attack on the Ahmadiyah community in Cikeusik, Banten province. Three Ahmadi members were killed and five injured. The officers present on the scene totally failed to protect the victims.⁸⁷

In other instances, the police have even become perpetrators of abuses “by commission,” by playing an actively violent role. The demolition of a Protestant Church in Setu, Bekasi was carried out by local police. In this case, the FPI members were standing behind the police, yelling and applauding at the devastation of the building.

In some instances, the victims of violence have been also blamed and criminalized. In Sampang, Madura Island, The Shia Cleric Tajul Muluk was convicted of blasphemy and imprisoned for two years. This happened after his community was attacked by a mob of Sunni militants, burning their houses and madrasa, and causing 500 Shia residents to be forcibly evicted and find shelter in a sport building. During the attack one man was killed. The police were present during the attack but refused to intervene.⁸⁸

Concerning the reasons why the police stand with the radicals, The Human Rights Watch Report asserts that

The reasons for police failure to protect minorities from physical attack vary from case to case. In some instances, police actively collude with the attackers for religious, economic, or political reasons; in other instances, they lack clear instructions from above or feel outnumbered by militants. In all cases, the poor police response reflects institutional failure to uphold the law and hold perpetrators of violent crimes to account. Some police officers were even involved in openly petitioning the ban of the Shia faith in Madura Island, an obvious break of the Indonesian police regulation, but they were never questioned.⁸⁹

For all these reasons, President Yudhoyono himself has been questioned on his policy regarding the issue of religious freedom. The president formally stands for interreligious harmony and several times has spoken assuring his solidarity to the victims of violence.⁹⁰ But, as a matter of fact, the instances of abuses against minority groups in Indonesia have

86. The Wahid Institute, *Ringkasan Eksekutif: Laporan Akhir Tahun Kebebasan Beragama dan Intoleransi 2012* (Jakarta: The Wahid Institute, 2013), 6. See also SETARA Institute, *Kondisi Kebebasan Beragama/Berkeyakinan di Indonesia, 2012* (Jakarta: SETARA Institute, Dec 17, 2012), 2–3, 7; at <<http://www.setara-institute.org/sites/setara-institute.org/files/Reports/Religious%20Freedom/121217-KKB2012-ID-ringkasaneksekutif.pdf>>.

87. E. Pearson and P. Kine, eds. *In Religion's Name*, op. cit., 77–9.

88. *Ibid.*, 83.

89. *Ibid.*, 73.

90. On the statements of the president, see SETARA Institute, *Kondisi Kebebasan Beragama/Berkeyakinan di Indonesia*, op. cit., 14.

increased considerably under the Yudhoyono government, and especially in the last four years.⁹¹

It is for this reason that minority groups have recently protested against the World Statesman Award by the New York-based Appeal of Conscience Foundation (ACF), bestowed upon President Yudhoyono on 30 May, 2013, for his commitment to religious freedom. Intellectuals and religious leaders, such as Franz Magnis Suseno and the former Muhammadiyah chairman Syafii Maarif, have also strongly criticized the ACS Foundation for being unaware of intolerance that is worsening in Indonesia and for being insensitive towards the victims of interreligious abuses.⁹²

CONCLUSION

At the end of this analysis, we can try to draw some conclusions. We have seen that freedom of religion in Indonesia relies on two strong pillars.

The first one is the Indonesian Constitution that, especially after the amendments adopted between 1999 and 2002, undoubtedly guarantees this fundamental right to every Indonesian citizen. This point is now even stronger after the ratification of the ICCPR in 2005, that not only strengthens the Constitutional position on freedom of religion, but also puts the State before the international community to guarantee and promote freedom of religion.

The second pillar is the attitude of Islam towards other religions. As we have seen above, several verses of the Holy Quran indicate the unavoidability of religious plurality within a Muslim society: the configuration of society is plural because Allah himself wants it plural. Then, there is no compulsion in religion, and therefore nobody can be forced to embrace Islam against his or her will. Moreover, the Muslims have no right to inflict sanctions on those who leave Islam. The judgment for *murtad* is in God's hands rather than men's. Finally, the early Islamic society and the concrete behaviour of Prophet Muhammad himself show the same tolerant attitude and openness towards other religions.

Nevertheless, despite such strong premises that should be able to guarantee freedom of religion and belief, the reality in Indonesia seems to be different. Under the Suharto regime, interreligious tensions and conflicts were strongly and roughly controlled with an iron hand. This is the reason why not many noticeable acts of religious intolerance were reported during the *Orde Baru*. Conversely, democracy, and the consequent freedom of expression, has given the possibility to fundamentalist and intolerant movements to organize, grow, and act within Indonesian society. Hardliners have adopted different strategies

91. The Wahid Institute reports that instances of violation of religious freedom increased from 121 in 2009 to 278 in 2012. See The Wahid Institute, *Ringkasan Eksekutif*, op. cit., 14–5.

92. See “Minority Groups Ask Yudhoyono to Turn Down Religious Freedom Award,” in *The Jakarta Post*, 11 May, 2013; <<http://ireport.cnn.com/docs/DOC-973039>>; <<http://indonesia.ucanews.com/2013/05/21/syafii-maarif-saya-ikut-protasnya-romo-magnis/>>.

to implement Shariah within Indonesian legislation. Some other movements, such as the Hizbut Tahrir Indonesia, even aim at the transformation of Indonesia into an Islamic state. In this increasingly insecure context, minority religious groups, mainly Islamic sects, deemed to be heretical, and Christian communities, have frequently become victims of intolerance, discrimination, and violence.

Institutions within the State do not sufficiently facilitate interreligious harmony, or sometimes even side with the radicals' agenda. Strong criticisms are also raised against the current cabinet which is blamed for not guaranteeing the rights of minorities. Intellectuals and religious figures have also repeatedly criticized President Yudhoyono. Despite the president's statements, that formally uphold interreligious harmony and express solidarity towards the victims of violence, under Yudhoyono's government minorities are more and more left unprotected and deprived of their fundamental rights. If not controlled, this dangerous trend may transform Indonesia, which so far has rightly been considered a good example of a harmonious interreligious society, into an intolerant country.

It is not too late to preserve interreligious harmony in Indonesia, but to do so there is some work to do. Firstly the government and public institutions have to be more committed to enforcing the law and the Constitutional mandate. Legislation must be improved and corrected, especially regarding the blasphemy law. Nevertheless, to a certain extent, the current legislation is already good enough to support interreligious harmony, as long as politicians and functionaries are willing to enforce it, rather than make political calculations. Unfortunately, quite often politicians and officers side with hard-liners, hoping to get the support of Islamic masses, which may even turn out to be a wrong political forecast, since so far the majority of Indonesian Islamic population keep their distance from fundamentalism. The State should also show a stronger commitment to prosecuting the perpetrators of criminal acts related to interreligious intolerance, intimidation, and violence.

Secondly, it is urgent that the moderate Islamic movements, such as Nahdlatul Ulama and Muhammadiyah, work together to promote interreligious harmony. The two largest Islamic movements have different visions and approaches to theological issues, and therefore it is impossible to expect complete synergy of action and thought between the two, but at least they should join forces in fighting fundamentalism. Unfortunately, often they often seem to take ambiguous positions on the issues related to Islamic sects and religious minorities' rights. They formally stand for interreligious harmony, but on the other hand, they do not keep their distance from hardliners.

Islamic bodies are also prodigal in issuing fatwas and regulations, sometimes about rather insubstantial matters.

Since it is true that the Holy Quran asks the Muslim to be tolerant towards the believers of other religions, it is about time to hear moderate movements declaring fatwas against more fundamental issues like intolerance, discrimination, injustice, and violence. Moreover, the moderates must commit to isolating the cells of fundamentalism that have infiltrated their environments and must keep their distance from hard-liners. This is nec-

essary in order to uphold and preserve the peaceful image of Islam as *rahmatan lil 'alamin* (blessing for the whole universe).

Thirdly, the NGOs and Human Rights activists committed to promoting interreligious tolerance and harmony, have to reach a higher level of coordination and effectiveness. They are strongly motivated and committed, but in many cases they do not have a clear and consistent work plan and are not well-coordinated with similar organizations. The result is that actions multiply, but without the support of the masses they lack efficacy. Small demonstrations only capable of gathering a few hundred people just serve to demonstrate the apparent disinterest on the part of the citizens regarding the issue exposed. Therefore, it would be better to have fewer actions and more cooperation among NGOs and Human Rights organizations, in order to make the minorities' voices heard. In this respect, fundamentalists are much more organized and able to rally support.

Forthly, minorities should not surrender to the temptation of isolation and self-pitying closure, but rather they should be more committed to dialogue with other religions and also with the majority religious groups. Dialogue is necessary to lay the groundwork for mutual understanding and respect. Oftentimes, it is the fear of others—or rather, the fear of what we think the others are—that triggers intolerance and violence. Therefore, knowing each other, especially at the grass roots of society, represents a conspicuous step forward towards interreligious harmony.

Furthermore, in the Indonesian cultural context, solving problems by means of the solely legal approach is not enough for building peaceful coexistence. Basically, Indonesian traditional ethics, especially in Java, tends to avoid frontal conflicts. Openly accusing or putting to shame communities or individuals, especially if they sit in a dominant position, can be felt as unbearably rude and offensive, even if these others are wrong. True reconciliation comes about as a result of *musyawarah*, that is the discussion of the problem until both parts achieve consensus. For this reason, dialogue, which means also the disposition to forgive, can become very helpful in reaching a mutual understanding among the parties in conflict.⁹³

In 313 CE the Edict of Milan opened the door of religious freedom to Christians in the whole Roman Empire. Emperor Constantine did not declare Christianity to be the official religion of the Empire,⁹⁴ but rather made the Christian free to worship openly and to live according to their faith. 1700 years later the same freedom, for all religious minorities, is barely present in several countries, including Indonesia. Nevertheless, the naturally tolerant attitude of the Indonesian people and the openness of the kind of Islam that has developed throughout the Archipelago during the centuries, are two reliable strongholds that

93. See F. Magnis Suseno, *Javanese Ethics and World-View. The Javanese Idea of the Good Life* (Jakarta: Gramedia Pustaka Utama, 1997), 42–83.

94. Constantine himself received baptism several years later, just before dying. It was the Edit of Thessalonica in 380 BCE, under the rule of the Emperors Theodosius I and Gratian that declared Christianity to be the state religion of the Roman Empire. See A. Franzen, *Breve Storia della Chiesa* (Brescia: Queriniana, 1982), 63–74.

so far have played an important role against the spread of intolerance and interreligious conflicts. As long as these two characteristics of the Indonesian people are preserved, there is still hope to uphold interreligious harmony and peaceful coexistence.

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JAPAN

TIZIANO TOSOLINI

The idea or concept of “human right” has a short history, but it is still at the center of debates in academic disciplines such as political science, philosophy, sociology, and anthropology, as well as in the fields of jurisprudence and international law. Thus, sixty-five years after the *Universal Declaration of Human Rights*, not only is the justification and alleged universality of these rights still a matter of dispute, but the very concept of human rights has been subjected to a new wave of criticism. Several factors have recently contributed to shape this critical and unstable scenario: economic globalization, the project to found a cosmopolitan or pan-human democracy and, last but not least, the strenuous defense of national and regional identities against the ruthless cultural uniformity carried out—so it is claimed—by the Western powers at the expense of the rest of the world.

This issue appears to be all the more important in the Asian context, where the unconditional respect of human rights has

been challenged by a different concept of humanity, culture and religion. As we shall see in this paper, and as the philosopher Jürgen Habermas claims, the critique of the Asian nations against the universalism of human rights takes three different directions: first, it questions the priority that rights have, in principle, over duties; second, it ranks hierarchy (of a communitarian kind) among human rights; finally, it laments the negative consequences that an individualistic juridical system has for social cohesiveness.¹

The primary purpose of our research is to try to understand whether, from an Asian perspective, the criticism of the universalism of human rights is theoretically tenable. More specifically, we will ask whether the reference to the so-called “Asian values” invoked by some countries is the result of genuine cultural concerns, or merely a strategy of the political elite to perpetuate their control over the people.

We will then restrict the focus of our study to the Japanese scene, trying to grasp the impact that the discourse of human rights had on Japan, particularly after World War II, when the country underwent the process of democratization.

Further, we will consider the suggestions of some scholars in the field and examine the attempt of Japanese Buddhism (which recently felt the necessity to come to terms with the issue of human rights by signing the 1993 *Declaration of a Global Ethic*) to provide a theoretical justification for human rights. This should help us to understand whether the different—more holistic—approach to these rights proposed by Buddhism is plausible.

Finally, we will consider the approach adopted by the Japanese Church to actualize the principles of human rights and make them an effective component of its larger project of evangelization, in which the Church is at the same time teacher and disciple.

AN OVERVIEW OF HUMAN RIGHTS AND ASIAN VALUES

At the beginning of the XXI century, the issue of human rights seems to permeate many of the social, political, and economic debates that take place in international arenas. The foreign policy of many countries is usually evaluated on the basis of their contribution to the promotion of these rights, while the quality of their domestic policy is judged on the basis of each country's ability to adhere to the list of human rights stipulated by international conventions and organisms. From the second half of the past century, consensus has been growing among nations on the nature of human rights (that is, the innate and inalienable rights possessed by every person independently of any juridical or political conferral) and on the juridical obligations they impose on the countries that recognize them.

The Idea of Right

First of all, we should bear in mind that the concept of “human right” is the result of a long and tormented reflection that began in the XVII century and which led to universal

1. In connection with this, see J. Habermas, *The Inclusion of the Other. Studies in Political Theory* (Cambridge, MA: MIT Press, 1998).

constitutions, declarations, statutes, and manifestos. Initially, “human rights” (an expression which was preferred to what was perceived as the excessively religious “natural rights” and the Hegelian “abstract rights”²) could be easily named. They included the right to life, freedom, and property. The American *Declaration of Independence* (1776) added the right to pursue happiness. The 1789 *Declaration of the Rights of Man and of the Citizen*, conceived during the course of the French Revolution, included the rights of personal freedom, property, security and resistance to oppression, while the *Universal Declaration of Human Rights* (1948) and the *European Convention for the Protection of Human Rights and Fundamental Freedoms* (1950) added the rights (both civil and political) of the individual before the community, as well the individual’s economic, social, and cultural rights. The *International Covenant on Economic, Social and Cultural Rights* and the *International Covenant on Civil and Political Rights*, both enforced in 1976, elaborate further on the context and application of the rights. These *Covenants*, along with the *Universal Declaration of Human Rights*, contain the “standard” list of all universally recognized rights that are to be respected and promoted within the signatory countries.³

The opening paragraph of the *Declaration and Programme of Action* stipulated by the *World Conference on Human Rights* that took place in Vienna, 14–25 June 1993, reads:

2. D. Knowles writes: “The term ‘human rights’ is best, for two reasons: first, it connects with the language of the charters, declarations and conventions... which inscribe rights as a principle of international law. For better or worse, it is human rights that citizens claim against their governments. Second, the older term, natural rights, carries with it a distinct provenance. Natural rights, to simplify, were deemed natural because they were the product of natural law. What is natural law? To many, it represented that law which God had prescribed as apt for creatures with natures like ours, those rules which God had determined that humans should follow if they are to fulfill the purposes He had laid down for them,” in D. Knowles, *Political Philosophy* (Montreal and Kingston: McGill/Queen’s University Press, 2001), 135.

3. The following is a concise list of human rights. The source of each right is indicated between brackets, with the title of the document (a. *Universal Declaration of Human Rights*; b. *International Covenant on Economic, Social, and Cultural Rights*; c. *International Covenant on Civil and Political Rights*), followed by the number of the article: equality of rights without discrimination (a1, a2, b2, b3, c2, c3); life (a3, c6); liberty and security of person (a3, c9); protection against slavery (a4, c8); protection against torture and cruel and inhuman punishment (a5, c7); recognition as a person before the law (a6, c16); equal protection of the law (a7, c14, c26); access to legal representation against human rights violations (a7, c2); protection against arbitrary arrest or detention (a9, c9); hearing before an independent and impartial judiciary (a10, c14); presumption of innocence (a11, c14); protection against *ex post facto* laws (a11, c15); protection of privacy, family, and home (a12, c17); freedom of movement and residence (a13, c12); seek asylum from persecution (a14); nationality (a15); marry and found a family (a16, b10, c23); own property (a17); freedom of thought, conscience and religion (a18, c18); freedom of opinion, expression and the press (a19, c19); freedom of assembly and association (a20, c21, c22); political participation (a21, c25); social security (a22, b9); work, under favorable conditions (a23, b6, b7); free trade unions (a23, b8, c22); rest and leisure (a24, b7); food, clothing, and housing (a25, b12); health care and social services (a25, b12); special protections for children (a25, b10, c24); education (a26, b13, b14); participation in cultural life (a27, b15); a social and international order needed to realize rights (a28); self-determination (b1, c1); humane treatment when detained or imprisoned (c10); protection against debtor’s prison (c11); protection against arbitrary expulsion of aliens (c13); protection against advocacy of racial or religious hatred (c20); protection of minority culture (c27). Cf. J. Donnelly, “Human Rights and Asian Values: A Defense of ‘Western’ Universalism,” in J. R. Bauer and D. A. Bell, *The East Asia Challenge for Human Rights* (Cambridge: Cambridge University Press, 1999), 65.

The World Conference on Human Rights reaffirms the solemn commitment of all States to fulfill their obligations to promote universal respect for, and observance and protection of all human rights and fundamental freedoms for all in accordance with the Charter of the United Nations, other instruments relating to human rights, and international law. The universal nature of these rights and freedoms is beyond question.⁴

At the same time, the development of the concept of human right, especially its ontological and epistemological foundations, never was (nor is) free of criticism. This criticism came chiefly from economists, philosophers, and students of political science. Those who tried to ground and articulate human rights through theological, essentialistic, and/or rationalistic arguments were often accused of talking mere nonsense (by utilitarians),⁵ of chasing after delusions or simple fantasies (by supporters of communitarianism),⁶ of supporting bourgeois ideology (by currents of Marxism),⁷ or simply of being outdated or old fashioned (by sympathizers of postmodernism).⁸

All this led to the conclusion that if we must talk about human rights, we first ought to recognize the problematic character of their founding presuppositions and, secondly,

4. *World Conference on Human Rights*, Vienna 14–25 June 1993, at <<http://www2.ohchr.org/english/law/pdf/vienna.pdf>>. The countries that ratified their efforts in the promotion of human rights are 168: cf. “Status of Ratifications of the Principal International Human Rights Treaties” at <<http://www2.ohchr.org/english/bodies/docs/status.pdf>>.

5. See J. Waldron, “Nonsense Upon Stilts:” *Bentham, Burke, and Marx on the Rights of Man* (London: Methuen, 1987). According to Bentham’s well-known assertion: “Natural rights are simple nonsense: natural and imprescriptible rights, rhetorical nonsense—nonsense upon stilts” (Ibid., 53).

6. A. MacIntyre, *After Virtue* (South Bend, Ind.: University of Notre Dame Press, 1984). For MacIntyre, as for Bentham, the fundamental problem of human rights concerns their ontological status: if we cannot exhibit some evidence of these rights, we will be unable to found them on anything other than an unjustified intuition. MacIntyre concludes: “The best reason for asserting so bluntly that there are not such rights is indeed of precisely the same type as the best reason we possess for asserting that there are no witches, and the best reason we possess for asserting that there are no unicorns: every attempt to give good reasons for believing that there are such rights has failed” (Ibid., 67). For MacIntyre this follows from the idea that all rationality begins in, and is an integral part of, a specific tradition, or of a community. Every appeal to human rights, therefore, is based only on the rationality and context of a particular tradition and is in complete contrast with the universalistic language which is implicit in the rhetoric of human rights.

7. K. Marx, “On the Jewish Question,” in R. C. Tucker, ed., *The Marx-Engels Reader* (New York: Norton, 1978). Marx points out that every appeal to human rights presupposes a specific political ideology, namely, the ideology of possessive individualism. Wherever human rights are asserted, they are usually brandished by individuals against the power of the State or against other individuals. However, to presuppose that such rights are necessary to protect oneself against the State means to assume that there is a permanent antagonism between the interests of the States and those of individuals, and this is a denial of the kind of ideal society envisioned by socialist and Marxist thinkers.

8. R. Rorty, “Human Rights, Rationality and Sentimentality,” in S. Shute and S. Hurley, *On Human Rights: The Oxford Amnesty Lectures* (New York: Basic Books, 1993). Rorty claims that the theories grounding human rights are “outmoded”: they represent an understanding of the philosophical project—the project of rationality—which cannot be sustained. We should rather focus on trying to articulate and spread our practices, not through metaphysical and essentialistic discourses about human nature, but through the charming (but weak and respectful of otherness) medium of sentimental storytelling.

we have to admit that their alleged universality is theoretically untenable. In the words of Susan Mendus:

Understood as a set of claims about the foundations of political practice, philosophy reveals that we no longer have, and maybe never did have, such foundations; but understood as an attempt to articulate what we believe, philosophy reveals that human rights are just that—they are what *we* in Western liberal democracies believe. They are not, as they purport to be, universal and timeless, nor do they justify intervention in the practices of others.”⁹

Asia and Its Values

Now, “the question of the ultimate source of human rights is primarily of interest to philosophers and theologians and is likely to be of little relevance to human rights activists,”¹⁰ and as N. Bobbio observed, “the fundamental problem concerning human rights today is not so much to justify them, as to defend them. It is not a philosophical but a political problem.”¹¹

And yet, some thinkers and spokespersons, mainly from Asian countries, have been claiming not only that human rights are incompatible with certain “Asian values” (values which are considered as a third alternative to the liberal-Marxist dichotomy), but also that the politics that promotes human rights internationally is only the continuation of devious colonial and imperialistic practices pursued through different means.

Of course, there are also people who point out that some ideas and principles close to the concept of human right can be found also in non-Western contexts; by way of example, in almost all contemporary Arab literature on human rights we find a list of fundamental human rights as stipulated in international conventions and a serious attempt to trace their juridical foundation back to the *Qurʾān*;¹² many “traditional African societies supported and practiced human rights”;¹³ and the defense of human rights is an integral part of several Asian traditions, to such an extent that even the Hindu caste system has been described as a “traditional, multidimensional view of human rights.”¹⁴

9. S. Mendus, “Human Rights in Political Theory,” in *Political Studies*, 1995, 43/4: 16.

10. D. Bell, “The East Asian Challenge to Human Rights: Reflections on an East West Dialogue,” in *Human Rights Quarterly*, 1996, 18: 650.

11. N. Bobbio, *Letà dei diritti* (Torino: Einaudi, 1990), 15–6. (My translation).

12. Cf. Z. Fouad, “Human Rights in the Arab World: The Islamic Context,” in *Philosophical Foundations of Human Rights* (Ed. Unesco, 1986), 227–28. Nurcholish Madjid, of the Indonesian *National Commission on Human Rights*, observes that “Islam too recognizes the right to found a family, the right to privacy, the right to freedom of movement and residence, the right to use one’s language, the right to practice one’s own culture and the right to freedom of religion” (cited in D. Bell, “The East Asian Challenge to Human Rights: Reflections on an East West Dialogue,” op. cit., 649).

13. D. M. Wai, “Human Rights in Sub-Saharan Africa,” quoted in J. Donnelly, “The Relative Universality of Human Rights,” in *Human Rights Quarterly*, 2007/29: 284.

14. R. Buultjens, “Human Rights in Indian Political Culture,” in K. W. Thompson, ed., *The Moral Imperative of Human Rights: A World Survey* (University Press of America, 1980), 109, 113.

Nonetheless, attempts to reconcile the language of human rights with that of one's religious and cultural tradition, the supporters of the so called "Asian values" are convinced that certain economic, social, political, and cultural aspects of Asian countries do not allow a non-critical assumption of human rights and/or a spontaneous adaptation to their alleged universality. On the contrary, the supporters of "Asian values" claim that these values have an ideological and practical priority over human rights, so that the latter may be subordinated to the local principles and the national priorities or demands of any given Asian nation. Thus, for example, article 8 of the 1993 *Bangkok Declaration on Human Rights* reads:

While human rights are universal in nature, they must be considered in the context of a dynamic and evolving process of international norm-setting, and bearing in mind the significance of national and regional particularities and various historical, cultural and religious backgrounds.¹⁵

Now, what values are invoked in opposition to the application of the statutes concerning the fundamental human rights? What are the regional or national religious, social, cultural, and political aspects that are deemed not only incompatible with the universality of human rights—which is nonetheless recognized—but even opposed to it in the name of a worldview that differs from those rights?

As we look for an answer to these questions, we may begin by observing that the first general factor mentioned by the supporters of the Asian values, in order to highlight the difference in the conceptual and social worldviews of Asian and Western countries, is the mere fact that Asia does not have a history of human rights (that is, of those inalienable rights that can be upheld against the State or society). In Asia the individual has, rather than "rights," fundamental "duties" which derive immediately from his participation in, or affiliation to, a group. Thus, a ruler may have a duty to rule justly and the rich a duty to help the poor through donations and gifts, but this does not mean that the people have the right to be governed with justice, or that the poor have the right to be helped and assisted.

Moreover, the fact that "East Asian societies as a whole preoccupied themselves not with the rights of the individuals but with their duties"¹⁶ is reflected also in another typical aspect of Asian culture, namely that it is primarily concerned with protecting and safeguarding the community where individuals live and to which they are constantly referred. As J. Hsiung writes, "pressing for one's own interest without regard to the interest of others is seen as no more than the pursuit of individual self-interest, not the pursuit

15. We must bear in mind that this *Declaration* represents the first organized reaction of Asian countries against the *Universal Declaration of Human Rights*. As a matter of fact, although the *Universal Declaration* is binding from a normative standpoint, many Asian countries adopt it more for pragmatic and political reasons, rather than because they are convinced of the value of its principles.

16. M. Lee, "North Korea and the Western Notion of Human Rights," in J. C. Hsiung, ed., *Human Rights in an East Asian Perspective* (New York: Paragon House Publishers, 1985), 132–33.

of human rights defined as rights of fellow humans.”¹⁷ It is the group, not the individual, which acts as the ultimate guardian of rights, so that the subject’s obligations toward the community are much more important than the rights he or she receives from it. A representative of ASEAN¹⁸ questions the concept of “individualism” as understood in the Western world:

Whether in periods of golden prosperity or in the depths of disorder, Asia has never valued the individual over society. The society has always been more important than the individual. I think that is what has saved Asia from greater misery... I believe that human-rights standards, as distinct from democracy as a form of government, will become universal. It will not be western standards, because the West is but a minority in this world.¹⁹

Thus—the third characteristic element of the Asian worldview—for the supporters of Asian values the community and its economic progress are so strategically important that the State can restrict or even temporarily suspend the political and civil freedoms and rights of its citizens in order to protect and promote the general well-being of the country. Here it is not a question of knowing which category of right—political or economic—is primary, but rather of realizing that two completely different versions of the concept of “human right” are at work: one (more limited and used in particular by Western authors) refers principally to civil and political rights; the other (broader in scope) interprets rights *both* in the sense of civil-political rights *and* in the sense of socio-economic rights. It is easy to grasp the controversy underlying this debate: if, on the one hand, many Western authors use the language of civil rights to criticize an insufficient or even completely non-existent politics of liberalization in some Asian countries, on the other hand, the leaders of these countries—by appealing to a broader definition of right—contend that the West permits a wide range of individual freedoms and rights, but fails to protect the socio-economic rights of its citizens.

Furthermore, many Asian commentators openly voice the need to give priority to socio-economic rights over civil-political rights through a twofold strategy: either by maintaining that the immediate satisfaction of survival needs is to be preferred to the satisfaction of other, comparatively superfluous, needs (such as civil liberties),²⁰ or else by asserting that the implementation of civil rights is a privilege that must be postponed until an adequate economic sustainability has been achieved. In both cases, these col-

17. J. C. Hsiung, ed., *Human Rights in an East Asian Perspective*, op. cit., 25.

18. *Association of South-East Asian Nations*. This association promotes the cooperation and reciprocal assistance of its members in order to achieve greater stability through faster economic progress.

19. Cited in C. Kenneth and D. Roy, *The Politics of Human Rights in East Asia* (London, Virginia: Pluto Press, 2001), 9.

20. The tone of this thesis is at times drastic: “Which would developing peoples rather have? A commitment from their governments to sacrifice civil liberties in the hope of increasing the availability of food, or a guarantee that they will not be tortured or extra-legally imprisoned by the state?” (cit. in *Ibid.*, 19).

umnists are convinced that the West is in no position to lecture them, either in matters of rights or of humanity, since the numerous negative aspects of Western societies (for example, the high percentage of crime and divorce, the deterioration of family relations, drug abuse, homelessness, and so on) seem to confirm that the Western solution has failed, while the Asian model could represent a valid and solid alternative. An article in *Asiaweek* claims:

Singapore opposition parties do not get equal time on television, but disadvantaged minorities do not riot, loot and burn. Malaysia detains dissidents without trial, but children are not gunned down at school. Taiwan does not allow free speech advocating communism, but its inner-city youth do not dissipate their energies on drugs. In South Korea one can be arrested just for publicly harboring affection for Kim Il Sung but they may walk the streets without fear of muggers.²¹

Finally, the fourth element that differentiates Asian and Western values is religious: on one side, the Christian (or Judeo-Christian) West, on the other, the Confucian (or Confucian-Islamic) East. Many people maintain that, for the most part, Asian civilization is influenced by the Confucian worldview, which indicates filial piety and obedience as the essential way to becoming a true human being. In the words of Huang-Chao,

human rights under the traditional Chinese political culture were conceived to be part of a larger body of morally prescribed norms of collective human conduct... The Confucian code of ethics recognized each individual's right to personal dignity and worth, but this right was not considered innate within each human soul as in the West, but had to be acquired by his living up to the code.²²

Moreover, the traditional Chinese theory of the "Mandate of Heaven" considered the ruler and political power as something conferred by the divinity in order to guarantee social order and prosperity. However, the same divinity could revoke the mandate from a corrupt and unjust ruler, and bestow it on someone more deserving; a riot or a popular revolt, as well as natural disasters such as floods and droughts, were interpreted as signs of the revocation of the mandate by the divinity.

In any case, Confucian philosophy considered the first and highest good to be social harmony and taught that harmony is obtained when each individual identifies as much as possible with one's class or social role (father, son, farmer, official, etc.). The rulers are effective when they rule virtuously, by inspiring respectful and responsible attitudes and by guiding the nation through moral example rather than through punishment and coercion. In the words of Lee Kuan Yew, Minister of Singapore:

21. *Ibid.*, 19.

22. T. Hung-Chao, "Human Rights in Taiwan: Convergence of Two Political Cultures?" in J. C. Hsiung, ed., *Human Rights in an East Asian Perspective*, op. cit., 88.

The Confucianist view of order between subject and ruler helps in the rapid transformation of society... in other words, you fit yourself in society—the exact opposite of the American rights of the individual. I believe that what a country needs to develop is discipline more than democracy. Democracy leads to under-disciplined and disorderly conditions.²³

Are Human Rights Incompatible with Asian Values?

Now, the Asian-values perspective makes a universalistic approach to human rights indeed *difficult*; but does it make it *impossible*? Is every discourse on human rights (especially civil and political rights, which have more to do with the freedom, dissent and rights of the minorities) to be ruled out *a priori*? The question is: Are Asian values truly (and in principle) incompatible with the idea of a State that respects these rights? What we have in mind is a State—an “ideal” State, undoubtedly, but one with which we must confront ourselves nevertheless—that is democratic (in which political authority arises from the sovereignty of the people), “liberal” (in the sense that it promotes all the necessary conditions for the actualization of the rights of its citizens), and founded on principles of welfare (by which the economic and social rights of citizens extend well beyond the libertarian right to property).

We ask about the first aspect (that the East follows the law of duties rather than the law of rights): Is the concept of “duty” really connatural to these Asian cultures, or is it only the historical product of gradual political enforcement, validated in turn by religious interpretations? After all, it is well known that the forms of government of many Asian countries that promote the value of submission to constituted authority present the typical traits of totalitarian regimes and authoritarian political systems. Thus, the so called “consensus” would be nothing but a disguised form of “coercion;” “harmony,” a simple ideological cover-up for “order and control;” and “participation,” only a veiled expression for “submission.”

In this regard, we must observe that those who criticize the concept of “right” on the basis of its Western origins (arguing that this is precisely why this concept cannot be extended to other cultural and social contexts) inevitably tend to minimize the character of “universality” that is part of the very concept of right. As J. Donnelly writes:

the “Western” origin of human rights, ideas and practices is a simple historical fact. It is not a matter for praise (or blame). Human rights initially emerged—were created or “discovered”—in Europe not because of superior Western virtue or insight but because, for better or worse, modern state and capitalism first appeared there. This history does not make these rights any more irrelevantly “Western” than the origins and initial spread of both Newtonian and quantum physics makes them “Western” physics inapplicable to Asia. Whatever appli-

23. *The Economist*, 27 April 1994, 5.

cability—or inapplicability—internationally recognized human rights have is independent of their place of origin.²⁴

As for the second point, concerning the dichotomy between an individualistic West and a communitarian East, we do not find it very plausible. The reason for this is that movements that support communitarianism can be found also in the West,²⁵ much like elements of individualism can be found in Asia.

Confucianism, for example, is too a rich and complex to assume that it is ignorant of the value of individuality. Thus, according to standard Confucian doctrine, a successful rebellion against an unjust ruler or a tyrant not only proved that the Mandate of Heaven was handed over to someone else, but also indicated that the rebellion was possible due to the moral autonomy and political independence of those who had cultivated their identities by learning and interiorizing the moral principles of Confucianism.

Individualistic tendencies can be found also in Buddhism and in Islam. While Buddhists reject all attachment to one's ego, they also stress self-reliance in spiritual awakening and regard the pleasures of family love and other communal bonds as disturbing passions and earthly illusions (*klesa*). As for Islam, suffice to think of Sufism, which represents the more individualistic attitude of Islamic piety and which gave rise to a form of inner search based on the direct and immediate unification of oneself with the divine through mysticism.

Moreover, in order to be able to evaluate the concept of community in Asia as objectively as possible, we must consider the social and cultural diversity of that continent. In fact, it would be a mistake to identify Asian societies with Asian rural communities, which are characterized by strong social cohesiveness. We should also pay closer attention to the quick social changes that are sweeping across Asia, which tend to favor the individual over the collectivity. The thriving economic development in the region is now accompanied by a rapid urbanization, the infiltration of the market in communal relations, the dissemination of a competitive and meritocratic mentality, the growth of opportunities in education, better access to information, etc. Therefore, one would be correct to presume that the tension between individualism and communitarianism does

24. J. Donnelly, "Human Rights and Asian Values: A Defense of 'Western' Universalism," *op. cit.*, 69. In this context, Donnelly states that the idea of developing a definition of human rights that is compatible with the cultural heritage of a given country is not only undesirable, but also difficult to conceive. In fact, "some cultural legacies are incompatible with any plausible idea of human rights. For example, racism, sexism, and anti-Semitism were for many centuries—many would argue still are—deeply entrenched elements of the cultural and political legacy of the West. One of our principal human rights achievements has been precisely to challenge, in theory and in practice, this legacy and to help create another" (*Ibid.*, 68). See also J. Donnelly, "The Relative Universality of Human Rights," *op. cit.*, 281–306.

25. Charles Taylor, Michael Walzer and the previously mentioned MacIntyre are some of the prominent representatives of the "communitarian" trend in contemporary political thought. For a discussion of the philosophical foundations of communitarianism, see M. Sandel, *Liberalism and the Limits of Justice* (Cambridge: Cambridge University Press, 1982) and D. A. Bell, *Communitarianism and Its Critics* (Oxford: Oxford University Press, 1993).

not concern only the relations between East and West, but is present in all countries of the world and imperceptibly shapes their internal relations and dynamics. As a matter of fact, no single society or culture is completely immune to this tension.

Furthermore, we have seen that the supporters of Asian values tend to privilege socio-economic rights over political and civil rights. And while the reasons used to justify this choice are fairly clear, we would like to consider an issue that remains somewhat implicit in the very articulation of the problem. We are referring to the fact that they place excessive emphasis on the concept of State sovereignty at the expense of the idea of human rights. In fact, while on the one hand, the promoters of Asian values fiercely criticize the concept of human rights, on the other, they give unconditional acceptance to the Western notion of State sovereignty and use it to silence the supporters of human rights (as well as to defend themselves from the accusation that they are violating those rights within their own States). And yet, in international relations, the principle of State sovereignty is only a conceptual extension of the equality and autonomy of the possessor of rights in interpersonal relations. As Inoue Tatsuo says,

the principle of sovereignty protects minor and weaker states against the oppression of major and hegemonic states, just as human rights protect weaker individuals and minorities against stronger political and social forces.²⁶

Moreover, human rights are a necessary complement to the principle of sovereignty, especially at a time when many Asian countries are reorganizing and strengthening themselves by destabilizing the autonomy of villages, communal structures, and other traditional institutions that used to protect the individual from the power of centralized governments. Thus, the correct reply to the tendency to absolutize the principle of sovereignty is not to reject this principle *tout court*, but to affirm that human rights represent an internal limitation of sovereignty itself. The solution is not so much to choose between human rights and sovereignty, as to realize that without human rights there cannot be any legitimate sovereignty.

As for the priority given to socio-economic rights, one cannot fail to notice how the defenders of Asian values twist the authentic meaning of this concept in order to limit civil rights. In fact, in the democratic tradition, the theme of socio-economic rights usually emerges in debates on market regulation, not on the limitation of political freedom and participation. Moreover, there are examples of Asian countries (not least Japan, with its miraculous economic rebirth from the ashes of World War II) in which the democratic system contributed to their economic growth by redistributing its benefits so that the apprehension and discontent of those affected by rapid social change are allayed and a national consensus on the priority of economic development is formed, strengthened and implemented. Indeed, the achievement of democratic consensus can facilitate rather than

26. I. Tatsuo, "Liberal Democracy and Asian Orientalism," in J. R. Bauer and D. A. Bell, *The East Asia Challenge for Human Rights*, op. cit., 31.

hinder (as claimed by the promoters of Asian values) the pursuit of policies of development because it enhances the government's legitimacy in requesting from its citizens the initial self-discipline and patience that are essential to economic growth. By contrast, an authoritarian regime can only represent a structural obstacle to economic development: the members of the ruling class, who are unchecked by democratic controls, have an incentive to interfere politically in the market economy and promote their own private interests. This impedes the proper allocation of resources, undermines public trust in the fairness of the system, and lowers productivity and morale. Therefore, the respect of political and civil rights does not represent an economic obstacle for developing nations; on the contrary, the rhetoric of "Food first, then morals!" clearly goes against the true aspirations and real necessities of those countries.

Finally, we come to the last dichotomy, concerning the difference of religious contexts—Confucian-Islamic in Asia, Judeo-Christian in the West. It must be said that this view is partial and inaccurate. All major world religions (not only Confucianism and Islam, but also Hinduism and Buddhism—not to mention the countless local religious movements) are present and exercise their influence on the Asian continent, so much so that we could say with good reason that the religious heterogeneousness of this continent is even superior to the one found in the West. Moreover, Christianity has been present in Asia for quite some time, contributing to influence the political and social doctrines of some South-East Asian countries. And if one considers the profound difference between Confucian secularism and Islamic monotheism, it would be theologically outrageous to unite Confucianism and Islam into a religious alliance whose only purpose is to oppose the Judeo-Christian worldview, and even more so to merge Islamic Asia and Confucian Asia.

Moreover, the demarcation of civilization spheres according to religion is not only undesirable but also politically dangerous. This worldview would rehash (in an Asian context) Huntington's famous theory of the "clash of civilizations," claiming that cultural and religious identity will be the primary cause of conflict in a post-Cold War world.²⁷ In our case, the Confucian-Islamic block would achieve its independence and clash with the Judeo-Christian block of democratic society in a distorted dialectical confrontation whereby the West would be the source of Asian identity insofar as the latter is opposed to the former. Thus, we would witness a kind of "Occidentalism," that is, an external construction of the West produced by the identitarian hatred of its enemies.²⁸

In any case, Asia's religious and cultural diversity cannot be circumscribed to, or identified with, national borders: many Asian countries (including China, Singapore, Malaysia, and Indonesia—countries which support Asian values openly and vigorously)

27. Cf. P. S. Huntington, *The Clash of Civilizations: And the Remaking of World Order* (New York: Free Press, 2002).

28. In connection with this, see I. Buruma and A. Margalit, *Occidentalism: A Short History of Anti-Westernism* (London: Atlantic Books, 2004).

are internally multi-religious, multi-cultural, and even multi-national. What contributed to create these distinctions is certainly the increased mobility brought about by the economic development in the Asian region. Therefore, we should not believe the idea of a “clash of civilizations,” but rather pay close attention to the domestic conflicts caused by the internal religious and cultural diversity of those countries. We should also insist on the fact that a serene and peaceful coexistence of cultures and religions is possible only by appealing to human rights and the international protection they provide.

Lastly, we may add that Orientalism (which maintains that Asian culture is resistant to every discourse about human rights) prejudicially considers the cultures and religions of Asia as monolithic and immutable: impenetrable, a-temporal and a-historical realities that are incapable of transformation, alteration, and assimilation. Now, a peaceful suspension of the kind of violence that is implicit in the East-West dichotomy does not require that the peoples of Asia accept the discourse and practice of human rights *despite* their being Asian, (as if they were forced to assimilate something completely foreign to their culture). On the contrary, this dangerous dichotomy will come to an end when human rights are recognized in their universality, that is, as something that belongs to every person, not by virtue of his geographical location, but because of his very humanity, the “intrinsic dignity” of every human being.²⁹

In fact, the universality of human rights does not ask a country and its citizens to abandon their culture and social peculiarities in order to adopt a different set of those items, just as Locke or Jefferson did not ask their contemporaries to reject their *modus vivendi* as a whole and embrace their philosophical and political ideas. But human rights do empower the State and its citizens to modify, or turn away from, those aspects of their culture which they find unsatisfactory, or even dangerous and counterproductive for their human and social development. Cultures and traditions (of every latitude and continent) can change and transform; they can constantly be reproduced and recreated. One of the key aspects of the discourse on human rights is that the reality we make for ourselves, whether intentionally or otherwise, must somehow conform to those universal requirements that rest on our common humanity and seek to guarantee an equal concern and respect for the condition of each and every human being. We therefore agree with J. Donnelly when he says that

human rights, as specified in the Universal Declaration and Covenants, represent the international community’s best effort to define the social and political parameters of our common humanity. Within these limits, all is possible. Outside of them, little should be allowed.³⁰

29. The *Preamble* of the *Universal Declaration of Human Rights* states: “...recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world...”

30. J. Donnelly, “Human Rights and Asian Values: A Defense of ‘Western’ Universalism,” *op. cit.*, 87.

HUMAN RIGHTS IN JAPAN

Taking a stroll through the streets of any Japanese town, one will not fail to notice banners of the size of advertising billboards—in front of town halls, by the buildings of the numerous cultural centers, and even near the curbs of minor roads—urging citizens to mutual respect and compassion. Often we will also see slogans such as “This town upholds the *Declaration of Human Rights*,” or fliers with texts from the various universal Declarations endorsed by the town—the *Declaration for a Denuclearized Territory*, the *Declaration on the Care of the Youth*, the *Declaration for the Elimination of All Forms of Violence*...

What is the meaning of this unusual insistence in reminding citizens that they possess inalienable rights? Are all these announcements and proclamations the expression of a celebration of humanity, or are they instead a warning that something has not yet been fully accomplished or actualized? Are these banners the expression of Japan's pride in its endorsement and promotion of universal resolutions on human rights, or are they there to remind the Japanese of something they often tend to forget because it is unknown or alien to their millenary history and culture?

Evolution of a Concept

We are facing here one of the recurrent difficulties of every global discourse: the difficulty of adequately translating expressions that a given language seems to lack (in this case the concept of “right”). The translator's work cannot be reduced to the effort to find an equivalent of the original term, but also requires a deep familiarity with the semantic field of that term. Historically, Japan faced this challenge during the Meiji period (1868–1912), when it decided to send scholars to Europe (the Netherlands, Germany, France, and England) in order to become familiar with the laws, rules, and legal terminology of those countries and thus acquire greater contractual power in extraterritorial negotiations. In this process, many new words were created by combining Chinese characters—an operation that produced an unprecedented blend of meaning and sound.³¹ One of the Western terms that underwent this operation is “right.”³²

31. Among the Western terms that have no semantic equivalent in Japanese we could list the words “love” (“In the Asian languages there is absolutely no equivalent of the Western term ‘love,’” in H. Dumoulin, *Buddhismo*. Trad. C. Broseghini, A.N. Terrin. Brescia, Queriniana, 1981, 104;—my translation) and “freedom” (“Largely through the heroic efforts of ‘Dutch scholars,’ who learned to read medical, scientific, and geographical texts in the Dutch language, Japanese knew more about the West than most Asians. One such scholar, reading a biography of Napoleon in Dutch, was so taken by the word for freedom, *Vrijheit*, that he softly intoned it whenever he got drunk,” in I. Buruma, *Taming the Gods. Religion and Democracy on Three Continents*. Princeton: Princeton University Press, 2010), 70.

32. C. Blacker, *The Japanese Enlightenment: A Study of the Writings of Fukuzawa Yūkichi* (Cambridge: Cambridge University Press, 1964), 104–5 writes: “At the beginning of the Meiji period the enormous majority of Japanese were entirely ignorant of its [viz., rights] meaning, for the reason that there had been no idea even remotely equivalent to it in the old Confucian philosophy... Having no idea of rights, the Japanese naturally had no word to express the idea—and their difficulty in grasping its meaning is well illustrated by their difficulty in choosing a suitable word.”

The primary difficulty concerning the translation of this word was due to the fact that the Dutch term *regt* (much like the Latin *ius*, the German *recth*, the French *droit*, and the English *right*) combined the meaning of “just” with that of “law.”³³ In the beginning, Mitsukuri Genpō (the pioneer translator of European legal texts in Japanese) invented the term *seiritu*, combining the Chinese characters of “just” and “rule.” But it was another scholar, Mitsukuri Rinshō, who coined the word still in use today: *kenri* (権利). This term combines two semantic fields, *ken* (volume, quantity, measure) and *ri*, which can be written in (at least) two ways, one meaning “profit,” “gain,” or “benefit” (利), and the other, “reason,” “justice,” “truth,” “principle” (理).

We are not certain when the first combination (the one combining quantity and benefit) was favored over the second (the one blending measure and justice), but many scholars think that this was an unfortunate slip. If the second meaning had prevailed, the Japanese word for “right” would have been linked correctly to the one combining the concept of power or authority with that of reason or principle. Today, instead, the term links power or authority to personal profit and interest (although the term for “human right”—*jinken* (人権)—tries to make up for this conceptual ambiguity by combining the terms “person” and “authority”). We are now in a position to understand the following keen observation by Patricia Boiling:

Even when rights exist on paper, individuals are reluctant to assert them, afraid of being perceived as troublemakers or whiners. They cannot overcome the feeling that what pertains only to them (as they see it) is selfish and illegitimate, and so they do not feel they are in the right to argue that others respect their privacy or beliefs.³⁴

Therefore, the terminology of rights in Japan seems to account for, or include, some of the attitudes that shape the cultural context of North-East Asia. Two points are particularly worth noting in this regard: first, the communal aspect, whereby the members of a given group bargain their freedom and equality in exchange for the safety provided by the group; second, the search for consensus, which determines the relations between the authority and the community (the success of the group could be threatened if its mem-

33. The great historian of Japan, G. Samson, *Western World and Japan* (New York: Alfred A. Knopf, 1950), 446, lamented: “So unfamiliar was the concept of the rights of the individual subject that in purely Japanese legal writings there is no term that closely corresponds to the word ‘rights’ as expressing something that is due to a person and that he can claim; nor indeed did familiar speech include such a word in its vocabulary.”

34. P. Boiling, “Private Interest and Public Good in Japan,” in *The Pacific Review*, 1990, 3/2: 190. It should be observed that books and manuals inspired by the narcissistic phenomenon of *nihonjinron* (“discussion about the Japanese”) are full of references to the uniqueness of the “Japanese spirit.” Among the manifestations of this spirit we find the effort to avoid conflict as much as possible, to avoid excessive resort to judicial courts and to favor all forms of conciliation. Some jurists even argue that, due to the vagueness and ambiguity of the Japanese language, legal disputes cannot be solved through the use of reason and precise definitions, but are settled instead through non-verbal communication which, unsurprisingly, is possessed only by the Japanese.

bers were dissatisfied and their expectations betrayed). The marked Confucian influence gave Japanese society a rigid hierarchical structure; consequently, not only did the individuals put an almost unlimited trust in authority but, in exchange for their loyalty, they also expected that their leaders would take care of them and redistribute some of the benefits they had received.

This cultural influence also explains the Japanese tendency to deal with the issue of human rights on the basis of a broader social perspective: the violations of human rights are seen as problematic, not necessarily because they violate the rights of individuals, but because they undermine social harmony at its roots. As D. Roy argues,

this may help explain why the Japanese government demonstrates a stronger commitment to protecting political rights, but a weaker approach to combating violations of socioeconomic rights, such as discrimination against socially disadvantaged minorities: unfair treatment of these minorities causes disharmony, but so would harsh punishments against the offending majority.³⁵

The Structure of Human Rights from the End of World War II to the Present

Along with the development of the Japanese terminology of “right,” we must bear in mind that, historically, the language of human rights in Japan (and the duty to promote them) reached its turning point only in the immediate post-war period, when the Allies decided to rewrite the Japanese constitution (drafted during the Meiji era) in accordance with the *Potsdam Declaration* of 1945.³⁶ The principal innovations of the constitutional reform concern three areas: the transferral of the center of political focus away from the person and institution of the Emperor and on to the Japanese people;³⁷ the endorsement of a peaceful attitude, rejecting the use of force as a means for the resolution of international conflicts; and finally, the recognition and adoption of the concept of human rights.

The Constitution explicitly mentions human rights three times: in the Preamble (“We recognize that all peoples of the world have the right to live in peace, free from fear and want. We believe that no nation is responsible to itself alone, but that laws of political morality are universal; and that obedience to such laws is incumbent upon all nations who would sustain their own sovereignty and justify their sovereign relationship with other nations”), in articles 10–40 of Chapter 3 (where we find a detailed list of the civil and economic rights to be implemented), and finally in article 97 (in which we read that “the fundamental human rights by this Constitution guaranteed to the people of Japan

35. D. Roy, “Japan,” in C. Kenneth and D. Roy, *The Politics of Human Rights in East Asia*, op. cit., 260–61.

36. Section 10 of the *Potsdam Declaration* reads: “The Japanese government shall remove all obstacles to the revival and strengthening of democratic tendencies among the Japanese people. Freedom of speech, of religion, and of thought, as well as respect for the fundamental human rights shall be established.”

37. In the Preface of the Constitution we read: “The authority of the Government is derived from the people, the powers of which are exercised by the representatives of the people, and the benefits of which are enjoyed by the people.”

are fruits of the age-old struggle of man to be free; they have survived the many exacting tests for durability and are conferred upon this and future generations in trust, to be held for all time inviolate”).

Conservative authorities and movements have often criticized the text of the Constitution, which they considered alien to Japan in that it was written and imposed on them by the Allies. But we must also point out that, prior to the drafting of the Constitution, Japan had witnessed a lively debate on the necessity to radically reorganize the country (particularly in regard to the role of the Emperor and the assessment of human rights), so much so that some local proposals to emend the political and social structure of the country were sometimes more radical than those included in the final text.³⁸

In any case, there is no doubt that the Japanese Constitution, which transformed the country into a parliamentary democracy and conferred complete autonomy on the Bar Association, gradually promoted the debate on human rights and increased awareness of their importance. In the period immediately after the war, two organizations distinguished themselves in the defense of human rights.

The first is the Japan Federation of Bar Association (*Nihon Bengoshi Rengōkai* 日本弁護士連合会). Founded in 1949 and immediately established as an organ independent of the Ministry of Justice (which prior to the war had claimed the power to suspend judiciary procedures and repeal the resolutions submitted by the Bar Associations), the Federation has launched several initiatives concerning the protection of human rights and has promoted legal aid to the poor. Today, the Federation's main concern is to reform the Japanese legal system by making it compatible with the international principles of human rights. To this end, the Federation has established a specific internal Committee whose twofold purpose is the “investigation of alleged violations of human rights, and issuance of warnings or requests against state agencies or other organizations which the committee believes have engaged in violations of human rights so that such violations will cease or be mitigated.”³⁹ So far the Federation has demonstrated that it has enough power, as well as the confidence and the necessary skills, not only to challenge the authorities, but also to negotiate with the State, thus placing limits on Government initiatives and monitoring and defending (as far as it is possible) the rights of civil society.

The second noteworthy organization is the Japan Civil Liberties Union (*Jiyū Jinken Kyōkai* 自由人権協会), one of Japan's most prominent non-governmental organizations.⁴⁰ Founded in 1947, its purpose is “to promote the democratization of the Japanese people by securing fundamental human rights and contribute to the peace of all mankind conducting all-out struggle against all infringements upon freedom and civil liberties by

38. For example, a poll conducted by the newspaper *Mainichi Shinbun* published on 27 May, 1946, reveals that a good 50% of the population favored the contents of the draft of the Constitution, while only 13% opposed it.

39. The web page of the Federation can be viewed at <<http://www.nichibenren.or.jp/en/>>.

40. The web page of the Japan Civil Liberties Union is found at <http://www.jclu.org/index_e.shtml>.

feudalistic, bureaucratic, and all other undemocratic systems and elements.”⁴¹ The Union was very active during the immediate post-war period, when it courageously opposed abuse of power by officials, police violence, and arrogant attitudes of tax officials; in the following years it provided legal defence and protection to people in need and actively cooperated with several international organizations. Recently, the movement has been promoting human rights through the organization of conferences on the rights of foreign immigrants and refugees.

But despite the flourishing of these praiseworthy initiatives and local organizations, from the end of the war to the beginning of the 90s Japan has not proved to be an enthusiastic supporter of human rights at international level. On the contrary, it participated only reluctantly in the bodies and international meetings dealing with human rights, and it hardly ever supported any resolution or proposal considered to be at variance with its practice or juridical system. There are several reasons for this attitude. The first may be that Japan complied with the United Nations’ agenda on human rights in a merely passive way, rather than endorsing it enthusiastically.

Secondly, Japan always opposed all those measures and regulations that might have interfered with the process of its domestic growth. Suffice it to say that Japan became a signatory member of the two international Conventions on civil and economic rights only in 1979, and even then it expressed reservations about some of the articles of these Conventions, specifically the article on the individual right to freedom of association (which includes the right to start and join labor unions that would protect one’s interests, and the right to strike—art. 22 of the *Convention on Civil and Political Rights*), and the right of labor unions to establish national confederations that may join or form international organizations of labor unions (art. 8 of the *Convention on Economic, Social and Cultural Rights*).

The third and final reason for Japan’s uneasiness toward human rights is that Japan has been reluctant to accept, or even simply take into consideration, any constructive criticism coming from outside its borders, while failing to settle the controversy concerning the rights of its ethnic minorities through internationally applicable laws. For example, it was not until 1991 that the Ainu were recognized as an “ethnic minority,” and this only in Japan’s third regular report to the United Nations on the occasion of the *International Covenant on Civil and Political Rights*. Instead, in its first report of 1980, the Japanese Government bluntly declared that in Japan there was no such thing as “ethnic minorities” as defined in article 27 of the *Covenant* (“In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language”).

Prior to the second report, which should have been delivered in 1986, Prime Minister Yasuhiro Nakasone made some inappropriate (to say the least) remarks. He asserted that

41. A. C. Oppler, *Legal Reform in Occupied Japan* (Princeton: Princeton University Press, 1976), 179.

Japan was a “homogeneous” country, claiming that its rapid economic growth, compared to that of the United States, was due to the fact that Japan had no minorities, and that Japan’s strength was indeed to have “one ethnicity, one State, and one language.”⁴² Needless to say, these remarks were harshly criticized both by Japan’s ethnic minorities and by the leaders of international movements fighting for the recognition of the rights of all ethnic minorities.

Japan’s attitude toward the issue of human rights underwent a qualitative change from the beginning of the 90s, at both international and national levels. The change at international level can be explained by reference to three interrelated factors. The first is the criticism Japan suffered due to its alleged political paralysis during the international crisis caused by the Gulf War. It is still unclear how Japan should have behaved or get involved in that event (given that article 9 of the Constitution prohibits the use of force to settle international matters). What was indeed evident is that Japan could no longer afford to sit on the side-lines of international politics and think that its involvement in a world crisis could be limited to monetary donations.

The second factor that urged Japan to take a stand on the issue of human rights was a result of its participation in the Bangkok meeting of April 1993, which was a prelude to the international conference that took place in Vienna in June of the same year. It seems that on that occasion the Japanese (and Korean) delegation had to surrender to the pressure of the other South-East Asian countries (especially China, Malaysia, Indonesia, and Singapore, which insisted on interpreting human rights in the context of the so-called “Asian values”) and apparently had to sign the *Bangkok Declaration*.⁴³

42. For a more detailed discussion of the ethnic minorities present in Japan, see T. Tosolini, ed., *The Other Within* (Osaka: Asian Study Centre, 2010), 63–91.

43. The last words of this sentence are intentionally vague, since conflicting reports about that signature are given. Some sources claim that Japan indeed ratified the *Declaration*, while others deny that such an event ever occurred. On the supporters of the former hypothesis, see H. Shigeko, *Japan And East Asian Monetary Regionalism: Towards a Proactive Leadership Role?* (London and New York; Routledge, 2006), 69: “The disharmony between Japan and Western countries is rooted in its historical relations with its neighbors: Japan cannot be seen to be dominant in the region. It is interesting to note that Japan joined other Asian nations and signed the Bangkok Declaration;” and O. Mehmet, E. Mendes, R. Sinding, *Towards A Fair Global Labour Market: The Role of International Labour* (London and New York; Routledge, 1999), 175: “The aspirations and the commitments of the Asian region were emphasized in the Document (Bangkok Declaration) while the concept of the universality of human rights was downplayed. Japan and Korea, while reluctant to do so, finally signed on to the priority of Asian values to universal conception of human rights, and were unwilling to resist China’s desire to show Asian solidarity against Western hegemony on human rights.” As for the supporters of the latter hypothesis, see S. McCarthy, *The Political Theory of Tyranny in Singapore and Burma: Aristotle and the Rhetoric of Benevolent Despotism* (London and New York; Routledge, 2006), 91: “The Bangkok Declaration on Human Rights, signed in 1993, was an attempt by various Asian states to forge a compromise on the issue of the universality as opposed to the relativity of human rights. The Declaration was signed in Bangkok by 40 countries, including China but excluding Japan;” and I. Neary, *Human Rights in Japan, South Korea and Taiwan* (New York: Routledge, 2002): “At both conferences (Bangkok and Vienna) the Japanese delegation made clear that it took the universalist view in opposition to the views expressed by the representatives of the PRC (People’s Republic of China), Singapore and others South East Asian countries who insisted on placing human rights in the context of ‘Asian Values.’”

The third and final factor that brought Japan to reconsider its position on human rights is the consensus reached within the Ministry of Foreign Affairs to present Japan's candidacy for a permanent post on the United Nations Security Council (if and when the suggested reform of this Council are enforced). The reason for this more positive attitude of the Ministry toward international rights is that Japan would hardly have been able to plead its cause, had it continued to ignore the appeals of the international community to ratify at least some of the more important international documents on human rights.⁴⁴

At local or national level, even if we consider only some of the initiatives promoted by some Japanese prefectures and towns, we will see that Japan positively modified its approach to human rights. In 1990, the Kanagawa Prefecture inaugurated its Human Rights Center, in 1996 the Tottori Prefecture established a Human Rights Centre, while the Osaka and the Fukuoka Prefectures established their own commissions to produce local versions of the national ten-year plan for human rights education.

In 1994 the city of Kyoto, on the occasion of the 1200th anniversary of its foundation, inaugurated the Human Rights Research Institute,⁴⁵ whose purpose is to conduct studies on issues concerning universal human rights, to promote academic exchange among national and international Institutes in the field of human rights, and to contribute to the advancement and understanding of those issues both locally and abroad.

In December of the same year, the Asian Pacific Human Rights Information Center⁴⁶ was inaugurated in Osaka. The purpose of the Center is to promote human rights in the Asian Pacific region; to offer reports on the Asian perspective on human rights to the international community; to ascertain that Japan's international cooperation activities include the human rights perspective; to raise awareness among people to promote the internationalization of Japan.

Lastly, numerous groups of *Amnesty International* (for a total of just over 9,000 members) are present in the country. They are dedicated to spreading information about prisoners of conscience and human rights issues in general (especially concerning the death penalty). In addition to this, the year 1988 saw the foundation of the International Movement against All Forms of Discrimination and Racism, whose goal is to support groups and organizations that fight against all forms of inequality and discrimination both in Japan and overseas. They have also published educational handbooks for police and immigration officers and similar groups who have regular contact with women who may have been victims of human trafficking and of the international sex worker industry.⁴⁷

44. In May 1994 Japan ratified the *Convention on the Rights of the Child*, in 1997 the *International Convention on the Elimination of All Forms of Racial Discrimination*, and in 1999 the *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*. Previously, in 1985, and in conformity with article 14 of its Constitution, Japan had ratified the *Convention on the Elimination of All Forms of Discrimination against Women*, adopted by the General Assembly of the United Nations in 1979.

45. *Sekai Jinken Mondai Kenkyū Sentā* (世界人権問題研究センター), at <<http://www.mmjp.or.jp/jinken/>>.

46. *Asia Taiheiyo Jinken Jōhō Sentā* (アジア・太平洋人権情報センター), at <<http://www.hurights.or.jp/japan/>>.

47. For a broader analysis on the popularization of the human rights discourse in Japan from the end of

Social and Civil Rights in Japan Today

Although some thinkers dispute the idea that Japan should be considered a truly mature democracy,⁴⁸ it is difficult to deny that the Japanese social and political system offers a range of civil and economic rights comparable to those promoted by many Western democracies.

The unemployment rate at the end of 2012 stood at 4.1%, and the once harmonious relation between employers and employees (a relation in which the employees would identify with their company to the point of sacrificing their health and rights for it) appears to have been unavoidably deteriorating: sudden layoffs (even for high ranking employees), the priority given to working proficiency rather than age or social standing, and the reform of the promotion and salary system led to a widespread mistrust between the two parties. The social mobility percentage is also low: it is very difficult to move up the corporate ladder for those who are not part of the elite. Many political leaders, industry executives, and business managers are either children or relatives of people who once held similar positions. Moreover, the family context remains crucial in determining school opportunities, which will eventually affect the socio-economic destiny of the individual: about half of the executive administrators and members of the parliament graduated from the prestigious Tokyo University. Thus, as pointed out by L. D. Hayes, “in Japan there is no chance for someone with a working-class background to make it to the top and very little chance for anyone from the middle class.”⁴⁹

The violence and crime rates (which reached the number of 1.48 million civil offenses in 2011) are among the lowest in the world (equal to Iceland and Switzerland). The level of vandalism and drug dealing is nearly insignificant, and the possession of weapons is illegal, although the sense of safety of many Japanese has been shaken after the attack on 20 March 1995, in which some members of the millenarist cult, Aum Shinrikyō, released sarin gas in the Tokyo subway system, killing 12 people and intoxicating about 6,000. In any event, it is important to bear in mind that, as L. D. Hayes observes, “in Japan obedience to the law is ingrained, a product of social expectations to conform, rather than the threat of punitive retribution imposed by agencies of the state.”⁵⁰

Japan's literacy rate is nearly perfect, even if the quality of life in secondary schools appears to be unsatisfactory. Students are under great pressure to pass standardized examinations that will grant them access to the most prestigious universities in the country, so that studying primarily amounts to memorizing (rather than critically assimilating and applying) data and information. In addition to this, every year Japanese textbooks (especially history manuals) come under attack from neighboring countries (China and

World War II to the present, see I. Neary; *Human Rights in Japan, South Korea and Taiwan*, op. cit., 15–67.

48. See for example K. von Wolferen, *The Enigma of Japanese Power: People and Politics in a Stateless Nation* (New York: Alfred A. Knopf, 1989).

49. L. D. Hayes, *Introduction to Japanese Politics* (New York: Paragon House, 1992), 139.

50. Ibid., 203.

Korea) because the Ministry of Education meticulously sifts all the information in those textbooks and systematically censors anything that might give a negative image of the country (especially information about Japan's crimes against Asian countries during World War II).

The Japanese health care system, because of the excellence it has attained in both its medical research and structures, is considered one of the most expensive in the world. The service is public: it is managed by the central authority in collaboration with the local government and is funded through a contributive insurance system. Patients have complete access to medical services.

There were fewer suicides in 2012 than in the previous year (27,766 in 2012; over 30,000 in 2011) thanks to the action taken by local administrations in providing psychological assistance to subjects considered at risk and the diagnostic improvements in mental health clinics.⁵¹ In comparison, the year 2011 saw an increase in cases of abuse and violence on minors. According to the Ministry of Health, Labor and Welfare this increase is due to greater awareness in the population about the serious nature of the problem, an awareness which grew in recent years as a result of numerous sensibilization campaigns on the subject.⁵²

Further, newspapers and other media rarely report discrimination against minorities living in Japan (Ainu, Burakumin, citizens of Okinawa, and residents of Korean origins), as well as the culturally ingrained discrimination against women, especially in the workplace, and despite the fact that the 1986 equal opportunity law declared the discrimination of working women illegal and enforced specific measures to guarantee their health, especially during pregnancy and after childbirth.

As for civil and political rights, like all democratic countries, Japan guarantees the freedom of the press, and the majority of the population considers the free circulation of information and news to be reliable. Newspaper circulation is widespread, every household is equipped with a television set, and about 87 million Japanese use cellular phones and the Internet regularly (53% of Internet users in Asia are Japanese). In spite of all this, foreign observers have pointed out that journalists are sometimes unable to exercise their right to autonomy. Instead, many journalists practice a form of self-censorship and uncritically confirm news received from the government or from the police. In addition

51. See <<http://www.japantimes.co.jp/text/nn20130118a4.html>>: "The number of suicides last year slipped below 30,000 for the first time in 15 years, falling 9.4 percent from 2011 to 27,766... A Cabinet Office official in charge of suicide prevention efforts attributed the decline largely to progress in countermeasures taken by local governments, including promoting counseling and enhancing diagnostic ability at mental health clinics... Last year 19,216 males committed suicide, down by 1,739 from the previous year and falling below 20,000 for the first time in 15 years, the NPA said. Female suicides numbered 8,550, down 1,146."

52. See <<http://www.japantimes.co.jp/text/ed20120820a1.html>>: "Child guidance centers throughout the country recognized and took action in a record 59,862 cases of child abuse during fiscal 2011, an increase of 3,478 from fiscal 2010 the health and welfare ministry announced... The ministry explained that heightened awareness among people of child abuse has led to more people reporting even suspected cases to child guidance centers."

to this, there is also the problem of press circles which grant access to certain news only to their members.

Political protests and demonstrations are allowed, provided that they are authorized by the competent authorities and do not constitute a threat to public safety. Labor unions are independent and active, but they are company unions rather than trade unions: this means that they maintain a corporate attitude and do not stand directly against their company's management, but always seek a compromise (consequently, strikes are virtually non-existent).

Since the beginning of the democratization process in the post-war period, the government no longer uses police force for political purposes. Police brutality and abuse are unlawful, although cases of verbal violence and abuse to extort a confession from suspects have been reported.

By contrast, the detention system appears to have maintained the authoritarian traits of the past. Convicts are subject to strict rules and discipline: while at work, they cannot speak to the guards nor establish any visual contact with them; minor violations are met with severe punishments, such as spending time handcuffed in a cell or in confinement. The conditions of prison cells are generally deplorable: the cells are dirty and not heated during the winter, thus posing a threat to the health of the convicts.

Japanese law prohibits perquisitions and arbitrary incarceration, and suspects can be detained for no longer than twenty-three days prior to the preliminary trial. However, this rule is often circumvented through the practice of *bekken taiho* (別件逮捕), whereby a person is detained on minor charges while the police use that time to investigate the more serious charge that they are really interested in. If new evidence emerges the police can then arrest the suspect again on a new charge and detain him for twenty-three additional days.

According to the Constitution, the defendant has the right to a quick and public trial by an impartial tribunal (art. 37); generally, the trial takes place within two months after the charge has been made. The verdicts are decided by judges (rather than by juries), who are reasonably free in determining the importance of the evidence. Capital punishment is legal in Japan, and the law dictates that the Justice Minister should sign the order of execution within six months of the death sentence handed down by the tribunal.⁵³

53. On 20, December 2010, some 2,000 people in Tokyo demonstrated in favor of the abolition of the death penalty. According to Amnesty International, 15 executions took place in 2008 (the highest number since 1975), while currently there are about 100 people on death row. The condition of convicts in Japan has often been criticized by humanitarian organizations, which have pointed out the inhumane practice of informing prisoners of their execution date on the morning of the same day (the Japanese government defends this practice by arguing that it spares the convicts feelings of anxiety and panic, which would certainly overwhelm them if they were informed in advance of the date of their execution). Moreover, family members and attorneys are notified of the execution only after it has taken place. The authorities appeal to the surveys that indicate that over 80% of the Japanese population support the death penalty, but in a 2003 report the Human Rights League denounced the conditions of Japanese convicts on death row as "unworthy of a democracy." See <<http://www.nessunotocchicaino.it/chisiamo/index.php?idtema=10319806>>.

Finally, Japan recognizes the freedom of worship and religion, and every religious organization must be registered with the Religious Corporation (*shūkyō hōjin* 宗教法人). Citizens are also free to choose and change their place of residence, and there are no restrictions on traveling abroad.

Undoubtedly, many other rights are yet to be put into practice (for example, political asylum to people who are persecuted in their countries of origin; the compensation of thousands of “comfort women” who were subjected to violence and abuse during World War II; adequate compensation for the victims of natural disasters; to protect people’s privacy by outlawing the recording of fingerprints and photographs of foreigners entering Japan; etc.), but there is no doubt that Japan intends to revise its position and constantly adapt it to the contents of international statutes on human rights, as well as to assume an international role in the promotion of these rights.⁵⁴

JAPANESE BUDDHISM AND HUMAN RIGHTS

In the Fall of 1993, the World’s Parliament of Religions convened in Chicago to explore whether the various religious traditions are in agreement concerning some fundamental ethical issues. All major world religions took part in the meeting, including the representatives of the various Buddhist traditions (Theravāda, Mahāyāna, Vajrayāna and Zen) and the spokespersons of some ethnic minorities.

Without a doubt, one of the most important results of that meeting was the *Declaration of a Global Ethic*, a document that briefly lists the moral principles that are shared indiscriminately and practiced by all world religions. The document opens by reiterating the firm conviction that “a common set of core values is found in the teachings of the religions, and that these form the basis of a global ethic,” that “we all have a responsibility for a better global order,” and that “our involvement for the sake of human rights, freedom, justice, peace, and the preservation of Earth is absolutely necessary.”⁵⁵

The explicit reference to the theme of human rights, which all religions should defend and promote (as recommended by the *Declaration*), undoubtedly gave rise to an unprecedented debate in the field of Buddhist studies. And yet, in spite of its importance, the question of human rights has received little attention from academic researchers and publishers. One of the reasons for this lack of attention could be that scholars have focused on the more traditional questions of Buddhism, as well as the fact that the concept of human rights was not only developed recently, but is also culturally alien to Eastern terminologies. Another reason that prevented a more widespread discussion of human rights within Buddhism may be the extreme difficulty of this tradition to provide a foundation

54. See, for example, the Tokyo group coordinated by Kanae Doi, Human Rights Watch, which has been encouraging the Japanese government to persuade its neighboring countries to show greater respect for human rights. Cf. <<http://www.hrw.org/en/bios/kanae-doi>>.

55. H. Küng, K.-J. Kuschel, eds., *A Global Ethic. The Declaration of the Parliament of the World’s Religions* (London: SCM Press, 1993).

for these rights, as well as the fact that it offers very few indications about the issue. More specifically, what Buddhism finds hard to deal with is the theme of the philosophical and/or religious presuppositions of a Buddhist doctrine of human rights—along with the complex Buddhist view of the social good and its legitimization.

In recent years, some Japanese Buddhist scholars have tried to tackle this issue directly, reaching the conclusion that the notion of “human right” is reductive and partial (insofar as it is based on an incomplete interpretation of the concept of “human person” as a being isolated from the environment and other sentient beings) and that, when correctly understood, Buddhist thought provides a much more *holistic* and omnicomprehensive view of the same rights. In what follows, we would like to consider briefly the suggestions of two Japanese thinkers who support this idea. In our exposition, we will try as much as possible to report the exact words of these authors. Then, in our closing remarks, we will try to dialogue with the results of this investigation.

Unno Taitetsu

The Japanese scholar Unno Taitetsu is an expert in the Buddhist thought of the True Pure Land School and is convinced that if

the Buddhist tradition in its past history has had little to say about personal rights in the current sense of the term, this does not mean that Buddhists were not concerned with human well-being, with the dignity and autonomy of the spirit.⁵⁶

And he adds:

Contemporary Buddhism, if it is to survive in the modern world and especially if it is to establish roots in the West, must clarify what it has to offer to the personal rights and its realization for all people.⁵⁷

According to Unno, Buddhism’s original contribution to the debate on human rights is its peculiar understanding of the human person. The person is conceived as part of an infinite series of relations, an uninterrupted circle of connections, a world where everything is interrelated and bound to everything else. Thus, the Buddhist doctrine of “no-self” allows us to understand the person as more than a mere entity or as an isolated individual, for this awareness frees the person from the limited concepts of “culture” and “religion” as expressed, for example, in the Hindu notion of “caste.”

By negating the metaphysical basis of traditional religious values and practices the Buddha affirmed instead the crucial nature of human conduct and *virtus* as determining what is truly human. He also stressed reliance on the powers of

56. T. Unno, “Personal Rights and Contemporary Buddhism,” in L. S. Rouner, ed., *Human Rights and the World’s Religions* (Indiana: University of Notre Dame Press, 1988), 129.

57. Ibid., 129–30.

analysis and autonomous reason and rejected revelations, authority, and tradition as sources of knowledge.⁵⁸

The Buddhist community, or *Sangha*, became the model of this new idea of person as it tried to promote a society of equals in which the traditional distinctions between rich and poor, servants and masters, slave and free people no longer applied, and every discourse that discriminated against individuals on the basis of their caste or family lineage would become irrelevant. People are now “human” by virtue of their behavior and character—while in constant relation with others and the environment.

Unno adds an important element to this way of reasoning, namely, the conviction that when a person realizes the interconnection of all the elements of life, he also realizes that the rights are fundamental not only for a human being, but for all sentient beings as such, as well as for nature itself. He writes:

Respect for the individual and the recognition of rights is not a static but a dynamic fact which makes it imperative that as we affirm our own individual rights we must also be willing to give up ourselves in order to affirm the rights of others. When, however, we affirm only our own rights at the expense of the rights of others—including the rights of humanity over nature, one nation or one race over another, one belief or view over others—we become tyrannical and oppressive.⁵⁹

Therefore, from a Buddhist point of view, human rights must be founded on what today is called an “ecological perspective” of nature and humanity, and if we wish to overcome the egoism often associated with human rights, these rights must be extended beyond human beings to other forms of life.

Abe Masao

At the outset of his reflection on the Buddhist view of human rights,⁶⁰ the renowned Zen philosopher and scholar of comparative religions, Abe Masao (1915–2006), openly recognizes that there is no equivalent of the Western concept of “human rights” in the vast literature of Buddhism. But this absence, far from being a defect, immediately points to a different interpretation of the concepts of “right” and “person.” In fact, the modern notion of “right” is something that concerns only human beings. In Buddhism, instead,

a human being is grasped not only from the human point of view, that is, not simply on an anthropological basis, but on a much broader transhomocentric cosmological basis. More concretely, in Buddhism human beings are grasped as one part of all sentient beings or even as one part of all beings, sentient and

58. Ibid., 131.

59. Ibid., 140.

60. M. Abe, “The Buddhist View of Human Rights,” in A. An-Na’im, J. D. Gort, H. Jansen, H. M. Vroom, *Human Rights and Religious Values. An Uneasy Relationship?* (Amsterdam: Editors Rodopi, 1995), 144–53.

nonsentient, because both human and nonhuman beings are equally subject to transiency or impermanency.⁶¹

The human being, therefore, is a relative and transient being, who is in an intrinsic relation of mutual dependence with other human beings and things, and it is only because he has awareness and a marked disposition to attachment and desire that he experiences the illusion (*maya*) of possessing an independent, lasting, and substantial “self.”

The self, nature, and the divine are certainly different and have a certain relative independence, but if considered at a deeper level (that is, at the absolute level, or from the perspective of emptiness), they are completely interchangeable:

because of the absence of substantial selfhood, I am not I, and you are not you; thereby, I am you, and you are me. We are different relatively but equal absolutely, interfusing with one another, even while retaining our distinct identity. The same is true with the self and nature, and with the self and the divine.⁶²

For this reason, according to Abe, Buddhism is radically different from monotheistic religions: the first Buddhist precept is to abstain from taking life, while the Decalogue opens by stating the privileged position of the transcendent (“You shall not have other gods besides me”). This means that

in the Judeo-Christian tradition the problem of human rights and human duties to others must be considered in relation to the exclusive commandment of the supreme God, whereas in Buddhism the same problem should be grasped in relation to all living beings in the universe. This difference entails that in Buddhism the conflict between human rights and religious freedom becomes much less serious than in the Judeo-Christian traditions.⁶³

In light of these premises, what is the Buddhist contribution to the debate on human rights? Abe makes three concrete suggestions. The first concerns the elimination of all dogmas insofar as they cause inequality and intolerance. For Abe the essence of a religion is not contained in fixed precepts and preset formulas to be believed intellectually, but

61. Ibid., 144.

62. Ibid., 146. Nishitani Keiji, one of the philosophers of the Kyoto School, reaches the same conclusions as Abe: “True equality is not simply a matter of an equality of human rights and the ownership of property. Such equality concerns man as the subject of desires and rights and comes down, in the final analysis, to the self-centered mode of being of man himself. It has yet to depart fundamentally from the principle of self-love. And therein the roots of discord and strife lie ever concealed. True equality, on the contrary, comes about in what we might call the reciprocal interchange of absolute inequality, such that the self and the other stand simultaneously in the position of absolute master and absolute servant with regard to one another. It is an equality in love. Only on the field of emptiness does all of this become possible,” in K. Nishitani, *Religion and Nothingness*. Trans. J. Van Bragt (Berkeley, Los Angeles, London: University of California Press, 1982), 285. See also another essay by Nishitani, “The I-Thou Relation in Zen Buddhism,” in F. Franck, ed., *The Buddha Eye. An Anthology of the Kyoto School* (New York: Crossroad, 1982), 47–60.

63. Ibid., 147.

in the total and existential adherence to the religious truth that underlies those doctrinal formulations.

The second suggestion consists of a change of emphasis: from the pair justice-love to the pair wisdom-compassion. According to Abe, only the first pair seems to be the ground of all equality and impartiality, while in fact it generates inequality, conflict, and division between those who think they are right and those who are believed to be wrong.

Whereas Christianity talks much about Love, Buddhism stresses compassion. In Christianity, however, love is accompanied by justice. Love without justice is not regarded as true love. In Buddhism, compassion always goes with wisdom. Compassion without wisdom is not understood to be true compassion. Unlike the Christian notion of justice... the Buddhist notion of wisdom does not entail judgment or election. Buddhist wisdom implies the affirmation or recognition of everything and everyone in their distinctiveness or in their "suchness." Further, ...the particular notion of justice in Christianity... creates an irreparable split between the just and the unjust, the righteous and the unrighteous, whereas the Buddhist notion of wisdom evokes the sense of equality and solidarity. Again, justice, when carried to its final conclusion, often result in punishment, conflict, revenge, and even war, whereas wisdom entails rapprochement, conciliation, harmony and peace. Love and justice are like water and fire: although both are necessary, they go together with difficulty. Compassion and wisdom are like heat and light: although different, they work together complementarily.⁶⁴

Finally, Abe suggests that monotheistic religions interpret the unity of ultimate reality in such a way that it produces dichotomizing and dualistic views which necessarily generate intolerant attitudes. In fact, not only does the unity of monotheism presuppose an incurable dualism between the "one" and that which is not "one," but it also emphasizes the existence of a substantiality which is separate and independent of all other things. By contrast, Buddhism (especially in its Mahāyāna version) is never tired of stressing the intrinsic unity of mind and body, life and death, *nirvana* and *samsara*. As Abe writes,

one should not abide in *samsara*, the endless process of transmigration, but, through the realization of wisdom, should attain *nirvana*, the blissful freedom from transmigration. However, if one remains in *nirvana*, one may enjoy the bliss but forget the suffering of his or her fellow beings, who are still involved in the process of *samsara*... One should not become attached to *nirvana* as if it were a substantial fixed entity. In order to fulfill compassion toward one's fellow beings, one should not abide in *nirvana* but return to *samsara*.⁶⁵

Abe concludes that, through these necessary Buddhist correctives, the discourse on

64. Ibid., 149.

65. Ibid., 152.

66. C. Ives, "Deploying the Dharma: Reflections on the Methodology of Constructive Buddhist Ethics,"

human rights could finally overcome a merely juridical discourse, limited to human beings and intolerant of other believers, and, through the virtues of wisdom and compassion, bring us closer to the whole of reality and to people of a different faith.

Closing Remarks

Despite Unno's innovative approach, we find that his arguments present two problems. The first problem concerns the attempt to found human rights (and morality) purely on a perspective in which a person is a being completely interconnected with, and dependent on, the elements of reality. Christopher Ives, a well-known Buddhist scholar, rightly points out:

To claim that our flourishing is dependent on everything else, or that everything nurtures us, is to move onto shaky ground. Though a Ukrainian baby does have a relationship with the Chernobyl reactor, and lingering radioactivity may affect her, one can hardly argue in any intelligible sense that she "arises in dependence upon" the failed reactor, or that once born she is 'supported' and "nurtured" by the dangerous iodine and strontium isotopes released by the 1986 accident, or that her well-being is 'dependent on' these forms of radioactive poison. Her well-being is actually dependent on limiting her physical relationship with radioactivity, on being independent of it. Hence the reactor gets encased in concrete.⁶⁶

That the Chernobyl reactor (and more recently the reactors of Fukushima) affects the existence of its victims does not imply that for these people Chernobyl is not a danger to avoid. A child may be interrelated with a violent father or a loving mother, and a citizen, with a murderous tyrant or a spiritual person such as the Dalai Lama. Therefore, it is obvious that interrelations, in themselves, are not neutral, and one must try to become independent of them whenever these are destructive or harmful to the person.

The second problem concerns the fact that, according to Unno, all of us (not only humans, but also plants and animals) have the *same* rights. Would it not be more logical to affirm that different "natures" presumably have different "rights"?

We limit our evaluation of Abe's interesting suggestion to a few questions. His views obviously reflect the Mahāyāna perspective, in which the figure of the Bodhisattva (enlightened being) is the personification of the Buddhist ideal that combines the aspiration to *satori*, or "awakening" (great wisdom), and an attitude of disinterested assistance to everyone (the great sympathetic compassion whereby the Bodhisattva renounces *nirvana* in order to help all sentient beings to free themselves from the painful cycle of rebirths).⁶⁷ In this perspective, the source of compassion is enlightened wisdom, and

in *Journal of Buddhist Ethics*, 2008/15: 24–5. Cf. also I. Harris, "Buddhism and Ecology," in D. Keown, ed., *Contemporary Buddhist Ethics*, op. cit., 125.

67. This renunciation, positively expressed in the first of the four vows taken by the Bodhisattva (i.e., "Sentient beings are innumerable: I vow to save them all") can mean that he a) will not enter *nirvana* in order

the actions of a sensitive person always aim at compassionately helping others. Now we ask: Why are these terms (wisdom and compassion) always viewed as something which the enlightened being is, or possesses, rather than something one should perform or exercise? In other words, why are wisdom and compassion always understood as “states” and expressions of the enlightened being, rather than principles that should guide one’s actions or duties?

A possible answer to these questions is that, after reaching *satori*, the enlightened being possesses a “disposition” to the good which one then actualizes in one’s relations with others. But this “status” or “disposition”—in contrast with the Kantian disposition, for example, which recognizes some guiding principles (one’s perfection and the happiness of others) that are at the basis of Kant’s theory of virtue—tells us nothing about its influence on *concrete* interpersonal relations. For instance: should someone who possesses or stands within the circle of this “status” abstain from performing evil or cruel acts? How, and why? Would this disposition protect innocent and weak people against possible abuses? How, and why? And with regard to our theme, are there any human rights to which the enlightened being would subscribe? If so, to which ones and why? And if this enlightened being wanted to add, or replace, some of the rights, which ones would be affected, and how would he justify such an addition or substitution?⁶⁸

Further, what morals should be adopted by those who have not (yet) attained enlightenment? Presumably, they should trust the indications given by the enlightened being. What are these indications, and why should the followers practice them? Finally, can there be a *satori* that derives not only from wisdom, but also from compassion?⁶⁹ While wisdom is the cause of compassion, is it really impossible to suppose that compassion, too, can lead to wisdom?

We ask all these questions with the intention of contributing, if only minimally, to the debate on the possibility of a Buddhist foundation of human rights, a foundation which we believe is necessary and that will somehow require that Buddhism undergo an inevitable change in order to dialogue even more fruitfully with the results of international Declarations and Conventions on human rights. For we agree with professor Jan Van Bragt when, reflecting on the future influence of Zen in the Western world, he writes:

But it can be reasonably expected that Zen would adopt as its own the remaining good points of Western ethics, and help to underpin and universalize them by its own psychological and anthropological tenets... And the minimum that can

to remain in this world; b) returns to this world after he has entered *nirvana*; c) enters a *nirvana* that does not remove him from this world.

68. Similar questions are asked by the scholar of religion, ethics and human rights, D. Little, “The Problem of Ethics in Nishitani’s *Religion and Nothingness*,” in T. Unno, ed., *The Religious Philosophy of Nishitani Keiji* (United States of America: Asian Humanities Press, 1990), 181–87.

69. In connection with this, see the article by J. Whitehill, “Is There a Zen Ethics?,” in *The Eastern Buddhist*, 1987, 20/1: 9–33.

70. J. Van Bragt, “Reflections on Zen Ethics,” in *Studies in Interreligious Dialogue*, 2002/2: 145–46. The

be demanded is, of course, that Zen does not unduly relativize and undermine the best points of Western ethics, such as, for example, the drive for full recognition of human rights... It appears that Zen in the West will have to pay more attention to ethical norms and motivations than the Zen movement ever did in its Eastern history, while placing *karuna* (compassion) and its expedient means resolutely in the center. It may even have to work out its own “Zen ethics” Zen people in the West can, therefore, not afford to simply repeat the traditional Zen rhetoric about ethics. They will have to be creative, and especially so when it comes to social ethics, and the place of (and motivation for) social engagement on the Zen path. For, traditionally “Buddhism is extremely other-worldly, refusing to enter into the various affairs of human society, politics, economics.”⁷⁰

We are certain that the furtherance of the debate on human rights will not only lead to a better and more sustainable world, but will also invalidate the prophecy of the historian Arnold Toynbee, who wrote that the encounter between Buddhism and the Western world will be “one of the greatest collisions of the twenty-first century.”⁷¹

THE CATHOLIC CHURCH AND HUMAN RIGHTS IN JAPAN

On the occasion of the sixtieth anniversary of the *Universal Declaration of Human Rights*, the Japanese Catholic bishops issued a letter to the faithful: *Respect Human Rights of All*.⁷² In this brief but significant document, the bishops voiced once again the urgency to guarantee human rights (especially economic rights) to every individual, and in line with the discourse of Pope Benedict XVI to the United Nations, they assert that

if individuals, enterprises and nations keep pursuing their own interests, human dignity will be trampled on and the world will become a more violent and distorted place, where the victims of hardship and despair, whose human dignity is violated with impunity, become easy prey to the call of violence, and they can then become violators of peace.⁷³

After referring to the first article of the *Declaration*, where it is stated that “all human

words reported in the quotation from Van Bragt are by the philosopher K. Nishitani (*Choshakushū*. Complete Works, vol. 17. Tokyo: Shōbunsha). These words emphasize once again that the central problem of Buddhism is what Buddhists call “self” or “ego,” and that the social problem is secondary. In the famous expression of Master Dōgen: “To study the Way is to study the self. To study the self is to forget the self. To forget the self is to be enlightened by all things of the universe. To be enlightened by all things of the universe is to cast off the body and mind of the self as well as those of others. Even the traces of enlightenment are wiped out, and life with traceless enlightenment goes on forever and ever.”

71. A. Toynbee, *Christianity Among the Religions of the World* (London: Oxford University Press, 1948), 14.

72. The Japanese text can be downloaded at <www.cbcj.catholic.jp/jpn/doc/cbcj/081210/08HRjp.pdf>; the English text can be found at <<http://www.cbcj.catholic.jp/jpn/doc/cbcj/081210/08HREng.pdf>>.

73. Address of Pope Benedict XVI to the UN General Assembly, April 18, 2008.

beings are born free and equal in dignity and rights,” and that “they are endowed with reason and conscience and should act towards one another in a spirit of brotherhood,” the bishops clearly indicate the theological principle underlying this statement: “From the teaching of the Bible, we believe that God created every human in his image, and the dignity of human beings is bestowed by God—not created by human society, that it pertains universally, and that no one must violate it.”

This document is an urgent invitation to establishing world peace (reminding us that the United Nations adopted the *Declaration on Human Rights* after reflecting on the number of human lives wiped out by the two world wars), to a fair redistribution of resources (by opposing market fundamentalism), and to adopt the perspective of those who are marginalized (for “if we do not take the viewpoint of those who are marginalized, then even without malicious intention, we will end up standing on the side of those saying that a certain degree of human rights violations are unavoidable”).

The programmatic character of this document is made even more urgent by the fact that the bishops are well aware that “human rights have been violated both at home and abroad even now after 60 years from the adoption of this declaration.” And it is on the basis of this awareness that the document is for the faithful (and, indirectly, for the Japanese society) an indication of the way to follow in the immediate future.

The Efforts of the Church in Favor of Human Rights

This document of the Japanese Church is certainly not the only one that refers explicitly to human rights, and it would be a sign of defeatism to claim that the Church, in the past, never worked to promote or defend human rights, either locally or internationally. That the Church did engage in these activities will become evident if we retrace, albeit briefly, its efforts and organizations geared to the promotion of human rights.

In November 1975, the Catholic Bishops’ Conference of Japan established a commission for justice and peace, thus fulfilling a desire expressed by Pope Paul VI in 1967. In the same year, at the end of the Vietnam war, many “boat people” began to seek asylum in Japan. The Church, through the organization *Caritas Japan*, positively answered the UN’s appeal to provide temporary accommodation for groups of refugees by making its structures available to them. Later, in 1982, the Bishops’ Conference created the *Committee for the Settlement of Refugees*, thus giving each Diocese the possibility to plan and implement activities in support of the refugees within its territory.

In the 1980s Japan had to face the dramatic problem of migrant workers from neighboring countries. A growing number of Asian women (especially from the Philippines), who were forced into the entertainment industry, had their freedom of movement hindered or denied and were subjected to other forms of discrimination. Churches and religious houses gave life to several forms of assistance and support until, in 1983, in agreement with the Catholic Bishops’ Conference of the Philippines, the *Committee for Solidarity with Asian Women Residing in Japan* was established.

In addition to migrant women, the 1980s also witnessed a constant flux of migrant

men coming not only from Asia but also from Latin American countries. Problems and difficulties of all kinds soon arose: acculturation and language difficulties, complications due to mixed marriages, issues with immigration offices, etc. The Bishops' Conference decided to widen the range of activity of the 1983 Committee by renaming it as the *Committee for Solidarity with Foreigners* residing in Japan. Support centers were also established in each Diocese to alleviate the social and personal maladjustment experienced by foreign workers.⁷⁴

The visit of Pope John Paul II to Japan renewed the Japanese Church's enthusiasm for the work of evangelization, rekindled its sense of responsibility for world peace and contributed to strengthen its sense of identity. Not only did the Pope's appeal in February 1981 at the "Peace Memorial Park" of Hiroshima attract the attention of Japanese civil society, but it also spurred the *Committee for Social Activities* to launch a sensibilization campaign and a petition to outlaw nuclear weapons, and to organize a Peace Pilgrimage Mission to present the signatures of this petition at the UN Second Special Session on Disarmament.

While dealing with all these problems and difficulties, the Church has been always concerned primarily with protecting the mission and dignity of people, who are created in God's image and redeemed by Jesus Christ. In 1983, in an attempt to address these problems in a more qualified way, the Bishops' Conference organized the *Catholic Committee for Human Rights and Welfare*, which was entrusted with the care and coordination of such groups as the Liaison Association for the Disabled, the National Liaison Association of Catholic Volunteers, the Braille Library, the Alcohol and Drug Dependency Strategy Committee, and the Federation of Prison Chaplains.

Among the social issues confronted by the Church, we must mention the discriminations against Burakumin (which in 1984 led to the creation of the Committee for the Buraku Issues) and Koreans living in Japan. A preliminary survey in several churches of Osaka showed that the faithful were generally unaware of the gravity of the disparity of treatment of Burakumin and were insufficiently prepared to deal with the problem. For this reason, in 1992 the Episcopal Commission for Social Activities issued the document *Towards Overcoming Buraku Discrimination*. The document outlined the Church's fundamental attitudes toward Burakumin and voiced the need for a total revision of the structures, organizations, habits, liturgies, rites and teachings of the Church in order to eliminate any reference or allusion to discriminatory practices and dispositions.

As for the issue of the human rights of Koreans living in Japan, the Church's activity was focused particularly on trying to oppose the law on Alien Registration that was in

74. The concrete efforts of the Bishops' Conference were followed by petitions and appeals to several Prime Ministers to immediately sign the *United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, adopted by the UN General Assembly in December 1990 and which Japan is still to ratify. For the text of this petition see <<http://www.cbcj.catholic.jp/eng/edoc/e97migr.htm>>.

effect during the 1980s. In 1984, the Bishops' Conference, through the Committee for Social Activities, presented a proposal to the Prime Minister, the Ministry of Justice, and the Ministry of Internal Affairs and Communications, calling for the repeal of the unjust law that made fingerprinting mandatory for foreign residents and respect for the rights of those who refuse to submit to it.

Further, we cannot fail to mention one of the most delicate issues that the Church had to face in the immediate post-war period: the issue of the separation of Church and State. The Meiji Restoration, which opened Japan's borders to the West and thus inaugurated the radical modernization of the country, also witnessed the public revival of the figure of the Emperor (then invested with divine status), to the point that all national and military policies were carried out in his "sacred" name.⁷⁵

The establishment of the Shinto shrine of Yasukuni dates back to this period, and since its foundation its function has been to preserve the memory of over two and a half million Japanese who, from the beginning of the Meiji Restoration to the end of the war, gave their lives for "the emperor and the country." While prior to the war the shrine used to receive special funds from the State, it later came to be considered only as a religious institution. However, in 1969, repeated attempts were made to pass a law that would allow public resources to be allocated to the shrine. The Church, especially through the *Catholic Council for Justice and Peace*, opposed (and continues to oppose) the implementation of that law, but the annual visits to the shrine by members of the government, and especially by Prime Ministers, are a clear sign that the principle of separation of State and religion is not as undisputedly accepted as it used to be.

In 1990 a petition of the Bishops' Conference addressed to the then Prime Minister Toshiki Kaifu stated that Japan "should learn a lesson from its past, when state, religion, and the military joined together to violate the basic human rights and peace of people not only in Japan but around the world, and especially in Asia." It urged that "the basic constitutional principles of separation of state and religion, the sovereignty of the people, and the renunciation of war be strictly observed and that Japan contribute to world peace." The expression "renunciation of war" found in this petition may be attributed to the fact that, at this time, the Church was preoccupied with the outcome of the various

75. This process of revival continued until the end of World War II, when, in January 1946, Hiroito formally declared to the nation that he was not divine. In the same year, the Supreme Commander for the Allied Powers, Douglas MacArthur, entrusted Courtney Whitney (Chief of the Government Section and MacArthur's personal attorney before the war) with putting together an American team of experts to rewrite the Japanese Constitution. The two most prominent names on this team were Beate Sirota Gordon (1923–2012), a young woman of Jewish descent who was born in Vienna twenty-two years earlier and was put in charge of the sections on civil rights (she is responsible for the drafting of the articles on the equality of men and women, especially art. 14 and art. 24 of the Constitution), and Richard Poole (1919–2006), a young naval officer whose main task was to rethink the status of the Emperor. It was Poole who transformed the figure of the Emperor from a "human divinity" to "the symbol of the State and of the unity of the People," (art. 1). See I. Buruma: *Inventing Japan. 1853–1964* (New York: Modern Library, 2004), 131–52.

debates that resulted in the *Peacekeeping Operation Law* of 1992 (that is, the law on military operations for the sake of peacekeeping carried out under the aegis of the UN), which authorized the Japan Self-Defense Forces to be deployed for military operations abroad.

We can detect the same preoccupation in 1991 (when the Conference suggested that civil rather than military aircraft be used for rescue operations of refugees during the Gulf War) and in 2007 (when the Conference, appealing to the faithful, reaffirmed the concept of separation of State and religion and insisted on the juridical principle of art. 20 of the Constitution, which guarantees the fundamental human rights of religious freedom: “Freedom of religion is guaranteed to all. No religious organization shall receive any privileges from the State, nor exercise any political authority. No person shall be compelled to take part in any religious act, celebration, rite or practice. The State and its organs shall refrain from religious education or any other religious activity”).⁷⁶

Lastly, we would like to mention the Church’s constant commitment to human life, which is well summed up in the document *For the Recognition of the Value of Human Life from Its Beginning*,⁷⁷ its efforts in favor of the fair treatment of foreign detainees in Japan⁷⁸ and its repeated pleas for the abolition of capital punishment.⁷⁹

Nor should we forget the very recent case of six policemen of the Kawasaki Port Police Station, who entered the grounds of Kaizuka Catholic Church (Yokohama Diocese) without a warrant (and hence illegally) to carry out police investigations and interrogations, even though the pastor of this parish had denied them permission to enter. The Bishops’ Conference asked the competent authorities to take the necessary measures to prevent similar incidents from happening again, insisting that the police respect the fundamental human rights stipulated by the Constitution (along with the right that entails the respect of religious freedom and organizations) and avoid causing unnecessary unrest among the faithful.⁸⁰

76. The text of the message can be found on the web page of the Catholic Bishops’ Conference of Japan, at <<http://www.cbcj.catholic.jp/eng/edoc/070221.htm>>.

77. This 1999 document by the bishops is available at <<http://www.cbcj.catholic.jp/eng/edoc/e99life.htm>>.

78. See a recent text dated November 1997: *A Plea for Better Treatment of Foreigners Held in Japanese Jails, Police Cells, Immigration Centers and Other Places of Temporary Confinement*, signed by the former Chairman of the Standing Committee of the Bishops’ Conference, Hamao Fumio, <<http://www.cbcj.catholic.jp/eng/edoc/e97migr.htm>>. The text reads at n. 5: “Because of our involvement with people in detention we have found that the awareness and interpretation of their responsibility, on the part of personnel in prisons and places of detention here, are far below international level. Could we entreat the Minister to provide officials and all personnel with a solid grounding and education in the principles involved so as to give them a greater consciousness of human rights? The *raison d’être* of a prison has changed. Its definition as ‘a place of punishment’ is changing to ‘a place of regeneration’. We are convinced that this is the present trend in international society.”

79. See the document “Reverence for Life. A Message for the Twenty-First Century from The Catholic Bishops of Japan,” 2001, 68–70, <<http://www.cbcj.catholic.jp/eng/edoc/o1life.htm>>.

80. The petition can be downloaded at <<http://www.cbcj.catholic.jp/eng/edoc/120621.htm>>.

Conclusion

At the end of the message *Respect Human Rights of All*, the Japanese bishops express their preoccupation for the conditions (especially the economic condition) of a world that seems insensitive to the discourse on human rights and gladly trades the common good of humanity for the boundless growth of individual profit. The bishops are well aware that this crisis is primarily moral rather than structural: “An offense against the human rights of one person,” they write while citing the thought of Pope John Paul II, “is an offense against humanity itself.”

Everyone is responsible for all, everyone must answer for the evil and injustice inflicted on one’s fellow human beings, and it is everyone’s duty to care for the wellbeing of others. For this reason, the bishops’ message reminds us that “the promotion of human rights is a task which follows from love of the human person and the most effective strategy for eliminating inequalities between countries and social groups, and for increasing security. When we respect human dignity and human rights together as a single whole, the good of both the person and society will be promoted unambiguously.”

What impact will this document have in a country where Catholics are only 0,5% of a population of about 127 million people? What echo could these words have in a social context that is dominated by a Confucian way of thinking (in which the superior-inferior relation has priority over all other relations) and a Shintō and Buddhist worldview (virtually lacking all practical references to human rights)? What influence will these appeals and exhortations have in a place where the dignity of the individual is sometimes compromised in favor of the State and its economic policies?

We should not forget that the primary recipients of the letter of the Bishops’ Conference are the Catholic laity and that, consequently, *they* are the necessary starting point of an ever new process of evangelization, both within and outside Japan.

In the meanwhile, the Japanese Church intends to proclaim openly that each individual possesses a dignity that no political or economical human system will ever be able to take away or diminish, and to keep spreading the seed of God’s Kingdom which—we know not when nor how (*Mk* 4:26–29)—will bear fruit in due time and become a shelter for many (*Mk* 4:30–32).

FINAL OBSERVATION

At the end of this historico-phenomenological *excursus*, which allowed us to reflect on the relation between human rights and Asian values, on the time and modality of the adoption of these rights in Japan, on their reception in Japanese Buddhism and Christianity (we said nothing about the contribution of Shintoism because this tradition never appears to have produced a systematic reflection on the theme), we now wish to spend a few words (in the form of an intuition rather than of an argument) on the relevance of the discourse on human rights from a missionary standpoint.

The two absolute novelties introduced by the discourse of human rights will not have escaped those who have followed us thus far. The first is the elimination of all distinctions and discriminations among human beings: wherever they may be and to whatever social rank they may belong to, all individuals carry these fundamental rights within themselves. In this sense, and for the first time in the history of humanity, human rights constitute the juridical basis for a Constitution of the entire human family: each State must respect these rights because they are possessed essentially by every human being (whether one is a citizen of that State or not).

The second element of novelty is the fact that all Declarations, Conventions, and Agreements on human rights list not only freedom rights (the “rights not to be hindered,” or the so called “negative freedom”) but also, equally importantly, the rights of the community that are to be promoted if one is to have a humanly dignified life (suffice it to think of art. 23 of the *Universal Declaration*, which speaks of the right to lead “an existence worthy of human dignity,” or of art. 25, which asserts a universal right to a “standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services,” or again of art. 26, which declares that “education shall be directed to the full development of the human personality,” etc.).

Now, could this constant reference to “human dignity” (a dignity which is not bestowed or conquered, but innate and inherent in every person) help us to define, not only the content of peace as it was envisioned by Pope John XXIII in his 1963 Encyclical letter *Pacem in Terris*, but also the initial approach of missionary proclamation? It would be a question of trying to think of human rights as a kind of grammar which, having already introduced a common jargon (“human being,” “right,” “dignity,” “equality,” “conscience,” “brotherhood,” to mention only the terms found in art. 1 of the *Universal Declaration*), could become a starting point for the missionary discourse.

This would be all the more urgent in Asia, where many such concepts are foreign and difficult to comprehend and assimilate, as we saw in our reflection on the term “right” in Japanese. In this view, the discourse of human rights would serve as a sort of *præambula fidei*,⁸¹ a kind of natural basis upon which to begin to introduce those terms-realities (*dabar*) that belong to the rich and profound language of the Gospel: “love,” “forgiveness,” “faith,” etc.

Of course, it would not be a question of “using” human rights to make inroads into a culture different from our own and then, once this goal is reached, replace them with the discourse of the Gospel. On the contrary, we believe that the respect and promotion of human rights is a task for all people, both religious and non-religious. But could we not think that the values promoted by these rights can help people to investigate further their

81. The term *præambula* must be understood in the sense it acquired in XIII century Scholastic philosophy, namely: truths that precede Revelation, not as its foundations but as its conditions of possibility. Thus, the task of the *præambula* is not to demonstrate faith but to make the content of revealed doctrine intelligible.

foundation and justification? Thus, as the Encyclical Letter *Pacem in Terris* states, “when, furthermore, we consider man’s personal dignity from the standpoint of divine revelation, *inevitably our estimate of it is incomparably increased*. Men have been ransomed by the blood of Jesus Christ. Grace has made them sons and friends of God, and heirs to eternal glory.”⁸²

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82. John XXIII, Encyclical Letter *Pacem in Terris*, n. 5. Emphasis added.

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PHIIPPINES

EUGENIO PULCINI

The quest for truth, justice, peace and freedom has been the challenge of many Filipinos during these past centuries. Early on, they tried to drive away the evil colonizers: most of the Philippines celebrated national heroes and martyrs have themselves been victims of the culture of impunity imposed by oppressive Spanish, American and Japanese rule. Nowadays, although much lip-service is being given to human rights in both public and private spheres of society, Filipinos strive to remove obstacles to the preservation and promotion of their dignity through land, a decent job, livelihood and education and civil and political rights.

At the beginning, this short paper offers an outline of the history of human rights in the Philippines, which aims to provide the reader with some more details on various aspects of the contemporary human rights struggle in the country. Later, we will describe the example of two formidable Filipinos who, as promoters and defenders of human rights, fought and became

the voice of the voiceless, ignited the flame of courage in many others, earning the right—unknown to them—to be called modern-day human rights heroes. Even today, they stand out as their country's indispensable links to full humanity and to the right to live in a manner worthy of human beings. Bishop Claver and Jos W. Diokno are among the witnesses who show us how the life of a citizen—and a Christian—can be a prophetic call to uphold human dignity and a revolutionary stand for the rights of every person through creative and non-violent action. We will then outline some of the groundbreaking laws approved by the Philippine government in recent years, laws that should help not only to combat, but also to prevent violations against human rights, examining the root causes of such violations and strengthening the awareness of the centrality of human rights in the social fabric of this country.



*I was still a young lady when we first had to evacuate.
Then when I had young children, we had to evacuate again.
Now, I have three grandchildren, but nothing has changed.*

August 2008, North Cotabato Province¹

Internal displacement remains to be one of the most vicious forms of human rights violations in the Philippines, affecting the entire breadth and dimensions of human rights. In the conflict-afflicted Philippines island of Mindanao, more than 200,000 civilians continue to live in camps or makeshift shelters. Periodically, people have to leave their villages to escape from direct MILF attacks and fighting between the Moro Islamic Liberation Front (MILF) and security forces. When they return, they find their houses burned and their livestock stolen and they continue to live in fear. Indeed, during recent decades, the violence from the Philippine government and Armed Force of the Philippines (AFP), the armed opposition groups such as MILF, New People Army (NPA) and Abu Sayaf Group, has continued to be accompanied by abuses by all sides and the number of civilians directly affected by these hostilities has increased dramatically, with no clear end in sight. Peace talks have continued, collapsing and resuming endlessly.

Another significant element in this virtual *civil war* has been the lawlessness of paramilitary groups and militias, controlled and funded by local politicians, landlords, mining companies and multinational corporations. These *private armies* have committed human rights abuses operating without any legal accountability. Member of the Philip-

1. Amnesty International, "The Human Cost of Armed Conflict in the Philippines." At: <<https://www.amnesty.org/fr/node/7805>>.

pine National Police (PNP) personnel often resort to the summary execution of suspects, or “salvaging” while combating crimes, explaining these killings as the unavoidable result of armed encounters with suspects or escapees. In the Philippines the causes of the present armed conflict can be traced back to the politics of exclusion and the practice of economic exploitation, which dates back to the colonial period.

The Spanish colonization (1521-1898) disrupted traditional values, communal practices and social relations by instituting a new “class structure” that served colonial interests. Land was increasingly privatized instigating a process of eroding the traditional subsistence base, and created a multitude of landless peasants. The onslaught of American colonization (1898-1946) sought to win over the Filipinos by promoting public education but, in fact, it was used as a tool to propagate American export ideology and to strengthen their political and economic interests. After the Philippines became independent, the failure of successive governments to respond to the needs of the majority only deepened social and economic inequality.

If we go back in time, the record of human rights violations in the Philippines began to escalate in the 70s. The period was characterized by an overall disenchantment and demonstrations in Philippine society. A protest movement then swept the country as elsewhere in the world, centered around nationalism and student activism. New organizations sprang up, while existing organizations became increasingly progressive, such as those of the Catholic Church.² Those years also saw the foundation of the Communist Party of the Philippines (CPP) and its armed branch, the NPA.³ In reaction, the Marcos regime, suppressed this political protest by imposing martial law from 1972 to 1981, largely through force and violence. Military prisons were gradually filled with men and women who expressed dissenting or contrary views to the administration. Torture, extrajudicial killings and kidnappings became unofficial government policy. Massacres of workers, peasants, student activists and people in the hinterlands became a normal occurrence. The conflicts inevitably resulted in extended human rights violations together with summary executions carried out by the AFB, the PNP and the NPA⁴ before and after *People Power Revolution*.

2. One case in point refers to the Task Force Detainees of the Philippines (TFDP) that was established in 1974 by the Association of Major Religious Superiors of the Philippines (AMRSP) to assist political prisoners, at a time when most organizations were banned. Cf. <<http://www.tfdp.net/>>.

3. Republic Act 1700, also known as Anti-Subversion Act, outlaws the CPP and other organizations with similar purposes. The law declares that “The CPP... is an organized conspiracy to overthrow the Government of the Republic of the Philippines not only by force and violence but also by deceit, subversion and other illegal means, for the purpose of establishing in the Philippines a totalitarian regime subject to alien domination and control.” At <http://wiki.lawcenter.ph/index.php?title=Anti-Subversion_Act.>. The nature of several provisions contained in this law has lent it to broad interpretation and has endangered many legal organizations which have come to be branded as communist fronts.

4. Peace talks that began in 1986 between the government and the NDF, the political arm of the CPP, made no progress in 2012. The NPA has continued to kill individuals it deemed to have committed “crimes against the people” or the communist movement.

After the ousting of the dictator through a massive uprising supported by the US and by the Philippine military shifting their loyalty, the country still witnessed in the following years marked levels of inequality, unequal access to justice, and the preponderant presence of powerful foreign interests. Since most of the alliances between government and (abusive) corporations are built on expectations of financial enrichment at the expense of the most marginalized, the deprivation of people's land and natural resources is greatly impoverishing many indigenous communities. The last administrations were determined to implement neoliberal policies and programs in the name of so-called development.

Yet, more often than not, the voices of protest have been suppressed with audacity and impunity showing how the collusion between business and state too often continue to relegate human rights programs to the backseat of government agenda. Well into the second decade of the XXI century, millions of Filipinos are still suffering from several kinds of human rights abuses: insecurity, violence, injustice and indignity; shortage of food, jobs, land and housing. Women and children are the most vulnerable.

The Philippines still has some of the worst forms of exploitation, such as child labor, human trafficking, sexual exploitation, employment with extortion (for example to pay off debts), recruitment for internal armed conflict. Many Filipinos remain below the poverty line and struggle to meet their basic needs. More and more of them are migrating to other countries (the so called Overseas Filipinos Workers, OFW). This has a heavy social cost for their families and has made them very vulnerable to abuse because they are unaware of their rights.

Even so, much work has been done in the Philippines in the field of human rights and it is obvious that much more needs to be done. People and religious organizations, NGOs and movements from below continue to work and serve the cause of human rights. Bishop Claver and "Pepe" Diokno were, to some extent, the precursors of this noble endeavor helping to shape it with their charisma and participatory methods. They envisioned a Philippine society where human rights and fundamental freedoms are fully enjoyed by all, and are respected, protected and fulfilled by the State. Through a long and arduous struggle, they glimpsed the bright and beautiful light at the end of the tunnel and carried on their struggle for the recognition of human rights to the very end, with selflessness and sacrifice, for the advantage of Filipino society today.

BISHOP FRANCISCO F. CLAVER, SJ

Bishop Claver, "a Filipino prophet without peer, truest priest, innovative humble shepherd"⁵ of the Mountain Province origin.⁶ Concern for the rights of ordinary people, their

5. O. B. Quevedo, in K. L. Alave, "First Igorot Bishop, Martial Law Foe Dies; 81." At: <<http://newsinfo.inquirer.net/inquirerheadlines/nation/view/20100702-278706/First-Igorot-bishop-martial-law-foe-dies-81>>.

6. Known as Bishop Cisco, Claver was born in Bontoc, Mountain Province, on Jan. 20, 1929. He became a Jesuit priest in 1961 at the age of 32. He received his Bachelor's and Licentiate degrees in Sacred Theology from

development, and the forces that affect them was a hallmark of Bishop Claver's apostolate and life. His campaign for social justice during the years of martial law helped frame the Philippine Catholic Church's policy of active nonviolence that inspired the peaceful People Power Revolution of 1986. Indeed, his opposition to the dictatorship through *justice plus active nonviolence*, was not universally accepted in the Philippine Church. "In the early years of martial law, there appeared to be perfect agreement among the major actors: Marcos said "I am the only alternative to the communists;" the communists said "We are the only alternative to Marcos;" the bishops as a body seemed to say "Amen, Amen," and quietly accepted martial law"⁷ through what was called a *critical collaboration*.

Therefore, Claver was one of the first bishops to speak out against Marcos' dictatorial regime. He had zero tolerance for dishonesty and corruption. During those very dark years in Philippine history, Bishop Cisco consistently, passionately and courageously denounced the injustices and contradictions of Martial Law. So great were the injustices especially against "the little people" that, in his own words, if he were silent, "even the stones will cry out!"⁸

When the DXBB radio station (which was operated by his prelature of Malaybalay in Bukidnon) was raided and closed in November 1976 by the troops of president Marcos, and the same fate befell the prelature's weekly mimeographed newsletter, *Ang Bandilyo*, Claver responded with a series of weekly, critical and hard hitting pastoral letters, which were read out in his name in all the parishes of the prelature, taking a stand as the shepherd of his people with a heartfelt concern for their genuine liberation and growth. Unless people themselves participate freely and conscientiously in the process from beginning to end, "setting ends, deciding on means, planning actions, assigning tasks, doing those tasks, evaluating them when done, trying new approaches and so forth," no broad change will ever take place in society.⁹

Communion, Co-Responsibility, Participation, Discernment, Dialogue, Basic Ecclesial Communities (BEC) and people empowerment were the themes he applied in his treatment of social issues—politics, human rights, justice and peace, development, indigenous peoples, environment, land reform, the relationship between ideology and faith, the impact of culture on life and faith. These insights became the strategy and the most

Woodstock College in Maryland and obtained his Doctorate degree in Anthropology from the University of Colorado. In 1969, he became the first bishop of Malaybalay in Bukidnon, during the Marcos regime, and served as chair of the *Episcopal Commission for Indigenous Peoples* and the *Commission for Justice and Peace*. Claver resigned as bishop of Malaybalay in 1984, but in 1995 he was appointed Apostolic Vicar of the recently established Apostolic Vicariate of Bontoc-Lagawe, which covers the two civil provinces of Ifugao and the Mountain Province. Co-founder of the *Institute on Church and Social Issues* (ICSI), he worked as researcher and writer until to 1995. He retired on April 2004 and died in 2010, at the age of 81.

7. J. J. Carroll, "Bishop Claver's Vision of the Church." In E. Dionisio, ed., *Becoming a Church of the poor*, (Quezon City: John J. Carroll Institute on Church and Social Issues, 2011), 13.

8. Claver, Bishop Francisco F., *The Stones Will Cry Out: Grassroots Pastorals*. (Maryknoll, NY: Orbis Books, 1978).

9. Claver, Bishop Francisco F., *The Making of a Local Church*, (Quezon City: Claretian Publications and Jesuit Communications, 2009), 7 ff.

fundamental source of his opposition to both martial law and the communist alternative: each sought to impose its own vision on the people from above, thereby stifling rather than promoting their development.

Bishop Claver observed how, despite collective statements of support for the Church's involvement in social justice issues, the hierarchy was somewhat aghast at the social upheaval, and at the alacrity with which some priests, religious and laity threw themselves into it, generally on the side of the poor and oppressed. The declaration of martial law in 1973 ended that upheaval (at least for a few years), much to the official relief of the leadership of the Catholic Bishops' Conference of the Philippines (CBCP). However, a number of bishops, led informally by Bishop Claver, dissented from the CBCP's stance of collaboration with the dictator Ferdinand Marcos and made little effort to hide their disgust with the authoritarian regime. They encouraged the laity, religious and clergy of their sees to continue working for human rights and social justice, even when this work earned the displeasure of local and national government authorities.

The regime retaliated and lay leaders and organizers, religious and clergy were harassed, arrested, tortured and killed. It was a costly choice for Bishop Claver, made even more costly by the parallel commitment to nonviolence: justice plus active non-violence as he eloquently put it during the funeral homily for Fr Godofredo Alingal SJ, a man who sought justice through peaceful means and was murdered for his defense of the people.¹⁰

There is a clear answer indicated, I believe, in the two facts noted above about Father Alingal's death—or, better, life: He was for justice, actively, uncompromisingly. He was also against violence, just as actively, just as uncompromisingly. If he had but reneged on the one, he might be alive today, his enemies not finding any compelling reason to kill him. If he had championed the other, he might not have been defenseless himself before the guns of his assailants. His YES to justice, his NO to violence—these are the hard facts of the life of the man whose murdered body was meant to fill the lonely tomb at Kibawe. Father Alingal's answer, I believe, is a perfect exemplification of the consensus that arose from

10. In spite of massive local and international protest, the extrajudicial killings of church people, has continued until today. Aided by an atmosphere of impunity, hundreds of members of the clergy and lay leaders, from different Christian denominations and active in human rights and social issues, have been killed, mainly by state agents. Here we mention just a few of them: Filimino Catambis, pastor of the United Church of Christ in the Philippines (UCCP); Fr. Cecilio Lucero, a diocesan Roman Catholic Priest; Bishop Alberto Sarmiento and lay leaders Benjamin Bayles and Jovelito Agustin, of the Iglesia Filipina Independiente (IFI); Purificacion Pedro, a young lay human rights leader; Catholic Bishop Benjamin de Jesus and the missionary Rey Roda, both of them Oblates of Mary Immaculate (OMI), the Claretian Father Rohel Gallardo, the fathers Tullio Favalli, Salvatore Carzedda and Fausto Tentorio, of the Pontifical Institute for Foreign Missions (PIME) and many others. The latest victim, Fr. Tentorio, who was assassinated on 17 October, 2011 worked among the indigenous people in his parish in Arakan Town, North Cotabato, Mindanao. It is believed that Fr. Tentorio, who strongly opposed a foreign mining project, was killed for being an active advocate of the rights of the indigenous Manobo tribes in Arakan Valley and for his vocal criticism of military abuse.

our last general Prelature meeting in February of priests and religious, lay leaders and Church workers. At that meeting we faced up to the problem of armed power in Bukidnon and its consequences for ourselves and our people. The consensus was an option for, to put it into a formula, total vulnerability. In effect, it was a rejection of violence as a way of righting wrongs and an affirmation of the Prelature's thrust for justice. We said NO to the "salvaging" of the military, to the "liquidation" of the NPA; YES to the continued striving for justice and the peace that comes through justice.¹¹

What does Bishop Claver mean to the Church in the Philippines and to its service/work on behalf of human rights and social issues?

In the turbulent years of the 1970s and 80s when ideology effectively influenced the minds of many pastoral workers all over the Philippines, many were convinced that Bishop Claver was one of those who turned the tide in the life and death struggle between ideology and faith. Faith, untainted by ideology, became once more the measure of ideology itself, as well as the dynamic motivation for pastoral workers striving for social change, something that Claver had been building up in the communities of faith all over Bukidnon first and, later, in Bontoc.

Bishop Claver was not only a learned man, especially in the matters of theology and sociology, but in the "humanities" too: human life, human dignity, and human rights were his forte. As the first Igorot bishop, he was one of the most influential bishops of the Cordilleras to defend human rights, steadfastly supporting the protests of the Kalinga tribal people against the World Bank-funded Chico hydroelectric power project in the Cordillera region in the mid-70s.

The insights of the anthropologist Bishop Claver on cultural analysis, which he gained through his academic training as an anthropologist and even more during his field research for his doctoral thesis, among migrant farmers in rural areas of Davao, made people aware of the abundant resources of their deep culture of religious faith. When the situation dramatically changed, after the assassination of Benigno S. Aquino Jr., and events moved on to the snap election, it was the anthropologist-Bishop Cisco who understood the 1986 *People Power Revolution* in terms of the converging values of *Lakas* (power, strength) and *Awa* (compassion). The *People Power Revolution* was the explosive irruption of *Lakas-Awa*, the power of compassion based on deep religious faith that transcends religious denominations, that became a massive force for social transformation.

As head of the *Institute on Church and Social Issues* (ICSI), Bishop Claver played a significant role in orienting the Philippine bishops and drafted their *Post-election Statement* denouncing the "unparalleled in fraudulence" of the 1986 snap elections. The same statement called on the people to find creative and nonviolent ways to dismantle the

11. Claver Bishop Francisco, "Remembering Bukidnon's Fr. Alingal: Bishop Claver's 'The Empty Tomb of Kibawe.'" At <<http://bukidnonnewstoday.wordpress.com/2011/04/14/remembering-bukidnon%E2%80%99s-fr-alingal-the-empty-tomb-of-kibawe/>>.

dictatorship he had criticized from the beginning. The statement was the culmination of his activist work and helped precipitate the *People Power Revolution* that ousted Marcos weeks after the “snap elections.”

The people have spoken. Or have tried to... And we condemn especially the following modes of fraudulence and irregularities (of the polls): The systematic disenfranchisement of voters... The widespread and massive vote-buying... The deliberate tampering with the election returns; intimidation, harassment, terrorism and murder. These made naked fear the decisive factor in people not participating in the polls or making their final choice. These and many other irregularities point to a criminal use of power to thwart the sovereign will of the people. Yet, despite these evil acts, we are morally certain the people's real will for change has been truly manifested... If such a government does not of itself freely correct the evil it has inflicted on the people then it is our serious moral obligation as a people to make it do so. We are not going to effect the change we seek by doing nothing, by sheer apathy... The way indicated to us now is the way of non-violent struggle for justice... We therefore ask every loyal member of the Church, every community of the faithful, to form their judgment about the February 7 polls... In a creative, imaginative way, under the guidance of Christ's Spirit, let us pray together, reason together, decide together, act together, always to the end that the truth prevail, that the will of the people be fully respected.¹²

This statement made history and it is forever part of the Philippine history. In the words of the Jesuit priest, Fr Jim Reuters, “Never in the history of the Church have bishops ever taken such a stand. It was an historic first. It was the small beginning that went on to even greater things.”¹³ The bishops wanted to make sure to call on everyone to discern and judge the polls on their own. In Bishop Claver's mind this was a *momentum*: the time for the Bishops to withdraw from the public arena and let the people activate their God-given *charisms* in political leadership. In Claver's vision that would correspond to the BEC key structure, as the *focus* and the *locus* of any evangelization.¹⁴ Until the end, even in sickness, Claver continued to preach and work about social justice. He was a member of *Simbahang Lingkod ng Bayan* Board of Trustees from year 2006 until his death.¹⁵

12. Catholic Bishops' Conference of the Philippines, “The Manipulative Use of Human Rights Violations.” At <http://www.cbcpnline.net/documents/1980s/1986-post_election.html>.

13. C.G. Arevalo, “Remembering Bishop Cisco, sj.” At <<https://www.phjesuits.org/features/304-remembering-bishop-cisco-sj>>.

14. The three often-overlapping types of BEC: the *liturgical* BEC, the *developmental* BEC and the *liberational* BEC which takes on broader issues of social justice, human rights, peace-building process and proactive advocacies against issues that do not promote the common good. See John J. Carrol, “Bishop Claver's Vision of the Church.” In E. Dionisio, ed., *Becoming a Church of the Poor*, op. cit., 17.

15. *Simbahang Lingkod ng Bayan* (SLB)—a Church servant of the country—is a non-partisan, Church-based, Jesuit-led organization and a network of religious, priests, seminarians, and lay individuals committed to the service of the Filipino Church and the Filipino people. SLB traces its history to the period of numerous protests and mobilizations after the assassination of Sen. Benigno Aquino during the final years of the

The historic pre-EDSA statement helped to further mobilize many of Church people to support justice and truth in the succeeding days. The many movements, NGOs and organization of Filipinos that were established to protect and enhance human rights in the past decades, were reinforced by the outstanding deeds of thousands of lay people, clergy and religious many of whom were victims of human rights abuses. Many pastoral statements on human rights were issued by the CBCP, both during and after the harshest times of Martial Law. The main topics focused on arbitrary arrests and detention, “liquidation and salvaging,” secret marshals, para-military forces, writ of habeas corpus, persecution of lay leaders, killings of church personnel, ministers, and journalists, electoral fraud, the national security state ideology as well as the ideology of violence, the rights of the indigenous people over their ancestral domain and the violence against women and children. Other pastoral exhortations on Philippine Politics, corruption and Land Reform were written, in response to the watering down of the Comprehensive Agrarian Reform Program (CARP). In other words, human rights have continued to be central to the church’s social teaching and action and they are perceived as necessary social conditions for human dignity.

As a response to the call for the Church’s proper mission in the sphere of the defense and promotion of human dignity, the CBCP created the National Secretariat for Social Action (NASSA) in 1966,¹⁶ the social development branch of the Philippine Catholic Church, under the direction and supervision of the Episcopal Commission on Social Action-Justice and Peace, which is currently chaired by Bishop Padillo.¹⁷ NASSA is committed to initiating and supporting sustainable Agriculture and Rural Development, Ecology Protection and Promotion of the Integrity of Creation, Promotion of Children’s Development and Women’s Rights, Development of Indigenous Peoples’ Communities, and Work for Peace and Development with groups composed of all religions, races, and ethnicities in the village.

For advocacy and lobbying for good governance and rights-based campaigns, it aims at linking and networking with other like-minded groups: non-government organizations, people’s organizations and church groups.¹⁸

Marcos regime (1983–1986). Back then, many religious, seminarians, priests and lay individuals organized such efforts and began to work in closer collaboration to fulfill their hope of regaining and strengthening the spirit of democracy in the Philippines and the genuine progress and development of the human rights of the Filipino people.

16. CBCP NASSA. At: <<http://nassa.org.ph/>>.

17. Episcopal Commission on Social Action, Justice and Peace (ECSA-JP). At: <<http://cbcponline.net/v2/?p=1114>>.

18. Founded by the Association of Major Women Religious Superiors of the Philippines (AMWRSP) in 1969, *The Rural Missionaries of the Philippines* (or RMP), is an inter-diocesan and inter-congregational in character, of men and women religious, priests and lay people. RMP members live and work with the rural poor farmers and agricultural workers for genuine agrarian reform, the fisherfolk for genuine aquatic reform, and the indigenous peoples for land and self-determination, towards attainment of the fullness of life, justice, freedom and integrity of creation. Advocacy for environmental protection and against large-scale mining are part of its core mission. See <<http://www.rmp-nmr.org/>>.

Just a year after *People Power Revolution* (or EDSA I), euphoria turned into dismay and the Church realized it had to be in the forefront of the struggle for social justice. The Corazon Aquino presidency clearly relied on the Church for moral support and, to some degree, also on the bishops' recommendations for people to be appointed to thousands of government positions around the country. According to Bishop Claver, instead (and to some other CBCP members too), the bishops should continue to support the regime, but through a critical approach; they should be mindful of the temptation of Christ in the desert to rely on political power, and remember that their power is basically moral and pastoral; they should speak for key social justice issues such as agrarian reform and the rights of Tribal Filipinos; they should avoid becoming power-brokers and gradually recede into the background, leaving decisions to the emerging lay leadership while still retaining a prophetic function whenever this is called for. However, as we said above, things moved in a somewhat different direction, as Cardinal Sin continued to express his views on a variety of national issues, suggesting in hushed tones his choice of a candidate to succeed Aquino as president, organizing and leading a massive rally in protest against the Cairo Conference on Population and development, against the proposal to change the Constitution and allow President Ramos to run for a second turn and so forth, with other national political vital issues.¹⁹

Undoubtedly, one of the most radical legacies of Bishop Claver was the introduction of a participatory ethic into the Church for the empowerment of people, thereby avoiding the risk of leadership being left entirely in the hands of the hierarchy. In his mind, it is not the Church's task to work *for* the poor. The Church may practice the preferential love for the poor, not by *flexing its muscles*, but by heeding the Evangelical call to *empower* people and to work in *solidarity with* them for the transformation of society, by dismantling the structures of injustice and corruption, by serving human dignity through the promotion of human rights.

The growth of people's organizations and nongovernment organizations has been an encouraging development in this line and the experience has taught a valuable lesson: even if the Catholic Church is still an authoritative presence in Philippine society, revolutions are not so much about overthrowing dictators or removing inept politicians but, rather, building up awareness at grassroots-level, *within* the communities and through human rights training and formation. This will give birth to a culture of truth and integrity that is more about changing a people's inner make-up, changing their perspectives on their world, their values, mentalities and mind-sets. In the words of Claver:

We have used People Power at EDSA I and II so far only to get rid of corrupt presidents. We in the boondocks have been asking for some time now how we should begin using it more effectively to do something about the very causes we dump presidents for: their crimes, their corruptions, their incompetence—these

19. John J. Carroll, "Bishop Claver's Vision of the Church," *op. cit.*, 20–3.

ills are unfortunately deeply embedded in our political culture all the way down to the barangays. To change our political culture all the way down to the barangays—this is the only way we can avoid having an infinite series of EDSAs!²⁰

JOSÉ W. WRIGHT DIOKNO

*Law in the land died. I grieve for it but I do not despair over it.
I know, with a certainty no argument can turn, no wind can shake,
that from its dust will rise a new and better law:
more just, more human, and more humane.
When that will happen, I know not. That it will happen, I know.*

José W. Diokno

Jose “Pepe” Wright Diokno was born in Batangas to Eleonor Wright and Ramon Diokno, a former Supreme Court associate justice. Gifted with a luminous mind, after, completing his secondary education and earning the Bachelor’s degree in commerce at the De La Salle College, he studied in his father’s law office and topped the bar examination without taking a course in law.

As an idealist and a brilliant lawyer, he was appointed Secretary of Justice in 1962 by President Diosdado Macapagal. He gained public attention for his zeal in investigating and prosecuting the celebrated case of Harry Stonehill, an American tobacco tycoon, who was accused of tax evasion and other crimes, and who kept several high ranking government officials and prominent politicians on his payroll, inevitably clashing with Diokno. One year after his appointment, Diokno left his post as justice secretary after receiving a letter “accepting” his resignation (a letter he never wrote.) That same year he was elected as senator of the *Nacionalista Party*, and was reelected in 1969. He was still a senator when President Marcos suspended the writ of *habeas corpus* in 1971. Diokno resigned from the *Nacionalista Party* (which was also Ferdinand Marcos’ party) in protest. He then became involved in several causes, including protests over oil price increases and the escalation and widespread violations of human rights in the country. He believed that “No cause is more worthy than the cause of human rights... they are what makes a man human. Deny them and you deny man’s humanity.”²¹

When Marcos declared Martial Law in September 1972, he was among the first to be arrested as a political prisoner at the same time as Ninoy Aquino.²² He was incarcerated

20. Claver Bishop Francisco, “Edsa I and What It Has Wrought.” At <<http://www.phjesuits.org/features/646-edsa-i-and-what-it-has-wrought>>.

21. J. W. Diokno, Nationalist. At <<http://diokno.org/>>.

22. Benigno S. Aquino Jr., alias Ninoy Aquino, was a Filipino Senator who—together with J. Diokno and others senators—formed the leadership of the opposition to the government of Ferdinand Marcos. Along with other dissidents, He was arrested in 1973, and imprisoned for seven years. Benigno Ninoy Aquino was assassinated in 1983.

for two years without being charged. He was arrested without a warrant in the dead of night and thrown into the maximum security unit of Fort Bonifacio; he was then transferred to the isolated Fort Magsaysay in Laur, Nueva Ecija, where his wife and family could not locate him. He was later sent back to Fort Bonifacio and placed in solitary confinement. He almost lost his sanity as the imprisonment was psychologically designed to humiliate and demean him. However, even while in prison, he continued to challenge the constitutionality of Martial Law.

Given that the military could not invent any charges against him, in 1974, Mr. Marcos had no choice but to grudgingly release him. "Indeed, in those times, in a government that imprisoned anyone unjustly, the true place for a just man was also prison."²³ When he was released, Diokno disclosed how determined the dictator was: he released Diokno but he continued to imprison Ninoy Aquino because Marcos knew Diokno was not a real threat to him. He did not aspire to the presidency since he did not have the political *machine* that Ninoy had.

"Pepe" Diokno could have let matters rest with his release but he decided that now he would now oppose Marcos openly. On regaining his freedom, he organized and led the *Free Legal Assistance Group* (FLAG), a small group of lawyers who provided the first truly *pro bono* free legal service in the country to the helpless victims of martial law, either political prisoners or other victims of military oppression. By the time Marcos fled the country in 1986, FLAG had approximately 200 volunteer lawyers in all the regions of the country, handling about 90 percent of all human rights cases at this time.²⁴ This made Attorney Jose Diokno the undisputed father of the human rights advocacy.

He continued to work for the workers and the peasants. He would go to the provinces at his own expense to defend the poor in court trials. He confided that he intimidated the judges with his presence, as a national figure, a political and legal luminary, on the side of the peasants, who adored him. In his fearless fight against martial law, he never had any illusions about winning the cases before the Supreme Court or the military commissions. Why then did he persist and prepare his cases so meticulously and thoroughly when the outcome would be against him? It was necessary, he insisted, that despite the law and the evidence being so overwhelmingly against the government, "the justices and the generals be tortured morally and intellectually when they ruled against the disadvantaged parties he represented."²⁵ Today, FLAG is a nation-wide human rights lawyers' organization, promoted and led by J. Diokno's son—Jose Manuel.²⁶

sinated at the Manila International Airport in August 1983, upon his return from his self-imposed exile. His death launched his widow, Corazon Aquino, into the political arena and prompted her to run for president in the 1986 snap elections.

23. J. P. Arroyo, "Jose W. Diokno: His Legacy." At <<http://todayopinion.blogspot.it/2005/02/jose-w-diokno-his-legacy.html>>.

24. Ivi.

25. Ivi.

26. Professor Jose Manuel Diokno regularly visited his father in jail at that time and witnessed at first hand

FLAG is still committed to the protection and promotion of human rights and civil liberties through a non-traditional view of law and society, the role of lawyers and the use of law as an instrument of societal transformation. He also chaired and revised the *Civil Liberties Union* (CLU) from 1975 to 1982 which had earlier been disbanded as a protest against constitutional transgressions of martial law and in support of nationalist causes.

He believed that authoritarian regimes, such as the Marcos administration, succeed, not only because of their power over the mass media, but also because of ignorance on the part of the people. That is why Diokno founded the Movement for Philippine Sovereignty and Democracy (*Kilusan sa Kapangyarihan at Kasarinlan ng Bayan or KAAKBAY*), which organized the “unorganizable” and advocated steps for citizens to undertake in their bid to regain their freedom. It was “a positive” movement that did not merely oppose government policies but also proposed alternative policies and actions.

Known as a steadfast opponent of the US bases in the Philippines, he also forged alliances with individuals, NGOs, groups, and other organizations; he founded the Anti-Bases Coalition to fight for the closure of American military bases in the Philippines and denounced the Bataan nuclear power plant project. In fact, senator Diokno always opposed American interference in Philippine internal affairs and his opposition was anchored on nationalist principles.

He would define Marcos’ regime (which was strongly influenced by US goals) as “re-feudalization;” hence the need to reform the political economy of “re-feudalization.” During a lunch with the *New Yorker* writer, the late Robert Shaplen, one of America’s foremost correspondents in the Philippines, he was asked what was the reason for his opposition to the bases, why he wanted them out when countries like Japan (a very nationalistic country) had them, and so many countries had defense treaties with the United States. Diokno said, “We are a young country. We cannot develop without a strong sense of nation. The very presence of the bases here is an obstacle to that feeling. You mention Japan and other nations that are mature countries; they do not need to emphasize the importance of nationalism.”²⁷

Diokno would boldly confront high-ranking American officials with the fact that American supplied all kinds of arms and weapons to support martial law; he also insisted that a dictatorship in the midst of American bases (supposedly the symbol and guardian of freedom) was an anachronism. He never compromised on the issue, even though he knew he was living in a country whose population was (and is) so pervasively pro-American.

He also preached the doctrine of independence from the dictates of multilateral

the repressive side of martial law during his adolescence. In 2009 he became the first Dean of the then newly established College of Law at De La Salle University in Manila. He has sat on various Human Rights Committees set up by previous Philippine presidents and was personally involved as counsel in the proceedings to impeach President Joseph Estrada in 2000.

27. F. J. Lionil, “Defining Greatness, Defining José W. Diokno.” At <<http://www.philstar.com/sunday-life/616991/defining-greatness-defining-jose-w-diokno>>.

financial institutions that unduly influence economic policy, and he warned against the encroachment of giant firms that create needs far beyond the people's means. According to his thinking, Filipino nationalism is not anti-American, nor is it inspired and led by communists as Americans officials insinuate. When the US government put pressure on the Filipino leadership to send Filipino troops to South Vietnam, Diokno strongly opposed this saying: "We cannot kill an idea with a bullet. We can defeat an idea only with a better idea. We can defeat communism by making democracy work here."²⁸

As with most of those who opposed Marcos, Diokno suffered financially. He had to abandon his lucrative law practice and work in the penurious field of human rights advocacy. With his diminished income, he continued to offer free legal advice to the poor and ended up living in a very modest and accessible house in Quezon City.

He was always a towering figure in opposition rallies denouncing the Marcos regime until the *People Power* and bloodless revolution at EDSA in 1986.

Although he was ill by then, after Marcos was deposed, President Cory Aquino appointed Diokno Chairman of the Presidential Committee on Human Rights, with the rank of Minister. He tried to negotiate for the return of rebel forces (mainly the NPA communist army) to civil society. His resounding message to the Government was clear: "food and freedom, jobs and justice... These are the keys to peace." When, barely a year into the new government, the democratic space that he and others had fought for became a death trap with the massacre of farmers—the "Mendiola massacre"²⁹—he knew he could not remain silent and he "walked his talk," abandoning the government he helped put into power. In deep disgust and even greater sadness, he resigned from his two positions in protest against the "wanton disregard" of human lives. Within a month of his resignation, Diokno, the champion of human rights, the driving force behind the Nationalist and Democratic Movement succumbed to lung cancer on 27 February, 1987, leaving behind a legacy of intellectual brilliance, integrity, courage, and dedicated service to his country.

As a proclaimed non-violent freedom fighter, human rights advocate, peacemaker and true man of law, "Pepe" Diokno refused to believe in the necessity of violence and armed struggle as an option in the revolution against Marcos' tyrannical regime. "There were not very many among those who suffered during the long period of martial law who believed that the dictatorship could be overthrown without resort to arms. What singled Pepe

28. Ibid. José W. Diokno was often approached for legal assistance by members of the Communist Party, and he gave his help without charge; more than once they asked him to join and even lead them, but he consistently declined even when he cogently argued for the legalization of the Communist Party, always maintaining that it is unjust to prosecute a person for his political beliefs.

29. This massacre took place in Mendiola Street, Manila on a Thursday, 22 January, 1987 in which 13 people were killed and many others wounded by the state security forces that were guarding Malacañang Palace. Some 10,000 farmers were holding a protest rally asking the President Corazon Aquino to make good on her promise to implement a genuine agrarian reform for genuine land reform. The media called it "*Black Thursday*" but it went down in history as "The Mendiola Massacre."

Diokno out was that he not only believed it was possible to do so but that more than anything else he worked relentlessly to build an active resistance of citizens that was necessary to make it happen.”³⁰ When asked how people should react to the violence exercised by an intransigent and oppressive political and justice system he would say:

“When you accept violence, there is no way by which you can control it.” While he did not accept violence as such, many of those he defended in the courts subscribed to this belief. On his death bed, very few days after the Mendiola Massacre, “Pepe,” I said: “Those who were killed in Mendiola how will they ever get justice? Their fate argues for revolution.” He smiled. “*Frankie, hindi nag-iba ang isip ko*. (Frankie, my mind hasn’t changed!) Once you accept violence, there is no way you can control it.”³¹

He taught lawyers, law students and members of the basic sectors about para-legalism, about a new kind of lawyering which he called *Developmental Legal Aid*. He taught people to be aware of their rights, to be aware of their situation and their right to self-determination. For many—lawyers, law students and ordinary people oppressed by the dictator’s “rule of law”—he changed, helped by the small band of lawyers and paralegals he first trained, formed and inspired, their vision of the law, their rights and their country. Memorably, he would sum up what Filipinos were fighting for in his inimitable turn of phrase, “to sing our own songs.”

Only a good man can become a great lawyer: for only a man who understands the weaknesses of men because he has conquered them in himself; who has the courage to pursue his ideals though he knows them to be unattainable; who tempers his conviction with respect for those of others because he realizes he may be mistaken; who deals honorably and fairly with all, because to do otherwise would diminish him as well as them—only such a man would so command respect that he could persuade and need never resort to force. Only such a man could become a great lawyer... For men and women of this kind, our country will always have need—and now more than ever. True, there is little that men of goodwill can do now to end the madness that holds our nation in its grip. But we can, even now, scrutinize our past; try to pinpoint where we went wrong; determine what led to this madness and what nurtured it; and how, when it ends, we can make sure that it need never happen again. For this madness must end—if not in my lifetime, at least in yours. We Filipinos are proverbially patient, but we are also infinitely tough and ingeniously resourceful. Our entire history as a people has been a quest for freedom and dignity; and we will not be denied our dreams.³²

30. Asuncion D. Maramba, ed., *Six Modern Filipino Heroes*, op. cit., 67.

31. F. J. Lionil, “Defining Greatness, Defining José W. Diokno, op. cit.

32. T. Te, “Remembering José ‘Ka Pepe’ Diokno: One Who Stayed.” At <<http://www.interaksyon.com/article/25351/remembering-jose-ka-pepe-diokno-one-who-stayed>>.

In a celebrated speech in 1981, Diokno maintained that there is a *Filipino Concept of Justice*, a highly moral concept.³³ Most of the ethnic groups—including the Tagalogs—use a common word for justice, *katarungan*, which is derived from the Visayan root *tarong*, and means straight, upright, appropriate, correct. For right, the used word is *karapatan*, whose root is *dapat*, signifying fitting, appropriate, correct. The similarity in meaning of the root words for “right” and “justice” indicates that for the Filipinos justice and right are intimately related. On the other hand, for “law,” the term employed is *batas*, a root word denoting command, order, decree, with a different meaning from that of the roots of our words for “justice” and “right.” According to Diokno, the Filipino language then distinguishes clearly between law and justice recognizing that the law is not always just. Furthermore, in the same speech, he described some standards for a Filipino model of social justice which he dreamt of and fought for.

Are these standards impossible to meet? If you mean meet completely and immediately, they are. But only yesterday in world time, it was thought impossible to land on the moon. And not too long ago, Aristotle justified slavery as natural and listed torture as a source of evidence. So standards thought too high today may well turn out to be too low tomorrow. But whether they do so or not is not really important... The superior virtue is not to receive justice, it is to fight relentlessly for it—to struggle for justice in time, yet under the aspect of eternity.³⁴

In “Pepe” Diokno’s life, no cause was more worthy than the cause of human rights. He made people understand that human rights are more than just legal concepts: they are the essence of the human being. They are what make man human, as he often repeated. He viewed human rights not only as civil and political rights, but also as encompassing economic, social, and cultural rights. In this sense, by that time, he was already calling for the protection for the human rights of indigenous people, taking a stand against the plundering of their ancestral domain under the guise of infrastructure and other industrial projects. A “mantra” of his recites: “We cannot enjoy civil rights unless we enjoy economic, social, and cultural rights, any more than we can ensure our economic, social, and cultural rights unless we exercise our civil and political rights.”

Even if Jose Diokno is considered one of the brightest senators the country ever had, a shining example of honest and dedicated public service, and a champion of civil liberties, it sometimes seems that he has yet to be fully recognized by the nation for what he has done and what he stood for. His Filipino nationalism—to simply be pro-Filipino—was inspired by a common consciousness that the Filipino are a one people, one blood one tradition and one dream without the need of a godfather for everything. Although The

33. J. W. Diokno, “The Filipino Concept of Justice.” At: <<http://www.scribd.com/doc/60553706/The-Filipino-Concept-of-Justice>>.

34. P. S., Manalang, ed., *A Nation for Our Children: Selected Writings of Jose W. Diokno* (Quezon City: Jose W. Diokno Foundation, Inc., 1987), 31.

Philippines were re-elected in May 2011 to the *Human Rights Council* at the UN for the period 2011–2014, the still problematic situation, especially regarding civil and political rights, confirms the view that the country has failed to uphold the highest standards in the promotion and protection of human rights. Among the paradoxes of the Filipino condition, “Pepe” Diokno would point out how the Philippines are independent but not sovereign, a state but not a nation, democratic yet an authoritarian and rich land with poor people.

No praise is more eloquent than Pepe Diokno’s own words and the strength of his faith in a better future. Once, when he observed a young woman cradling her husband who had been horribly tortured, he saw not despair but hope:

As I looked at the couple, I saw in them the face of every Filipino; and I knew then that martial law could crush our bodies; it could break our minds; but it could not conquer our spirit. It may silence our voice and see our eyes; but it cannot kill our hope nor obliterate our vision. We will struggle on, no matter how long it takes or what it costs, until we establish a just community of free men and women in our land, deciding together, working and striving together, but also singing and dancing, laughing and living together. That is the ultimate lesson.³⁵

GROUNDBREAKING LAWS FOR HUMAN RIGHTS ENFORCEMENT IN THE PHILIPPINES

In the Philippines, human rights are included in Constitutional guarantees, laws and policies but are not necessarily translated into practice. On the one hand, the new 1987 Constitution³⁶ includes a very progressive Bill of rights and the article on Social Justice and Human Rights (Article XIII). The creation of the *Commission on Human Rights* (CHR) represents the unequivocal commitment to protect, respect and implement human rights as they are formulated in international common standards.³⁷ On the other hand, an evident difficulty and lack of resolve has been observed during these past decades in translating the constitutional guarantees into reality. It would seem that the govern-

35. Ibid., 45.

36. The 1987 Constitution of the Republic of The Philippines. At <<http://www.gov.ph/the-philippine-constitutions/the-1987-constitution-of-the-republic-of-the-philippines/the-1987-constitution-of-the-republic-of-the-philippines-article-xiii/>>.

37. CHR is committed to ensure the primacy of all human rights to their protection, promotion and fulfillment, on the basis of equality and non-discrimination, especially for those who are marginalized and vulnerable. It is an independent institution whose primary function is to investigate all forms of human rights violations; however it doesn’t possess the power of adjudication and its functions are primarily investigatory. Compliance and strict adherence of the government to obligations under international human rights instruments, including the timely submission of treaty implementation reports to the United Nations is one of the duties of the CHR. In 2010, President Benigno Aquino III appointed Representative Etta Rosales—twice illegally arrested and severely tortured during Marcos’ martial law—to head the CHR.

ment has badly failed to properly protect people's human rights, giving the impression that the Philippines lives in a sort of permanent human rights crisis. Nonetheless, in the very recent years, through the help of a broad alliance of people's organizations, NGOs, religious and civic organizations, concerned legislators and leading citizens, the overall human rights situation in the Philippines has improved, also through the ratification of historic laws promoting rights.

The signing of the *Anti-violence against women and their children Act* (Anti-vawc), of 2004 (Republic Act 9262) into law was a milestone for the thousands of women advocates all over the country who tirelessly worked for it for almost a decade. In section 2 it recites:

The Filipino State values the dignity of women and children and guarantees full respect for human rights... Towards this end, the State shall exert efforts to address violence committed against women and children in keeping with the fundamental freedoms guaranteed under the Constitution and the Provisions of the Universal Declaration of Human Rights, the convention on the Elimination of all forms of discrimination Against Women, Convention on the Rights of the Child and other international human rights instruments of which the Philippines is a party.³⁸

During recent decades, the Philippines too, have paid the heavy price of human rights violations committed against women and children, and all too often these violations have gone unseen, unheard and underreported. Indeed, children and women were among the most affected by incidents of violence and human rights abuse especially in situations of armed conflict, demolitions and forced evacuations.

Furthermore, the plague of the tens of thousands of Filipino girls, mostly coming from landless peasant families in the provinces, who became prostitutes and were engaged in some form of sexual trade still continues today. Since the approval of this law, millions of women and children, including internal refugee, have the means to seek justice and attaining their human rights to be freed from violence and abuse. The CHR, which is very focused on the issues of violence against women and their children, commended the Supreme Court for recently upholding the constitutionality of Republic Act 9262.

The *Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity* (Republic Act No. 9851)³⁹ was signed into law on 11 December, 2009 and it was widely considered as a groundbreaking law for the enforce-

38. The section continues: "Violence against women and their children" refers to any act or a series of acts committed by any person against a woman who is his wife, former wife, or against a woman with whom the person has or had a sexual or dating relationship, or with whom he has a common child, or against her child whether legitimate or illegitimate, within or without the family abode, which result in or is likely to result in physical, sexual, psychological harm or suffering, or economic abuse including threats of such acts, battery, assault, coercion, harassment or arbitrary deprivation of liberty." See The LAWPHIL Project, at <http://www.lawphil.net/statutes/repacts/ra2004/ra_9262_2004.html>.

39. The LAWPHIL Project. At <http://www.lawphil.net/statutes/repacts/ra2009/ra_9851_2009.html>.

ment of international humanitarian law (IHL) as well as human rights in the Philippines. In fact, despite various appeals by local and international groups, the spate of extrajudicial killings in the Philippines has never stopped.

In connection with this, the first decade of the third millennium unfortunately stands out. Continuous reports denounce an increase in the murder of political activists, predominately those associated with leftist or left-orientated groups, has caused increasing concern in the Philippines and at international level. These attacks, which are mostly carried out by unidentified men who shoot the victims before escaping on motorcycles, have very rarely led to the arrest, prosecution and punishment of those responsible. It is believed that the killings still constitute a pattern and that a continuing failure to deliver justice to the victims represents a failure by the Government of the Philippines to fulfill its obligation to protect the right to life of every individual under its jurisdiction.

Both the 2007 *Melo Commission Report*⁴⁰ and *Alston Mission Report* on extrajudicial killings in the Philippines, recommended a special law for strict chain-of-command responsibility for police and military forces and other government officials with respect to such killings and other offenses committed by personnel under their command, control or authority. The appallingly high number of political killings in this country was investigated in early 2007 by Philip Alston, the UN Special Rapporteur on *Extrajudicial, Summary or Arbitrary Executions*. Following a well-defined review process, he spent a short, but difficult, time examining the situation. His report condemned repressive elements of the Philippine state and directed specific criticisms at the armed forces, noting that most of the killings constitute a pattern of politically targeted extrajudicial executions taking place within the wider context of a continuing counter-insurgency campaign.

Human rights violations, including torture, kidnappings and harassment, have been inflicted on workers, students, farmers, women and children, church people and media. In various *fora*, the military openly admitted they had drawn up an “Order of Battle”⁴¹ which included the names of persons and people’s organizations active in human rights, labeled as communist sympathizers and systematically abducted, and /or killed. Alston discovered that a culture of impunity prevailed within the military and that the Arroyo administration had not done enough to address the problem or to protect the rights of its citizens. In the words of Alston’s report:

In some areas, the leaders of leftist organizations are systematically hunted down

40. The “Melo Commission” was an investigating body headed by José R. Melo, a Philippine lawyer, created by President Gloria Macapagal Arroyo in 2006 to probe the extrajudicial and political killings which had targeted militant activists and member of the press. The report rendered concluded that most of the killings were instigated by the Armed Forces of the Philippines (AFP) and linked state security forces to the murder of militants and recommended that military officials, notably retired major general Jovito Palparan, should be held liable under the principle of command responsibility for killings in their areas of assignment.

41. An “order of battle” is a list, created by the military and the police of persons and groups considered to be enemies of the State and “legitimate targets as combatants.” The order of battle was part of the government’s security apparatus since Marcos’ martial law regime until recently.

by interrogating and torturing those who may know their whereabouts, and they are often killed following a campaign of individual vilification designed to instill fear into the community. The priorities of the criminal justice system have also been distorted, and it has increasingly focused on prosecuting civil society leaders rather than their killers. Many in the Government have concluded that numerous civil society organizations are “fronts” for the Communist Party of the Philippines (CPP) and its armed group, the New People’s Army (NPA). The military is in a state of denial concerning the numerous extrajudicial executions in which its soldiers are implicated. Military officers argue that many or all of the extrajudicial executions have actually been committed by the communist insurgents as part of an internal purge. The NPA does commit extrajudicial executions, sometimes dressing them up as “revolutionary justice,” but the evidence that it is currently engaged in a large-scale purge is strikingly unconvincing... Some of the other situations in which extrajudicial executions occur in the Philippines were also studied during the visit. Journalists are killed with increasing frequency as a result of the prevailing impunity as well as the structure of the media industry. Disputes between peasants and landowners, as well as armed groups, lead to killings in the context of agrarian reform efforts, and the police often provide inadequate protection to the peasants involved.⁴²

His report specifically recommended that “the necessary measures should be taken to ensure that the principle of command responsibility, as it is understood in international law, is a basis for criminal liability within the domestic legal order.”⁴³ Alston’s visit provided insights into the Philippine government’s inadequate human rights policy and these paved the way to the drafting of the new *Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity* (Republic Act No. 9851) which was signed into law on 11 December, 2009. As a matter of fact, for the first time here, a national statute defines and penalizes “the most serious crimes of concern to the international community as a whole”—namely, war crimes, genocide, and crimes against humanity. Together with R.A. No. 9745, the *Anti-Torture Act of 2009* signed into law on 10 November, 2009, a significant and successful “one-two punch” for human rights and IHL has been given. Credit is also due to the various human rights and IHL advocates in civil society and in government who have worked long and hard for these and related legislation as well as administrative measures. No other Philippine statute has shown such adherence to international law. It could well be the *extra mile* that needs to be taken by police, AFP and all the rebels groups to put a final stop to extrajudicial killings.

While the context of this provision refers to war crimes, genocide, and “other crimes against humanity,” R.A.No. 9851 sets a statutory precedent for its extension to the cases of other serious crimes such as torture, enforced disappearances, and extrajudicial killings

42. Philippe Alston Report, at <http://humanwrongs.org/?page_id=2>.

43. Ivi.

in the corresponding special laws, if any, on such crimes. In practical terms, something like the Maguindanao Massacre⁴⁴ involving multiple willful killing as part of a systematic pre-planned attack directed by clan leaders (who were also public officials) against a group of civilians led by rival clan members, can be characterized and prosecuted as a crime against humanity rather than as a common crime of mass murder. In addition, R.A. 9851 also supports the new effort for a civilian protection component in the context of the peace process, especially between the Government of the Philippines and the MILF or the communist military force NPA, contributing to the proper balance between peace and justice, which should not be an either-or proposition.⁴⁵

One more milestone that fostered the human rights struggle in the Philippines, was the approval of the so called *Bill of the Desaparecidos*. After a campaign lasting two decades by human rights activists, a law principally directed against state agencies that would outlaw acts that result in disappearances, and that allows the prosecution of perpetrators even though their victims remain missing was signed by President Benigno Aquino III on Friday, 21 December, 2012.⁴⁶ The *Anti-Enforced or Involuntary Disappearance Act of 2012*, R.A. 10353 or *Bill of the Desaparecidos*—the first of its kind in Asia—makes the crime of enforced disappearance punishable by life imprisonment. In the words of House Representative Edcel Lagman, “There should be enough of *desaparecidos* in the Philippines, because enforced disappearances have emotionally, mentally and physically displaced mothers and fathers, sisters, brothers, children. Enforced disappearance was an atrocious tool of the martial law regime to silence protesters and human rights advocates and continues to be employed by subsequent administrations after the end of the martial law.”⁴⁷

44. In November 2009, 57 members of a convoy that included family members and media workers on their way to file for the candidacy of Ismail Mangudadatu for the governorship of Maguindanao province (western Mindanao) were murdered. The powerful Ampatuan clan, who possessed a private army and enjoyed close ties with President Arroyo, was implicated in the massacre. Ampatuan, Sr. was charged with vote tampering for President Arroyo in 2007. Andal Ampatuan, Jr., the chief suspect in the massacre, had hoped to succeed his father as governor. Even for a country long accustomed to election violence, this unspeakable massacre of at least 57 defenseless civilians, among them a large group of journalists, hit a new low. Western Mindanao, a troubled ‘corner’ of the Philippines, usually makes headlines for its long-running Muslim separatist rebellion. But the killings starkly exposed a nationwide malaise: the fierce competition for regional power among the country’s small élite of a few hundred families and clans that control an inordinate amount of the national wealth—and the desperate measures some will take to protect their hold on power.

45. Chapter 1, sec.2 of R.A. No. 9851 declaration of Principles and state policies: a) The PH renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land and adheres to a policy of peace, equality, justice, freedom cooperation and amity with all nations.

46. Official Gazette of the Republic of The Philippines, Republic Act No. 10353. At <<http://www.gov.ph/2012/12/21/republic-act-no-10353/>>.

47. L. B. Salaverria, N. Bordadora, “Desaparecidos’ Bill OK’d.” At: <<http://newsinfo.inquirer.net/291024/desaparecidos-bill-okd>>. Edcel Lagman is a Filipino human rights lawyer and politician. He is the older brother of Filemon “Popoy” Lagman, the founder of the *Partido ng Manggagawa* who was shot dead inside the University of the Philippines campus in Diliman, Quezon City, on 7 February, 2001. His assassination is widely speculated to have been carried out by his former associates in the Communist Party. Another brother of Lagman, Hermon, who was a labor and human rights lawyer, was also a political activist who disappeared

One unique feature of the bill is the requirement that all government agencies submit to the CHR within six months of the law's enactment an updated inventory of all officially recognized and controlled detention facilities and the list of detainees under their respective jurisdictions. It is illegal for any government agency to maintain an unlisted detention facility. Another crucial provision of the law declares any order of battle illegal.

R.A. 10353 makes enforced disappearance a crime distinct from kidnapping, serious illegal detention, murder or any common crime. The bill also states that it cannot be suspended, even in times of war or public emergency. Violators cannot be offered amnesty. During recent decades, disappearances have caused the Philippines government to be put under the close scrutiny of local and international rights groups and even foreign governments. Actually, *Human Rights Watch* lauded the Aquino government for the enactment of the landmark law. "This law is a testament to the thousands of 'disappearance' victims since the Marcos dictatorship, whose long-suffering families are still searching for justice. The challenge now is for the government to move quickly to enforce the new law."⁴⁸

On 25 February, 2013, another landmark law, that provides compensation for human rights victims of Marcos' dictatorship, was signed by President Benigno Aquino III, the only son of two of the most prominent victims of Ferdinand Marcos' regime. The *Republic Act 10368 or the Human Rights Victims Reparation and Recognition Act of 2013*⁴⁹ is a belated acknowledgement of the victims of martial law and a very important piece of legislation that ends their forty-year wait of the victims for recognition and compensation. The law will award P10 billion, sourced mainly from the Marcos Family's Swiss bank deposits and the sum's accrued interest.⁵⁰ The enactment of this law concretizes the role of international law in promoting state accountability for the promotion and protection of all human rights. Compensation will be based on the extent of injuries, including period of detention, degree of torture or sexual abuse, among others.⁵¹

during Marcos' martial law. His mother, Cecilia, was the first chairperson of the group *Families of Victims of Involuntary Disappearance* (FIND). According to FIND, there are a total of 1838 cases of enforced disappearance in the Philippines since Martial Law. A total of 1,147 are still missing. At least 256 were found dead while 435 have resurfaced alive.

48. Ivi.

49. Official Gazette of the Republic of The Philippines. At <<http://www.gov.ph/2013/02/25/republic-act-no-10368/>>.

50. Before it was signed, the bill underwent an extensive legislative process that was delayed mainly by the difficulties in retrieving the Marcos' financial assets. According to the first Presidential Commission on Good governance Chairperson Jovito Salonga, the plundered funds were traced back to three main sources: kickbacks from public works, diverted foreign economic aid and assistance received from the United States military for the sending Filipino troops to Vietnam.

51. R.A. 10368, Chapter 1, Sec.2: "The State hereby acknowledges its moral and legal obligation to recognize and/or provide reparation to said victims and/or their families for the deaths, injuries, sufferings, deprivations and damages they suffered under the Marcos regime. Similarly, it is the obligation of the State to acknowledge the sufferings and damages inflicted upon persons whose properties or businesses were forcibly taken over, sequestered or used, or those whose professions were damaged and/or impaired, or those whose freedom of movement was restricted, and/or such other victims of the violations of the Bill of Rights." See Official Gazette of the Republic of The Philippines, at <<http://www.gov.ph/2013/02/25/republic-act-no-10368/>>.

The signing of the law—exactly 27 years after the ousting of dictator Ferdinand Marcos in a bloodless military-backed popular uprising—is also considered as official recognition of the atrocities committed during the regime, mainly by security forces. Through this law, those who have suffered gross violations of their rights during the Marcos’ regime, may now feel a sense of justice since the state is obliged to give them compensation. The time stolen from martial law victims will not brought back, but the law shows the state’s commitment to ensure that these mistakes never happen again.⁵² It is indeed both a call for vigilance and a definitive rejection of martial law. R.A. 10368 also provides for the creation of the *Human Rights Violations Victim’s Memorial Commission*, whose task is to heighten awareness among young people—through education—of the violence and oppression of the Marcos regime as well as the heroism of those who fought it, preventing this part of Philippine history from being trivialized or the facts being distorted by those who seek to be cleansed of their transgressions against the Filipino people. Therefore, from the P10 billion fund, an estimated P500 million will be allocated to the foundation of a library, a museum and memorial that will commemorate the victims of Martial Law.

It is said that human rights legislation in the Philippines is a saga of human rights that is “good on paper” and—at the same time—it is one of ongoing impunity and non-enforcement of human rights laws. The Philippines is a member of the UN Human Rights Council (HRC), even though in 2012, as in previous years, it failed to take a strong or principled stand on key votes. On the one hand, it is a strong supporter of human rights internationally but, on the other, it unfortunately often fails to practice within its borders what it advocates abroad. The signing of the *Human Rights Victims Reparation and Recognition Act of 2013* completed the “trilogy” of landmark human rights laws in the country (R.A. 9851, R.A. 10353 and R.A. 10368), which represent the strong pressure exerted on the Philippine government by local and international organizations to apply them seriously in their national life, leaving no room for excusing the failure to comply with international human rights obligations.

FINAL CONSIDERATIONS

We are witnesses to a paradox in the Philippines today: human rights are benefitting from more effective national and international protection than ever before, thanks to developments in supranational law and an increase in public sensitivity to human rights

52. “The statute will not compensate for the sacrifices of the several hundreds of martyrs who fought the dictatorship, most of them through systematic patterns of torture, in the process losing their lives or the use of their limbs. It does not, will not and can never pay for the peace of mind that escapes them as they close their eyes in sleep or remembrance, and for the families dismembered for a cause they believed in and lived out. What they can see and recall, several long years later—though till now more of the same—are the anguish and the pain they had to endure at the hands of the vilest and most cruel persecutors of their time.” E. U. Olalia, “R.A. 10368 Belated but Important Piece of Legislation.” At <<http://opinion.inquirer.net/47903/ra-10368-belated-but-important-piece-of-legislation#ixzz2bBMbqLj4>>.

violations. At the same time, elementary human rights (of individuals, ethnic or religious minorities) are still under serious threat in many sectors and regions of the country. The current context resembles other countries where “dirty” wars are being fought.

In this paper, we have not dwelt at any length on the threat posed to human rights by non-state agents, which is actually an increasing cause for concern. Indeed, during the history of human rights in this country, it hasn’t been taken for granted that all sorts of non-state agents, including insurgents (namely, NPA, MILF and the Abu Sayaf Group) would be expected to comply with the principles of international human rights law. A case in point: extrajudicial killings and enforced disappearances are unique in the Philippines in as much as it is publicly and commonly known that these are carried out also by non-state armed groups, such as those mentioned above.

Though cases have been well documented, the legal mechanisms for enforcing the accountability of non-state agents are weak, if not actually non-existent. One of the complicating factors is the effect of ideology on human rights advocacy, which has challenged the universality of human rights and the way in which human rights abuses are talked about and reported. For example, the CPP and NPA openly declare their intention to support human rights for the people, not for “the exploiters or enemies of the people.” What this means is that the question of human rights, and their ongoing violations, have become a political and ideological concern and not, as it should be, a human and moral issue. For some years now, this has seriously undermined any genuine peace initiative, which have been *de facto* “corrupted” by political overt and covert political agendas. Neither peace nor human rights were real objectives: the real goal was power and political advantage. Furthermore, the strong political nature of some major human rights NGOs⁵³, accompanied by a lack of “even-handed” reporting of human rights violations, did not help matters and, instead, caused conflicts and division, each side accusing the other of manipulating human rights violations.⁵⁴

Therefore, a first inference/conclusion is that the ideological abuse of human rights is a further indication that declarations and ratifications alone do not create true humanity among human beings. Also in the Philippines, human rights are abused whenever they are used ideologically to justify private interests over and against the rights of other human beings. They are abused whenever they are divided up and it is pretended that only part of them stand for human rights in their totality. It is then that we see the birth

53. See also G. Clark, “Human Rights NGOs in the Philippines. A Case Study of Task Force Detainees of the Philippines.” In G. S. Silliman and G. L. Noble, ed., *Organizing for Democracy. NGOs, Civil Society and the Philippine State* (Quezon City. Ateneo de Manila University Press, 1998), 157ff.

54. “This is what we mean by ‘the manipulative use of human rights violations’; the reprobation and publicizing by one political bloc of violations of human rights not specifically to put a stop to them (despite the rhetoric) but merely to blacken the political image of the other... This is putting the suffering of the people—the victims of human rights abuse—secondary to what political and ideological mileage can be gotten from it.” CBCP, “The Manipulative Use of Human Rights.” At <<http://cbcponline.net/v2/?p=309>>.

of individual egoism, national arrogance and “corporate imperialism” over nature, which discriminate against the lower sectors of society.

All human rights are bound up with, and related to, one another and with specific human duties: by their very nature, human rights entail duties and responsibilities that we have towards each other. Behind the practical question as to how human rights may be achieved, there are more profound questions as to where people can experience their true humanity and how they can overcome their actual inhumanity. Rights and duties cannot be separated from each other; privileges should not grow out of rights, nor strip demands of their duties. In other words: human rights are only effective insofar as people are truly human and act humanly. Their inhumanity becomes manifest in the violations and abuse of human rights.

Another challenging aspect of the present situation of human rights in the Philippines concerns impunity. The Philippines endured a tumultuous period in its history, during which many of the rights enshrined in the International Covenant on Civil and Political Rights were trampled underfoot with impunity by a dictatorial Government, a deadly social virus that ever since has led to appalling abuses. “Impunity” literally means exemption from punishment. In the Philippine context, it refers to the failure of the state to redress human rights violations by bringing suspected perpetrators to justice in accordance with international human rights standards, as well as making amends for the harm suffered by the victims. The *culture of impunity* is enabled in part by a void in the justice system since Marcos dismantled the legislative branch of government. The government has been incapable of controlling competing interests⁵⁵ and the various Presidents (regimes) have been reluctant to discipline the military, since its top ranks provide them with much needed political support

Although there has been a reduction in the reported numbers of extrajudicial killings, enforced disappearances and torture, impunity has meant that very few have been made to pay for these crimes.⁵⁶ A clear example of the persistent culture of impunity can be seen in the continuing presence of Marcos’ wife and children, with many of his former cronies and military henchmen (including notorious torturers and coupists) who have never “gone,” never paid for their crimes and who still hold powerful local and national government posts.⁵⁷ This is how things are in the Philippines: “The first to go is outrage;

55. “Nowhere in Asia has produced more plans for land reform than the Philippines. But equally, no ruling elite in Asia has come up with as many ways to avoid implementing genuine land reform as the Filipino one.” J. Studwell, quoted by S.-C. Monsod, “How to Sustain our 7-Percent Growth Rate.” At <<http://opinion.inquirer.net/57473/how-to-sustain-our-7-percent-growth-rate>>. One can only agree.

56. As far as extrajudicial killings are concerned, the above mentioned *Maguindanao massacre* is undoubtedly the most extreme, shocking, and stunning example, not just because of the number of victims, but also because of the impunity with which it was carried out, and the apparent consent (or at least indifference) of the duly constituted authorities to its planning, execution and attempted cover-up.

57. Sen. Juan Ponce Enrile, who is still a prominent politician, was a protégé of President Ferdinand Marcos, and served as Justice Secretary and Defense minister under his regime. He later became one of the leaders of People Power Revolution that drove Marcos from power, although the reasons for his involvement

the next, memory; the last, resolve. The one thing that remains, after all these are gone, is regret. This is how impunity prevails.”⁵⁸ Finally, it must be remembered that, most of the time, impunity in the realm of civil and political rights is rooted in the impunity of economic, social and cultural rights.

Given the current prevailing conditions, the promotion of a better human rights culture in Philippine society, through a reorientation on human rights values in Philippine institutions, is of paramount importance. In fact, human rights education will never make violations appear acceptable. While human rights education, through the CHR, has been a legally mandated field, socio-civic and NGOs monitoring work indicate that there is little involvement of duty-bearers in the promotion of the primacy of human rights through research, education and training programs. Many teachers and school administrators neither have a full and comprehensive knowledge of human rights nor the appropriate attitude towards human rights. The members of the police, military, and para-military groups, other law enforcers, Governmental authorities, private sector and contract workers—all of them potential human rights violators—have shown very little awareness of the meaning, content and value of human rights and the rule of law.

Furthermore, the myths concerning human rights still pervade the minds of many of them. Misconceptions or wrong ideas about human rights education still plague their thinking, something that is further compounded by a general culture of hierarchy and seniority in society and its institutions.⁵⁹ According to these myths, human rights education is anti-government, makes people become “radical,” is pro-communist, promotes pessimism or negativity, is applicable only to adults and is a form of cultural imperialism that threatens sound Filipino values. To erase this gross ignorance and bias, a deep and thorough campaign within the government institutions must be undertaken. The relevance of human rights education cannot be overemphasized, since awareness has been the most powerful weapon against oppression and human rights violations in the Philippines.

Philippine human rights history also shows that most struggles for great change began, not as the initiative of states, but as the endeavor of ordinary people. The living memory

with the movement were highly disputed. Elected four times as senator, he was President of the Senate of the Philippines from November 2008 until his resignation on 5 June, 2013. Several times, Ferdinand Marcos has been on the verge of being reincarnated as a hero. In 2011, a resolution passed by the House of Representatives, citing Marcos’ services as a former president and wartime soldier, urged President Aquino to allow the strongman’s burial at the cemetery reserved for national heroes. The Philippines must still find the resolve and the imagination to keep alive the painful truths about the martial-law regime in its social memory, the way Israel and its gifted people remind the world about the Holocaust through persistent narratives in literature, historical documents, films and memorials.

58. T. Te in Z. Isagani, “The State of Impunity.” At <<http://opinion.inquirer.net/41521/state-of-impunity>>.

59. That there are culturally embedded barriers to the growth of a democratic polity in the Philippines explains in large measure the appalling lack of the sense of common good which can be observed in the preference for *patron-client* relations and the relevant phenomenon of *populism*. See also A.L. Cartagenas, “Where have all the BECs gone?” in M.A. Brazal, and A.L. Cartagenas, ed., *Transformative Theological ethics* (Quezon City: Ateneo de Manila University Press. 2010), 171ff.

of “Pepe” Diokno and Bishop Claver constantly remind Filipinos that, in a functioning democracy, every citizen is responsible for each and everyone, including the ordinary people. The rights of persons can only be developed in a just society, and a just society can only be built on the foundations of the rights of the person. It is to people power that the Philippines must turn to exert pressure on their political leaders, demanding that they invest more in human rights than in economic growth. In this field, the Philippine economy has recently been growing steadily. It is really upsetting to see the government publishing high GDP growth rates—making it the highest in Asia—without any of this easing the burden of the poor. This country has been very adept in passing hardship on to the poor people in times of want and depriving them of prosperity in times of plenty. The Philippine experience is very telling: open markets don’t necessarily lead to open societies and economic recovery/growth will be neither sustainable nor equitable if it does not include a strong focus on human rights.

Finally, human rights are the result of historical development; they grow over time and awareness of them increases: each right achieved will be followed by others. Anyone who defends human rights is a forerunner, just like “Pepe” Diokno and Bishop Claver, among others. They went before us, pressed on and opened new ground. They show us that anyone who engages with the intimate dynamics of human rights ends up profoundly changed, moved and converted. They did not look upon human rights as abstract ideals, but considered them against the background of the suffering and the struggles of individuals and communities. In them, *the right* to resist became *the duty* to resist illegal and inhumane regimes, in favor of the rights of every individual. As forerunners, they captured the rhythm of an underlying “civilizing current” that was running through that specific historical period of the Philippines.

As Claver and Diokno teach us, the cause of human rights is not about victories, but perseverance and hope. They built a bridge on our behalf, knowing that their words and actions would create new life, and that many others would follow in their footsteps in the defense of human rights. Each human being is called to live this vocation (mission) precisely because he/she is a human being. In the words of “Pepe” Diokno: “No cause is more worthy than the cause of human rights... they are what makes a man human. Deny them and you deny man’s humanity.”

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TAIWAN

FABRIZIO TOSOLINI

The history of Taiwan shows rather clearly how much, on the one hand, an intercultural context promotes a greater awareness, and supports the dialectics leading to a more satisfying implementation of the issue of human rights, and on the other hand reveals the many inconsistencies which appear when people try to improve human rights among different ethnic groups, histories, traditions and cultures, in the same territory.

Again, a historical approach seems to be the most helpful in order to present how the path to human rights has been paved on the island of Formosa, which is a true workshop of the future for the whole Asia-Pacific macro-region. Besides, with reference to events and situations, whether past or present, there is a very rich documentation.

BEFORE 1945. A HISTORICAL OVERVIEW

During the first millennia of Taiwan's history, Aboriginal cultures

developed and evolved. Their traditions show a vision of the rights of individuals in the context of the villages, and of the relations among the villages; about these epochs there are no precise data. In the relatively short documented history of Taiwan (starting from the seventeenth century) it is possible to identify the following periods:

a) the short but culturally intense experience of colonization by the Dutch (in the South and the North, 1624–1662) and the Spaniards (in the North, 1626–1642);

b) the era which begins with the immigration of Chinese populations from Fujian under the Dutch, which in turn can be articulated in the following periods: the kingdom of Zheng Cheng-gong (鄭成功, also called Koxinga) and his son (1662–1683); Chinese rule under the Qing Dynasty (1683–1895); the short parenthesis of the Republic of Taiwan (1895); Japanese rule (1895–1945).

During these four-hundred years, issues linked to human rights surface in some areas of social interaction, and it is possible to inquire about whether in these areas human rights—their substance, if not their more recent formulations—are respected or violated.

On the one hand there is the interaction between the two bigger groups of the Aborigines and of the Chinese immigrants. On the other there are the interactions with external powers: the Dutch (and Spaniards), the Qing and Japanese Empires. Such interactions also involve intercultural and interethnic dimensions.

It is also necessary to take note of the continuous presence of a peculiar problem which characterizes the whole history of Taiwan: the problem of sovereignty. On the one hand it becomes a problem of who has the right to decide to whom the island belongs (the Aborigines? Which among their many groups? The first Chinese immigrants? Other resident colonists? Kings or emperors living far-away?). On the other hand it becomes a problem of international acknowledgment of such a decision: who has the right to such acknowledgment? On which basis do they decide? What is the value and meaning of this decision? Why, and for whom does such decision have binding force?

Under the Dutch (1624–1662) and the Zheng Dynasty (1662–1683)

The Dutch settled in some parts of Taiwan for almost forty years. This period was particularly important because during this time the complex phenomena of ethnic and cultural interaction began to appear, and continued to occur in the following centuries in varied forms. An external subject, a numerical minority but in a hegemonic position (the Dutch) needed to come to terms with two different groups: the Aborigines and the Chinese migrants.

A concomitance of factors explains the great Chinese immigration from Fujian in the seventeenth century: the defeat of the Ming Dynasty at the hands of the foreign Qing;¹ recurrent famines; the need of the Dutch for expert farmers, able to cultivate the plains in the South-West of Taiwan, where they had settled; and finally the availability of the

1. J. W. Davidson, *The Isle of Formosa Past and Present* (Oxford: Oxford University Press, 1988), 30.

ships of Zheng Zhi-long (鄭芝龍).² His son, Zheng Cheng-gong (鄭成功), after the failed attempt to reconquer the Mainland for the Ming Dynasty, besieged the Dutch forts of Zeelandia and Provintia close to Tainan between 1661–1662, and conquered them. The Dutch were ousted from the island. His son, Zheng Jing (鄭經), after losing control of the last cities of Fujian, created an independent state in Taiwan, conquered by the Qing under the reign of his successor, Zheng Ke-shuang (鄭克塽) in 1683.³

In view of creating good relations with the Aborigines, for the commercial purposes of their East India Company, the Dutch organized schools, translated texts, and taught the Christian religion in the form of Calvinism.⁴ In the North, the Spaniards did the same, in the areas surrounding Dan Shui and Ji Long.⁵ Under the Dutch administration the Aborigines were allowed to maintain a certain degree of autonomy: they elected their leaders, who administered the villages and had regular contacts with the governor.⁶

The growth in numbers of Chinese immigrants suggested to the Dutch new ways to increase their gains, besides trade. They started renting them land (land was never sold to the Chinese), imported pack animals, dug wells, encouraged the production of rice (the staple food of the Aborigines was millet), sugar, tea; sulphur was collected in Dan Shui and Ji Long for export,⁷ together with deer, elk and elands hides hunted by the Chinese under licence (duly sold and bought) and exported to Japan.⁸

Towards the end of Dutch rule, the sources of profit of the East India Company had shifted from trade to taxation of land and of its produce. Such taxation, however, was not made according to the logic of a governmental administration, so as to get resources to improve the general condition of the territory. Rather, the only purpose of the Company was to exploit resources in view of optimization of profit. During this period, besides the political and military fights among the Chinese, the inter-ethnic and inter-cultural problem started looming with regard to the relations with the local populations of Aborigines. Such a problem went through ups and downs without being really solved, and continues to the present.

In the first place, there was an extension of the areas occupied by the Chinese, in concomitance with a reduction of the Aboriginal presence in the lowlands, and the

2. See C.-C. Hung, *A History of Taiwan* (Rimini: Il Cerchio, 2000), 17–9, 119–20. According to the author, at the end of the Dutch control over Taiwan, there were about 25,000 households on the island, 100,000 persons, around the same number as the Aborigines. Among them, about 82 per cent were Hoklo, 13 per cent Hakka and 5 per cent Cantonese.

3. In 1683, the Qing dynasty defeated the Zheng holdout, and formally annexed Taiwan, placing it under the jurisdiction of Fujian province. Zheng's followers were sent to the farthest reaches of the Qing Empire, leaving approximately 7,000 Han on Taiwan. See <<http://taiwanese.stanford.edu/taiwan-history>>.

4. C.-C. Hung, *A History of Taiwan*, op. cit., 29–30.

5. J. Van Hecken "The Catholic Church in Taiwan: 1626–1965," in *Verbiest Study Notes*, 2004/16: 13–4.

6. C.-C. Hung, *A History of Taiwan*, op. cit., 29–30.

7. *Ibid.*, 35.

8. *Ibid.*, 32.

assimilation of the Aborigines of the plain into the culture and traditions imported from the Mainland.

This went hand in hand with a process of ethnic mixing, so that it is possible to say that as a result a new ethnic group came into being. This was formed by the inhabitants of low-lying areas of the central-western end of the island. They carried both the ethnic and cultural characteristics of the Chinese immigrants as well as those of the Aborigines of the plain.

Along with the reduction of their territory, the Aborigines saw the violation of their rights to use the land that remained in their possession. The Dutch sold too many hunting licenses to the Chinese, causing a decrease in the number of deer and consequently a supply problem for the natives, who were at the same time deprived of a crucial commercial resource. In addition, to increase the production of camphor oil, the Chinese immigrants cut trees in areas more internal to the Aboriginal territories, which at times results in bloody clashes.⁹

Under the Qing (1683–1895)

In 1683 Zheng Ke-shuang surrendered to the Qing; he allowed part of his head to be shaved and agreed to wear the queue. The emperor Kang Xi decided to annex Taiwan to the Chinese Empire as part of the province of Fujian.¹⁰ The work of sinicization of the island started by the Zheng family continued. The calendar of Beijing was introduced, together with the Confucian administrative system; Chinese characters were already present in Taiwan. With regard to the Aborigines, two policies were implemented.

As for the Aborigines of the plain, who were in the process of being sinicized, they continued living in their villages; they had gradual access to school and elected their headmen. They received official recognition. However, the native liaison officers for the villages of the plain and the licensed Chinese merchants seemingly worked together to exploit the Aborigines. As a result, many rebellions took place. Altogether, during the Qing rule, twelve campaigns were carried out to suppress these revolts.¹¹

With regard to the not-yet sinicized Aborigines, a strict policy of seclusion was implemented: the Chinese could not enter their territory and they could not leave it; intermarriages were prohibited.¹² A reason for the seclusion was the Aboriginal custom of

9. Ibid., 80.

10. The Qing policy tried to reduce piracy and vagrancy in the area, which led to a series of edicts to manage immigration and respect aboriginal land rights. However, illegal immigrants from Fujian continued to enter Taiwan as renters of large plots of aboriginal lands under contracts that usually involved marriage. The border between taxpaying lands and “savage” lands migrated East; some aborigines “sinicized,” while others retreated into the mountains. The bulk of Taiwan’s population today claims descent from these immigrants and the mixed marriages with the sinicised Aborigines of the plain. See <<http://taiwanese.stanford.edu/taiwan-history>>.

11. C.-C. Hung, *A History of Taiwan*, op. cit., 132.

12. Their territory was considered as a foreign country, beyond the reach of Chinese government and

head-hunting, which posed a threat to the neighboring populations. In 1871, 54 members of a shipwrecked Japanese vessel were killed by some Aborigines, leading to the Japanese invasion of South Taiwan in 1874, to the establishment of a Japanese colony on Aboriginal land¹³ and to the end of the seclusion policy in 1875.¹⁴

A further development in the field of education, basically limited to the Chinese population, was the introduction of Western schooling, at the hands of the first Presbyterian missionaries, who arrived on the island starting from 1860. They also opened schools for girls, and requested that the Hoklo¹⁵ custom of binding the feet of women be terminated.¹⁶ Such measures contrast to old traditions, but at the same time can be seen as an objective improvement of the condition—and basic rights—of women in Chinese culture.

The time of Qing rule is also marked by social instability: between 1768 and 1890, many armed incidents took place on the island. Of them, 17 were between the Hoklo and the Hakka, 28 between Hoklo of the two different provenances in Fujian: Quanzhou (泉州) and Zhangzhou (漳州); almost 40 were revolts against the Qing government,¹⁷ among which at least three of big proportions, in 1721, 1785 and 1860.¹⁸

Piracy too thrived in the Taiwan Strait. Taken together with the Aboriginal revolts, these facts show the persistent difficulties in the interaction of different groups in the territory, a situation tied to reciprocal exploitation and lack of acknowledgment of the rights of other different peoples and cultures.

Starting with the two Opium wars (1838–1842 and 1856–1860), some Western powers (Great Britain, France, United States, Japan, Germany and also Japan) showed interest in Taiwan, either for commercial purposes, or with the aim of conquering it. Besides the Japanese local invasion of 1874–1875, Taiwan was attacked by French troops during the Sino-French war (1884–1885). As a result, the Qing government reconsidered the status of Taiwan and made it an independent province in 1885. The following six years saw the process of modernization of Taiwan, under the leadership of the first governor, Liu Ming-chuan (劉銘傳).¹⁹ He succeeded in laying the basis of a modern society, making Taiwan one of the best administered provinces in China. Such a process was mainly accomplished through a clever tax policy and self-financing. Not depending on central funds, the island was able to uphold its autonomy also at a political level, and therefore enjoy greater social stability.

culture. Other countries could therefore get in touch with, or attack them, without incurring any diplomatic strife with Beijing. *Ibid.*, 150.

13. The colony was later occupied by the Chinese at the end of 1874. *Ibid.*, 151.

14. *Ibid.*, 133.

15. The biggest numbers of Chinese migrants to Taiwan come from Guangdong (mainly Hakka people) and from Fujian. The latter are called Hoklo. They speak the dialect of South Fujian (Minnan language). *Ibid.*, 137.

16. *Ibid.*, 134.

17. *Ibid.*, 137–38.

18. The leaders of the revolts belonged to the Triad, a secret society which is going back to Zheng Cheng-gong. *Ibid.*, 138–42.

19. See <http://en.wikipedia.org/wiki/Liu_Mingchuan>.

Although in itself a positive development, Taiwan's modernization seemed to be a "belated answer" of the Chinese government, "to respond to more than four decades of pressuring by Western powers and Japan, or their representatives, to gain a foothold on the island." In the process, Taiwan became "a diplomatic pawn in international politics."²⁰

Unfortunately, the effort to increase agricultural production in Taiwan also meant continuing taking away land from the Aboriginal territories, thereby infringing upon their basic right to own the land of their ancestors.²¹

The Republic of Taiwan (1895)

Surprisingly enough, when the news of the agreements at Shimonoseki reached Taiwan, there was a popular uprising against becoming a Japanese colony. A petition was sent to Beijing, which contained an affirmation of the basic right of the Taiwanese to live and die as a free people on their motherland, without letting it become merchandise for trade among foreign owners.

The cession of territory for the sake of peace has shocked all the people of Taiwan. Since the alarm (of war) was heard, the people of Taiwan have generously contributed money as well as munitions, thereby living up to the great benevolence and beneficence they have so far received from all the imperial ancestors. Now is the time for our Emperor to make use of the loyalty and morale (of the people of Taiwan) that have been fostered for over two hundred years. Why should they be given up at this moment? Why don't we make one more battle? We, the subjects in our homeland, have no desire but to live or die in it. We wish to defend it to the death in collaboration with Your Majesty's governor and his officials. Should a war be waged without success, please wait until after we subjects have died before any more talk of ceding territory. Your Majesty may then face your ancestors on high as well as the common people below.²²

Those urging the Emperor to nullify the cession terms of the treaty, quoted an international legal reference to "self rule:" a referendum should be held among the inhabitants of a territory before ceding it to foreign powers.²³

Indeed, the short-lived experience of the Republic of Taiwan (23 May–21 October,

20. C.-C. Hung, *A History of Taiwan*, op. cit., 164. The author counts at least seven episodes of encroachment by foreign powers in Taiwan between 1840 and 1895. With the exception of the last, during the Sino-Japanese war, all the others ended up without the Chinese conceding any part of territory to the foreign powers. There is at the time a sort of "Co-operative Policy" among them, according to which they tried to extract all possible commercial benefits from China, while not allowing any of their group to get a foothold on the Mainland. The Sino-Japanese war and Japan's requested to have Taiwan signalled the end of such policy, and the beginning of a new one, following which the foreign powers tried to get some part of Chinese soil.

21. Ibid., 154.

22. Quoted in Ibid., 167.

23. Ibid., 168–69.

1895), at least formally represented for China a big leap forward in the direction of Western political conceptions and vision of human rights. In fact, what prompted the leaders of Taiwan to create the first Republic in Asia was a desire for autonomy, linked to a feeling of loyalty to an Empire which their ancestors had fought against two centuries before. They made use of Western political concepts in the hope of receiving the help of the colonial powers, which they both feared and disliked.²⁴

The Republic of Taiwan is somewhat atypical: its leaders are not revolutionaries, nor social or political reformers, nor are they nationalists. They lack the support of the masses, and do not

seek to bring about deep-rooted social and political change in Taiwan, nor advocate such fundamental concepts as equality, individual rights and the elective process necessary for a viable system of representative government... the republican government on the island amounted to a superstructure superimposed on the Ch'ing administrative framework.²⁵

Nevertheless, such political enterprise remains in history at least as a symbol of the desire of a people to affirm their right to self-determination in face of international agreements disrespectful of local autonomies.²⁶

Under Japanese Rule (1895–1945)

The Japanese needed years to pacify the island. At a certain point, guerrilla-style resistance was so successful that government heads in Tokyo even considered leaving it.²⁷ In time, however, order was gradually restored and the resources of Taiwan started again to be exploited.

Japanese Aboriginal Policy

Among the many challenges they had to face, the Japanese needed also tackle the problem of how to deal with the Aborigines. “The Japanese inherited in Taiwan a legacy of several centuries of misrule, injustice and inhumanity which had characterized Chinese relations with the aborigines and had produced among the latter a profound distrust and hatred of the Chinese,”²⁸ resulting in a latent state of warfare. Chinese settlers continually

24. “They reasoned that in this way foreign backing could be enlisted and resistance to the Japanese sustained without further embroiling the Ch'ing court in Peking with Japan.” *Ibid.*, 186.

25. *Ibid.*, 186.

26. Another declaration made at the same period points to the problem of the way different cultures see each other. It is something apparently shared by the majority of ethnic groups throughout space and time, more deeply rooted than nationalism, present to our days, and much more difficult to overcome. The Declaration reads: “We now learn that the Japanese slaves are about to arrive. If we suffer this, the land of our hearths and homes will become the land of savages and barbarians.” Quoted in J. W. Davidson, *The Isle of Formosa Past and Present*, op. cit., 279.

27. C.-C. Hung, *A History of Taiwan*, op. cit., 188, 191.

28. *Ibid.*, 195.

took over their land to till it; they entered their forests to cut camphor trees to obtain camphor crystals and oil. The Aborigines ambushed camphor gatherers; the Chinese attacked and destroyed their villages.

In their dealings with the Aborigines, the Japanese basically followed the blueprint inherited from the Qing administration. They created a long border-guard line, with outposts manned by armed border guards, which was periodically moved forward, extended and consolidated. The aim of such a border line was to force the Aborigines into some delimited areas, isolate and control them, so that they eventually would give up their warlike customs, especially the practice of head-hunting, and settle down as peaceful farmers. In the same way as in the past, such a policy did not meet with great success.²⁹ And, “despite the continued resistance to the advancing border guards, the aborigines were compelled to abandon extensive tracts of territory, part of which was then given over to farming, timbering, and mining enterprise.”³⁰

Under the Governor-general Sakuma Samata (1906–1915), the Japanese started a nine-year program of pacification of Aborigines. More than 10,000 policemen were deployed, more than 10,000 pieces of weaponry were confiscated. The campaign ended in an apparent success, but years later other Aborigines insurrections took place.³¹

On 27 October, 1930, a band of about 300 braves belonging to the Sediq Aboriginal group killed 134 Japanese taking part to a festive gathering at the Elementary School of Wushe (霧社). It was an act of revenge against a series of police insults against the Aborigines,³² already suffering under forced labor. Two thousand Japanese regular army troops fought the Sediq, even with the use of gas, destroying their village, killing all the inhabitants; and after the rebels who had surrendered had been confined in a nearby village, on 25 April, 1931, a band of Aborigines collaborators, together with the Japanese, killed all the males above 15.³³

Japanese colonial period also entailed some positive aspects. The Japanese admin-

29. Ibid., 196.

30. Ibid., 197.

31. Ibid., 201.

32. About this uprising, as well as about other cases of rebellion, Olivier Lardinois writes: “Assez significativement, la plupart de ces révoltes éclatèrent non pas parce que les autochtones se seraient senti victimes d’injustices économiques ou administratives, mais bien parce que certains chefs aborigènes trouvaient que la leur dignité n’avait pas été respectée par les leaders nippons.” O. Lardinois *Civilisation chinoise et minorités ethniques. L’émancipation des aborigènes de Taiwan. Un modèle?* (Louvain-la-Neuve: Harmattan-Academia, 2012), 38.

33. Here is how the situation of Aborigines in Taiwan was portrayed by the representatives of Taiwan Alliance of Aborigines to the United Nations Working Group on Indigenous Populations in 1993: “In 1895, the Manchu government lost the Sino-Japanese War and signed the Treaty of Shimonoseki, ceding Taiwan to Japan. The Japanese government began to exploit Taiwan’s economic resources through a systematic, capitalistic style of management; it was during this period that the subsistence lifestyle of the Indigenous Peoples began to crumble. In order to obtain control over Taiwan’s forests, mineral resources, water and tourism potential, the Japanese rulers contained the Indigenous Peoples in ‘Mountain Reservations’ thus slashing the traditional territory of 2,000,000 hectares to 24,000 hectares, to which the Indigenous Peoples had only utilization rights but could not claim permanent possession. In order to squash resistance from the Indigenous Peoples, the Japanese colonial government launched a large number of massacres. During the ‘Five-Year-

istration made considerable efforts to improve the living conditions of the Aborigines, especially in the field of education and hygiene, in preventing fights among them, and implementing agrarian reforms. Besides, apart from being compelled to give up head-hunting and black Shamanism, the Aborigines were not forced into abandoning their lifestyle, clothes, maternal language, hunting and fishing. Finally, they were not compelled to change their civil status and become Japanese citizens, and were respected as Taiwanese autochthons.³⁴

Besides, Japanese anthropologists conducted extensive anthropological, ethnographic and linguistic research among the Aborigines. Their results still influence the ethnic map of Taiwan, the civil administration of the Aborigines of the island and the geographic image the Aborigines have of their own land.³⁵

Japanese Colonial Rule and Taiwan Chinese Population

Japanese administration put all its efforts into continuing the modernization of Taiwan, with considerable success, especially in the fields of agriculture, mining industry, hydro-electric power, transportation, hygiene and medical services, schooling and education, access of girls to instruction.³⁶

However, the problem of the status of Taiwanese people *vis-à-vis* the Japanese remained basically unsolved. The way of confrontation remained open: in 1912–13 an anti-Japanese uprising took place in the wake of the Chinese Revolution on the Mainland, and was immediately crushed.³⁷

Some tried more dialogic ways: a first attempt was the creation of the Doka-kai (Tong Hua Hui), or Assimilation Society, fruit of the cooperation of Lin Xian-tang (林獻堂) and Itagaki Taisuke. The Society only lasted 67 days, Governor Sakuma disbanding it on January 1915.

The purpose of the two founders were also different: Lin aimed at freeing Taiwan by working with illuminated Japanese, on the model of Ireland fighting with England, while Itagaki wanted to hasten the assimilation of the Taiwanese by the Japanese and aimed at overcoming some social barriers opposing it, such as the preferential treatment of the

Expedition' between 1910 and 1914, 10,000 Taroko People were massacred. In 1930, in the Wushe Rebellion, the Japanese attacked six Taroko Villages with airplanes, cannons, machine guns and chemical weapons and massacred virtually all the men, women and children of the Villages. In order to assimilate the Indigenous Peoples, the Japanese government encouraged the Indigenous Peoples to use Japanese names, and forced children to speak Japanese under their compulsory elementary school program. It was during this period that the traditional political, economic, cultural, and social systems of the Indigenous Peoples began to collapse." At <<http://www.taiwandocuments.org/ata.htm>>.

34. O. Lardinois, *Civilisation chinoise et minorités ethniques*, op. cit., 39.

35. Ibid., 40

36. C.-C. Hung, *A History of Taiwan*, op. cit., 197–204.

37. Ibid., 204–5.

38. Ibid., 205–6.

Japanese, and the divide between Japanese, Taiwanese and Aborigines.³⁸ Lin continued pursuing his project through the cultural way, by opening schools for the Taiwanese beyond the elementary level.³⁹

In the wake of us President Wilson's advocacy for the liberation of peoples and self-determination of colonies (Paris Peace Conference, 1919), and of the May Fourth Movement in Mainland China, Taiwan too saw the birth and first steps of autonomy movements.⁴⁰ Lin Xian-tang, Jiang Wei-shui (蔣渭水) and numerous Taiwanese students in Japanese universities created new Associations in Taipei and in Japan (the Enlightenment Society, Tokyo, 1919; the New People's Society, Tokyo 1920; the Taiwan Cultural Association, Taipei, 1921); new periodicals were founded; in 1921 a petition was submitted to the Imperial Diet of Japan for the establishment of a parliamentary body in Taiwan, the first of fourteen petitions presented in the following 13 years, all of them advocating forms of autonomy for Taiwan people in the frame of Japanese government.⁴¹

In 1925–1926 the Taiwan Cultural Association sponsored 315 public lectures on the cultural and political discrimination affecting Taiwan, with more than 100,000 attending. However, the growth of the autonomy movement created fears among the Japanese residents; in 1923 governor-general Den promulgated a police law targeted at the members of the Association; in December some activists were arrested and convicted.

Under these conditions, there was a split inside the Cultural Association: its more radical members founded the People's Party (1927), with the aim of establishing democracy in Taiwan, economic reform, an improved social system. Lin Xian-tang and others organized an alternative movement, the Taiwan Self-Rule League (1930). One year later, the party was declared illegal by governor Ota Masahiro (1931); the Taiwan Cultural Association too virtually ceased to exist.⁴²

Instead, other movements for improved pricing conditions for agricultural products ended in the creation of the Taiwan Communist Party (Shanghai 1928), with the support of the Chinese Communist Party (CCP), advocating the creation of an independent state of Taiwan.⁴³ Internal splits hampered the initial stages of political activity. By 1931, 75 of the leaders had been indicted; 47 convicted to terms ranging from 15 to three years in prison.⁴⁴

The efforts of the Self-Rule League, and of many artists, scholars, historians, teachers and poets to keep on fighting for greater autonomy and democracy in Taiwan came to an end with the rising to power of militarists in Japan, who stifled the "Liberal '20s" in Japan as well as in Taiwan. The League voted its own end in August 1937.⁴⁵

39. Ibid., 207.

40. Ibid., 210.

41. Ibid., 210; M. A. Rubinstein, ed., *Taiwan: A New History* (New York: Armonk, 1999), 231–33.

42. C.-C. Hung, *A History of Taiwan*, op. cit., 213–14.

43. Ibid., 215.

44. Ibid., 216.

45. Ibid., 218.

In the following years, Taiwan too felt the consequences of the preparations for war being made in the Japanese Empire. Admiral Kobayashi, governor-general from 1935 to 1940, set Japanization as the top priority of his administration. At all levels, economic as well as cultural, Taiwanese people needed to comply with the new, tough regulations, which altered virtually all aspects of social life on the island.⁴⁶

The next Japanese governor, Admiral Hasegawa Kiyoshi (1940–1945) institutionalized the Japanization movement as the Imperial Subject Service Society, which saw its presence spreading all over Taiwan. Persecution against Christians became stronger, military conscription started in 1944. No less than 207,000 recruited Taiwanese were sent abroad, 31,000 of whom died overseas.⁴⁷

After fifty years of colonial rule in Taiwan the Japanese left behind widely different pictures: economically, and even culturally, undeniable progress was made, making Taiwan one of the most advanced regions of the Far East at that time. At the level of proper human interactions, however, achievements were poor: a rigid separation of the ethnic populations, the Japanese, the Chinese, and the Aborigines did not build up any reciprocal trust; and politically, almost no opportunity was offered to the Taiwanese for self-expression and self-rule. The Japanese set up a discriminative system, an administrative structure which favored economic growth, but was not respectful of other basic human needs and rights.

The fifty years of Japanese rule in Taiwan show the emergence of a peculiar pattern: if the impulse given to economic and all sorts of material progress does not pay much attention to other, more properly human dimensions of life, paradoxically it meets with great, or greater success, and thus recommends itself as a goal that can be pursued without too many second thoughts. Such a pattern seems to be still working in many societies down to our days.

THE LAST SEVENTY YEARS (1945–2013)

After the return of Taiwan to the Republic of China, with reference to human rights, basically the same set of problems can be observed as in the past, in the three areas already identified: the relationship of the dominant group to the other communities present in the territory; the problem of the international status of Taiwan; and the struggles to implement a set of individual rights in opposition to more traditional Chinese perspectives and values.

46. Chinese was forbidden in the media; personal names were Japanized, attendance at Shinto temples became compulsory, celebration of traditional Chinese festivals was discouraged, all the schools had a required course on Japanese spirit, Christians began suffering persecution, especially the missionaries coming from English-speaking countries. *Ibid.*, 231–32.

47. *Ibid.*, 235.

ROC Administration and the Taiwanese

With the end of the Second World War, Japan withdrew from Taiwan, which returned to the Republic of China (ROC) and its ruling party, the Chinese Nationalist Party (Guomindang, 國民黨, also spelled Kuomintang, KMT).

The years 1945–1947 marked the awakening of the people of Taiwan to a new and unexpected reality: life under the external rule of the KMT, of its undisciplined armies, of its cadres and ideology, all of them coming from the Mainland. “It soon became apparent that Taiwan was to be treated as a conquered territory, and its population as a subjugated people.”⁴⁸ In a short time the flourishing economy of the island was ruined, social disorder and corruption followed, protests arose, culminating in the incident of 28 February, 1947, in the aftermath of which the social, cultural and economic elites of Taiwan, about 20,000 people, were eliminated. Due to the lack of local cadres, Continental leaders took control of the civil administration, education, industry and commerce for several decades.⁴⁹

The 1947 events created a deep divide between the Taiwanese and the Mainlanders, a wound that is still bleeding. The internal problem of the relationship between Mainlanders and Taiwanese, was further complicated by the echo on the island of the civil war in China opposing Communists (the CCP under the leadership of Mao Tse-tung) and Nationalists (the KMT of Chiang Kai-shek). In Taiwan too a repression started against those suspected of being Communists.⁵⁰

Even though the government of the ROC signed the Universal Declaration of Human Rights in 1948, martial law remained in place from 19 May, 1947 until 15 July, 1987. During this period under martial law, called the White Terror (Baise Kongbu, 白色恐怖), the longest in the world after the Syrian martial law (1963–2011), about 140,000 Taiwanese were imprisoned. Among them, there were about 29,000 cases of political persecution; between 3,000 and 4,000 were executed, under suspicion of opposing the Chinese Nationalist Party⁵¹ mainly in the years 1950–1952.

Although most of the prosecuted were labeled as “bandit spies” (Feidie, 匪諜), that is: spies for the communists, Communist insurgency basically did not constitute a real challenge to the KMT in Taiwan: among those arrested, only 900 really did belong to the Communist party.⁵² Reasons for the White Terror are rather to be looked for in the divide

48. Ibid., 247.

49. Ibid., 248–57.

50. A Communist Party existed in Taiwan from the time of the Japanese. They advocated independence from their rule. After the February 28 Incident, and after the agrarian reform, the movement for independence received wider support from small landowners, however without any further success. With the passing of the years, the center of the Taiwan independence movement moved to the US. Ibid., 282.

51. Hsieh Cong-min (謝聰敏), quoted in Huang Tai-lin, “White Terror Exhibit Unveils Part of the Truth,” at <<http://www.taipeitimes.com/News/taiwan/archives/2005/05/20/2003255840/1>>; see also: L. Mei-chun, “Ceremony Recalls White Terror,” at <www.taipeitimes.com/News/local/archives/2001/03/19/0000078143> and H. Tai-lin, “Top 10 Martial Law ‘Wrongs’ Listed,” at <<http://www.taipeitimes.com/News/taiwan/archives/2004/12/10/2003214466>>.

52. H. Tai-lin, “White Terror Exhibit Unveils Part of the Truth,” op. cit.

between Mainlanders and Taiwanese, in the context of critical international situations, such as the Korean War and the Cold War. In time, the aim of the dissidents was political freedom and the lifting of martial law. The main impulse behind the struggle against the rule of the Mainlanders was the desire for local autonomy and democratization on the part of the Taiwanese Chinese, the roots of which went back to the end of the Ming Dynasty.

During the same years, however, Taiwan knew some positive achievements in various fields: the successful battle against inflation (one of the causes of the 1947 incident);⁵³ the implementation of land reform in the years 1949–1953;⁵⁴ a rapid industrialization.⁵⁵ Nor should the US military and economic assistance be forgotten, which in the wake of the Korean War⁵⁶ offered immediate relief to many, helping them out of sheer poverty (the US interest in Taiwan however also meant a silence on human rights violations). All these factors came together to improve life conditions among large strata of the population.

Traditional home to the activists of the movement for autonomy and democratization were the temples of folk religion and the many associations linked with them. Western Churches, in a special way the Presbyterian Church of Taiwan, appeared on the scene as strong allies of these movements, with a view of reaching the same goals. Churches, that is, religious organizations, were the bearers of values rooted in faith, therefore endowed with a strong motivational background and resiliency.

Besides, such values were based on the dignity of each person, as the subject of the act of faith on which the community is built. Such a vision paved the way for the acknowledgment of a set of rights which sounded new in a cultural environment where basically tradition alone (as embodied by the ruling group) was considered as the source of any individual right. Moreover, Protestant Churches had stories of struggles against established ruling powers in order to secure their right to an independent existence.

Third, Churches could count on powerful audiences also in the West, thus deterring any government from the use of too drastic measures to curb opposition, under threat of losing face and help.

The Presbyterian Church already faced persecution under the Japanese, for being too close to the local people, to their needs and vindications. They were therefore prepared for the struggle for political freedom and against martial law. Their efforts found support in a number of foreigners who willingly took considerable risks in exposing the repression operated during the years of the White Terror.⁵⁷

53. C.-C. Hung, *A History of Taiwan*, op. cit., 259–61.

54. Ibid., 261–64.

55. Ibid., 287–91.

56. Ibid., 264–73.

57. L. Gail Arrigo and L. Miles, eds., *A Borrowed Voice: Taiwan Human Rights through International Networks, 1960–1980* (Taipei: Social Empowerment Alliance 2008). The book presents the experiences of the varied group of foreigners involved in reporting the abuses against human rights in the years 1960–1980 to the world: students, scholars, journalists, missionaries, even US military personnel. They successfully tried to

Some major events during the years before the lifting of martial law (1987) can be listed.

In 1964 Prof. Peng Ming-min (彭明敏), co-author of the *Declaration of Taiwan Self-Salvation* criticized martial law during his courses at Taiwan National University and was jailed. He was freed after few years, but deprived of his teaching post. An American friend, Mark Thelin, together with others, helped him to leave the country, with a Japanese passport, and go to Sweden, where he appeared again in 1970.⁵⁸

In the same year, in connection with this, and also due to the progressive isolation of Taiwan, the government requested the Presbyterian Church to sever its links with the World Council of Churches, which switched recognition to Beijing. The Church answered with its first Declaration on Human Rights, published in Chinese and in English in December 1971 in Hong Kong.

The foreigners who participated in the redaction of the document were expelled from the country in the following years.⁵⁹ In 1975 the Presbyterian Church published another document: "Our Appeal concerning the Bible, the Church and the Nation," in which it stated its right and duty to care about the situation of the country. It denounced the risk of international isolation of the country, stating the right of the people to decide their destiny, to enjoy religious freedom, and the need for mutual trust between the government and the Church. The document invited the Church to be concerned about human rights, to try to solve poverty and hunger.⁶⁰

Among the Catholic leadership, it was only some individual missionaries who sided with the Taiwanese, not necessarily in view of political change, but basically out of solidarity with the people to whom they were sent, especially poor people and workers. They did not find much support in the Catholic environment, mostly constituted of Mainlanders who fled the Communists, whereas the Taiwanese Catholics were a tiny minority among them.⁶¹

Fr. Ronald Boccheri, a Maryknoll Missionary (MM), was invited to leave the country and not allowed to return, due to the help he provided Miss Chen Ju (陳菊) in 1978.⁶² After working in Taiwan in the ecumenical field, Fr. Collignon MM helped a MM Sister, Nadine Tierney, during her tour of conferences in the US in 1982–1983. His visa application in 1983 was turned down, and only in 1996 was he allowed to return to Taiwan.⁶³ Fr.

attract international attention to such abuses in a number of foreign countries, among which also Japan, and human rights defense organizations.

58. E. Ryden, *Réflexions sur les droits de l'homme développées à partir de Taïwan* (Louvain-la-Neuve: Harmattan-Academia, 2011), 22–3.

59. Ibid., 23–4.

60. Ibid., 25.

61. Ibid., 43–8.

62. L. Gail Arrigo and L. Miles, eds., *A Borrowed Voice*, op. cit., 253–57.

63. Ibid., 235.

Neil Magill, a Columban Missionary, spent 11 years in Taiwan, supporting the rights of workers, before being deported from the country in 1989.⁶⁴

In 1977, while the US was moving their Embassy from Taipei to Beijing, the Presbyterian Church published a Declaration on human rights, in which it asked President Carter to respect the rights of the Taiwanese people, and to acknowledge that Taiwan is a country with right to autonomy and independence.⁶⁵ The document was signed by the secretary of the Presbyterian Church, Gao Jun-ming (高俊明), who was later arrested because of helping another fugitive activist, Shi Ming-de (施明德), and condemned to seven years on the Green Island, home to the prison of political dissidents.

Other major events took place during the years 1977–79: a protest in front of a police office in Zhong Li (中壢) on 19 November, 1977, after a school principal was discovered trying to manipulate local elections on behalf of the KMT; the short imprisonment (23 June, 1978) of a young activist woman, Chen Ju, now Mayor of Gao Xiong (高雄); the activities of Shi Ming-de, a former political prisoner⁶⁶ in organizing the electoral campaign for the Dangwai (黨外, “Outside-of-the-party”) candidates; his marriage with a US citizen, the activist Linda Gail Arrigo (15 June, 1978) at the US Consulate in Taipei, in order to prevent a second imprisonment; his work as the general manager of the newly founded *Meilidao* (美麗島, *Formosa*) Magazine; the Chiaotou March (橋頭, a suburb of Gao Xiong) on 21 January, 1979;⁶⁷ the GaoXiong Incident (10 December, 1979): a rally to celebrate the Proclamation of the Universal Declaration of Human Rights, in which about 15,000 people took part, dispersed by the police, in the wake of which Linda Arrigo was expelled from Taiwan, and Shi Ming-de was again imprisoned⁶⁸ together with Gao Jun-ming, who hid him; and the horrific killing of the mother and two little twin daughters of another activist, Lin Yi-xiong (林義雄) on 28 February, 1980,⁶⁹ during the sedition trial over the events in Gao Xiong.

64. Ibid., 243–47. Another missionary, Fr. Edward Kelly, after being forced to leave the country in 1984, worked in Hong Kong until his premature death in 1994, collecting and publishing documents on the struggle for democracy in Taiwan. Ibid., 239–41.

65. E. Ryden, *Réflexions sur les droits de l'homme développées à partir de Taïwan*, op. cit., 25–6.

66. Shi Ming-de was arrested at the age of 21 in 1962 and charged with creating the “Taiwan Independence League” (a study group) with the intention of overthrowing the KMT government. He was sentenced to life imprisonment, sentence commuted to 15 years in 1975. On June 16, 1977, he was released. At <http://en.wikipedia.org/wiki/Shih_Ming-teh>.

67. During the march, a young woman would shout to a policeman: “Today the KMT martial law order is no longer a virgin; we raped the thirty-year old virgin!” in L. Gail Arrigo, L. Miles, ed., *A Borrowed Voice*, op. cit., 330.

68. Shi Ming-de was sentenced to life in prison; in 1987 Jiang Jing-guo lifts the martial law and offers him an amnesty, but he refuses. After totaling 25 years in jail, he is released in 1990. In 1994, he becomes the leader of the Democratic Progressive Party (DPP); he is also elected legislator three times. After his proposal of a political “Grand Reconciliation” in Taiwan met with strong opposition on the side of the DPP, he resigned from the party in November 2000. In 2006, Shih led a massive protest (the Red Shirts) against corruption, in an effort to force the DPP president Chen Shui-bian (陳水扁), the lawyer who had defended him at the Gao-Xiong trial, to resign before the end of the presidential term in 2008. The protest ended in April 2007.

69. Ibid., 421–27.

When Jiang Jing-guo (蔣進國, the son and heir of Chiang Kai-shek) died in 1988, six months after lifting martial law, more than 7,500 political prisoners were freed. The new president, Li Deng-hui (李登輝), a Taiwanese-born member of the KMT, progressed cautiously on the road to democratization.⁷⁰ However, in May 1988, a rally of farmers ended up in episodes of violence; in April 1989 the police tried to arrest the founder and redactor-in-chief of *Freedom Era Weekly*, Cheng Nan-rong (鄧南榕), who had published a proposal for a new constitution of Taiwan. He set fire to his office and died in the blaze. Another activist immolated himself when the funeral procession was blocked by the police.⁷¹

With the progress of democratization and the change in political leadership, a movement was born which aimed at allowing Taiwan to come to terms with its past. The president Lee Teng-hui and the government acknowledged their responsibility in the incident of 28 February, 1947, and asked forgiveness from the people. In 1995 the New Park of Taipei was renamed the “Park of the Peace of February 28.” In 1999 a memorial was built on Green Island, where the majority of political prisoners had been jailed. After long delays, the “National 228 Museum” opened in Taipei, on 28 February, 2011.⁷²

The authorities also proposed some compensation to the families of the victims of the February 28 Incident and for the victims of the White Terror. The numbers reported by the daily *Taipei Times* during the year 2003 showed that practically all those claiming compensation received it. Some details however remain unclear: Is the KMT to be held responsible for the February 28 Incident? With what money is the compensations being paid? The money of the State (of the taxpayers) or the money of the party? Are there any culprits? If yes, is it possible to know their names?⁷³

ROC Administration and the Aborigines

While in the struggle for political freedom the two Chinese groups confronting each other basically shared the same racial and cultural background, in the case of the Aborigines there are great differences in terms of culture, of life ideals, of abilities and resources at every level.

After gaining control of Taiwan, the KMT started a policy of assimilation of the Aborigines which deprived them of their identity, and with it of the few resource still in their hands. Olivier Lardinois speaks of three alienations.

70. After one term as president elected by the people (1996–2000), he does not run for another term. The DPP candidate, Chen Shui-bian (陳水扁) becomes president (2000–2004). He is elected for a second term (2004–2008), after which Ma Ying-jiu (馬英九), for the KMT takes the presidency, from 2008 to the present (2013). At <http://en.wikipedia.org/wiki/Shih_Ming-teh>.

71. E. Ryden, *Réflexions sur les droits de l'homme développées à partir de Taïwan*, op. cit., 50.

72. K. Shu-ling, R. Chang and V. Y. Chao, “National 228 museum opens in Taipei,” at <<http://www.taipei-times.com/News/front/archives/2011/03/01/2003497056>>.

73. “Ce qui reste curieux, c’est que le gouvernement reconnaisse le crime et dédommage les victimes, mais ne trouve ni même ne cherche de criminel!” in E. Ryden, *Réflexions sur les droits de l'homme développées à partir de Taïwan*, op. cit., 53.

First alienation: the new government abolished the existence in the administrative law of the twelve tribes of the Aborigines of the plain; as a result, they were forcibly integrated into the Han. Then, because of the agrarian reform, even the last relics of the Fanhehanchian (番爺漢佃) system were abolished. According to this system, which was established under the Qing Dynasty and which the Japanese had allowed to survive, the Aborigines of the plain were allowed to own land, which they could rent to Chinese farmers.

Second alienation: the members of the nine tribes of the mountains, not assimilated to Chinese culture, received Chinese citizenship *ex officio*. They were called “Compatriots of the Mountains” (山地同胞, Shandi Tongbao), even though some of them actually lived on the plains surrounding the Pacific Coast.

Third alienation: the KMT government decided on a new policy of protection of waters and forests, and an agrarian reform of the plain and of the mountain, without involving any of the Aboriginal leaders in the planning of these changes. As a result, in no time the Aborigines became Chinese citizens and discovered that they had been dispossessed of almost all of their rights.⁷⁴

One of the responses of the Aborigines was to convert to Christianity, either in the Catholic or Presbyterian Church: for a long time only Christian communities offered them an autonomous space and social aid, especially when, because of the swift industrialization of the country in the years 1960–1970, they migrated to the new industrial zones and lived in illegal shantytowns along the rivers, exploited under harsh working conditions.⁷⁵

Inspired by the commitment of the Presbyterian Church to the emancipation of Aborigines in many countries, in Taiwan too a movement was created in defense of their rights. On 1 May, 1983, a group of students of the prestigious Taiwan National University started an apparently innocuous journal, the *Gaoshanqing* (高山青, Youth of High Mountains). With time, the journal published articles denouncing all the abuses and violations of rights of which the Aborigines were victims: exploitation of workers, forced prostitution of Aborigine girls; expropriation of ancestral land and deforestation by the government; storage of nuclear waste on Orchid Island close to the villages of the Aborigines; perpetuation of strong prejudices against Aboriginal culture; prohibition of the use of Roman characters to write their languages...⁷⁶

On 29 December, 1984, following the death of about ten Ami workers in the explosion of a mine in the suburbs of Taipei, some Aboriginal activists gathered at the Mackay Memorial Hospital and established the A.T.A., Alliance of Taiwan Aborigines (Yuanzhumin Quanli Cujinhu, 原住民權利促進會). As its first goal, the Alliance worked to have

74. O. Lardinois, *Civilisation chinoise et minorités ethniques*, op. cit., 42–3.

75. Ibid., 43–7.

76. Ibid., 51. The Taiwan Aboriginal Rights Webpage (<<http://www.taiwanfirstnations.org/>>) contains a series of articles on old and new vindications of Aboriginal peoples in Taiwan.

the State recognize the appellation *Yuanzhumin*, (原住民, Aborigines) in the Constitution instead of “Compatriots of the Mountains” as the true name of the Aboriginal tribes.

After the lifting of Martial Law in 1987, the A.T.A. worked successfully to eliminate the legend of Wu Feng (吳鳳)⁷⁷ from the collective memory of Taiwanese people, starting from the symbolic gesture of tearing down a big statue of Wu Feng in front of the train station of Jia Yi.

Another success followed the requests of the *Huan Wo Tudi* (還我土地, Give me back my land) movement: the government agreed to study a reform of the law of the land reserved to the Aborigines. Other results obtained: the teaching of Aboriginal languages in the primary schools; the possibility of using one's Aboriginal name on one's identity card (1995); measures in favor of Aboriginal workers. Besides, in 1994 the appellation *Yuanzhumin* (原住民) for the Aborigines was accepted in the Constitution; in 1996 the government created a Commission for Aboriginal Affairs (in 2002 its name was changed into Council of Indigenous Peoples); starting from the year 2000, other minority groups saw their independent existence acknowledged. Another important law (2001) allows those who can prove that at least one of their grandparents is an Aborigine to obtain Aboriginal identity and the benefits thereof. In this way in ten years the total number of Aborigines passed from 350,000 to half a million.⁷⁸

More recently, the creation of a specific tv channel has allowed for the widespread diffusion of knowledge of Aboriginal culture and traditions.

The direction of the evolution of the relationship between Chinese and Aborigines in Taiwan is undoubtedly positive; some problems remain unsolved, though. There are many cases of exploitation of Aboriginal land and resources by the Chinese, profiting from the ingenuousness of the Indigenous people, and also from natural calamities; there is the problem of alcoholism, and of the continuing economic exploitation of Aboriginal workers. A recent challenge is the presence of foreign workers: they are preferred because their cost to the employer is lower than that of a Taiwanese. This has caused a loss of jobs among the Aborigines. In general, Aboriginal culture is no match for the entrepreneurial spirit of the Chinese. The Chinese find all possible ways to exploit their territory and finally to make them foreigners in their own land, not allowing them to continue their traditional way of life.

Taiwan International Status

Even a cursory overview of the international context of the first years of the Republic of China in Taiwan, and of its evolution, explains many of the internal struggles of the gov-

77. According to this legend, a Chinese named Wu Feng, a good friend of the Aborigines, failing in his attempts to persuade them to give up head hunting, found an extreme way. After masking himself so as not to be recognized, he wandered among the Aborigines till somebody cut off his head, only to discover that he had killed the greatest friend of his people. As a result, the Aborigines finally gave up their cruel custom. *Ibid.*, 52.

78. *Ibid.*, 52–4.

ernment, and the attempts at solving them. It also reveals how much the broader context can be influential in shaping the minds and behavior of an entire country.

In the Cairo Declaration, released on 1 December, 1943, Roosevelt, Churchill and Chiang Kai-Shek made public their decisions about the future prosecution of the war and the future of the territories occupied by Japan. As for Taiwan, they stated: "It is their purpose that Japan shall be stripped of all the islands in the Pacific which she has seized or occupied since the beginning of the first World War in 1914, and that all the territories Japan has stolen from the Chinese, such as Manchuria, Formosa and the Pescadores, shall be restored to the Republic of China."⁷⁹

The international agreements signed in the following years left open in principle the question of the independence of Formosa.⁸⁰ The US first abandoned Taiwan,⁸¹ then suddenly rethought their stance and considered it again as an important asset in their strategy for the Far East. The reason for this reversal was the Korean War, which followed the Battle of Quemoy (October 1949),⁸² and the North Korean invasion of the South (25 June, 1950). Immediately, President Truman issued a statement showing the new attitude of the US with regard to Taiwan.

The attack upon Korea makes it plain beyond all doubt that Communism has passed beyond the use of subversion to conquer independent nations and will now use armed invasion and war... In these circumstances the occupation of

79. C.-C. Hung, *A History of Taiwan*, op. cit., 244–45. However, "This and the following two declarations [The Yalta and the Postdam Declarations, 1945] were unilateral statements of intent, not legally binding on the declarants, much less so Japan, the title-holder to Formosa," at <<http://www.taiwandocuments.org/summary.htm>>.

80. "In article 2 paragraph (b) of the Treaty of Peace with Japan concluded in San Francisco in 1951, Japan renounced 'all right, title, and claim to Formosa and the Pescadores.' This is the *only* renunciation Japan ever made regarding sovereignty over Formosa. The Treaty makes no provision for sovereignty over Formosa once it was renounced by Japan. However, the Treaty does state in its preamble that Japan would 'in all circumstances conform to the principles of the Charter of the United Nations and strive to realize the objectives of the Universal Declaration of Human Rights,' which includes respect for the self-determination of peoples and adherence to UN General Assembly resolutions. One of these resolutions, G.A. Res. 1514 (xv) (1960), spells out specifically principles relating to the independence of former colonies like Formosa. The commitment to the principles of the United Nations Charter implicitly transfers sovereignty over the island to the inhabitants of Formosa... The Treaty of Peace between the Republic of China and Japan (1952) again left open the question of sovereignty over Formosa. Article 2 of the Treaty merely recognizes Japan's renunciation of sovereignty under the San Francisco Treaty. Article 2 was not a new renunciation. Article 4 of the Treaty does, however, abrogate all agreements between China and Japan concluded before 9 December, 1941. This would include the Shimonoseki Treaty and would implicitly nullify the cession of Formosa to Japan. Note here the precision of the language: It is the agreements between China and Japan, and not only between the *Republic of China* and Japan that are nullified. This stands in stark contrast to the ambiguity of the language contained in the Cairo Declaration. Despite this abrogation, the absence of a specific provision transferring sovereignty to China is striking, especially in light of Article 5 which abrogates a specific agreement between Japan and China." At <<http://www.taiwandocuments.org/summary.htm>>.

81. C.-C. Hung, *A History of Taiwan*, op. cit., 264–65.

82. The crushing defeat inflicted on the PLA (more than 8,000 casualties after 56 hours battle) discouraged the PRC from invading Taiwan. Ibid., 265–66.

Formosa by Communist forces would be a direct threat to the security of the Pacific area and to the United States forces performing their lawful and necessary functions in that area. Accordingly I have ordered the Seventh Fleet to prevent any attack on Formosa... The determination of the future status of Formosa must await the restoration of security in the Pacific, a peace settlement with Japan, or consideration by the United Nations.⁸³

The US offered military as well as economic and humanitarian assistance; in this way they also helped the successful development of Taiwan. However, the international status of Taiwan remained in limbo. The Peace Treaty with Japan was discussed and signed by 48 of the 51 Allied countries participating in the Peace Conference of St. Francisco (8 September, 1951), without determining with which of the two governments of China (the Republic of China, ROC, or the People's Republic of China, PRC) Japan should sign a bilateral treaty of peace and establish diplomatic relations. Because of the critical situation of the Korean War, the US strongly recommended that Japan sign the peace treaty with the ROC. The treaty was signed on 28 April, 1952 and went into effect on 5 August of the same year.⁸⁴

In the following years, apart from the Quemoy crisis in 1954,⁸⁵ the situation did not see any major changes. The battle between the ROC and PRC extended internationally and touched on the cultural level, the ROC proclaiming itself the defender of traditional Chinese values and heritage in the face of the Cultural Revolution waged in the Mainland against Chinese tradition.⁸⁶

However, with the growth in numbers of the countries entering the UN, for Taiwan to claim the right to represent the whole of China became more and more difficult. Nevertheless, throughout the Vietnam war, the US made use of Taiwan as a logistic base and resort for their troops; however, the war also caused the US policymakers to begin seeing the need for a new stance toward the PRC. In 1959 a resolution was passed in the UN to consider the status of Taiwan as an important question, requiring a two-thirds vote to be settled. The many ups and downs of international politics notwithstanding, Taiwan was able to keep its seat throughout the Sixties.⁸⁷

Taiwan's international status encountered the worst setbacks during the Seventies. President Nixon's administration indicated the desire to improve the relations between the US and the PRC, culminating in his visit to Beijing in February 1972. A joint declaration issued in Shanghai states: "The United States acknowledge that all Chinese on either side of the Taiwan Strait maintain that there is but one China and that Taiwan is a part

83. Quoted in *Ibid.*, 266.

84. *Ibid.*, 275.

85. Naval encounters and air dogfights ending in a massive bombing of the island of Quemoy, but with no landing of PLA troops. *Ibid.*, 279–80.

86. *Ibid.*, 285–86.

87. M. A. Rubinstein, ed, *Taiwan: A New History*, op. cit., 334.

of China. The United States does not challenge that position. It reaffirms its interest in a peaceful settlement of the Taiwan question by the Chinese themselves.”⁸⁸

Next, in the UN the question was often raised about which Chinese government had the right of representing China. The question came to a head when three draft resolutions were proposed to the twenty-sixth Session of the General Assembly, on 21 September, 1971. The first (sponsored by Albania and other pro-PRC countries) called for the admission of the PRC and the expulsion of Chiang Kai-Shek. The second (sponsored by the US and others) proposed that the PRC “be seated as one of the five permanent members of the Security Council,” while upholding the right to representation of the ROC. The third draft was procedural, asking the member countries to decide whether a majority of two-thirds was necessary to deprive the ROC of its representation in the UN. This third resolution was voted first with the result (54/59 15 abstentions) that only a simple majority was required. Therefore, before being expelled in the next votin session, the ROC Foreign Minister led his delegation out of the Assembly Hall, by this act withdrawing from the UN (25 October, 1971). After this event, almost all the countries switched recognition from Taipei to Beijing. Taipei was forced to abandon all the UN organizations.⁸⁹ The next year Japan established diplomatic relations with the PRC and scrapped the Peace Treaty of 1952 with the ROC.⁹⁰

From that time on, Taiwan became more and more like a pariah in the international community, while the PRC ruthlessly choked off any of its efforts to gain international visibility.

By the Taiwan Relations Act, passed in 1979, the US tried to assure Taiwan of their standing commitment to prevent any other country from infringing on their right to self-determination. However, such a commitment seems to be becoming weaker and weaker, because recent US Presidential administrations have been reluctant to provide Taiwan with the means of self-defense, out of the fear of the negative reactions of Beijing.

A great effort also took place to identify principles, categories, and strategies that might lead the two sides to some kind of positive relationship. An example is the theory of “One Country, Two Systems,” devised by Den Xiao Ping in the late ’70s. In view of this, too, in the late 1980s, on both sides of the Taiwan Strait, two formally non-governmental bodies (the SEF in Taiwan, the ARATS in Beijing)⁹¹ were established, with the purpose of holding informal meetings on the issue of the relationships between the ROC and the PRC. An important outcome of such talks was the so-called “1992 Consensus:” both sides of the Taiwan Strait upheld that there is only one China, “with different interpretations:” they agreed to acknowledge and respect the fact that both sides may interpret that statement in

88. Quoted in C.-C. Hung, *A History of Taiwan*, op. cit., 292.

89. Ibid., 293.

90. Ibid., 294.

91. SEF stands for “Straits Exchange Foundation,” and ARATS for “Association for Relations Across the Taiwan Straits.” At <http://en.wikipedia.org/wiki/Cross-Strait_relations>.

a different way. Such a position reflects the stance of the KMT, and was challenged by the DPP, the pro-independence party, according to which, the 1992 consensus never existed. This also seems to be the interpretation of the representatives of Taiwan and the PRC to the talks: rather than forging a consensus, “both sides agreed to proceed with future meetings on the basis of equality and mutual respect.” The word “consensus” might be better replaced by “understanding” or “accord.”⁹²

Further talks however encountered obstacles: on the occasion of the visit of President Li Deng-hui to his Alma Mater, Cornell University in 1995, and before the presidential elections of 1996 in Taiwan, the PLA held missile tests and landing exercises, prompting an immediate response on the part of the US Navy (two carrier battle groups were sent to the area).⁹³ Then, in 1999, President Li proposed his “Special State-to-State Relations Theory,” which again drew a negative response from the PRC. The theory was refined by the DPP President Chen Shui-bian, who in 2002 proposed the “One Country on Each Side of the Taiwan Strait” theory, to an even stronger reaction not only on the side of Mainland China, but also of the US who distanced themselves even further from the ROC President.

Mixed signals were sent: on the one side visits of KMT leaders started to Mainland China in 2005, opening the way for far-reaching contacts;⁹⁴ at the same time, however, the PRC passed the Anti-Secession Law, the Art. 8, which requires the Chinese government to use non-peaceful and any other means to regain control of Taiwan, should it declare independence.⁹⁵ A positive fact is that the new law foresees talks between China and Taiwan on a different, more respectful basis.

Things changed dramatically with the following KMT President, Ma Ying-jiu (from 2008 to the present), under whose administration new steps were taken towards an ever-closer cooperation between the PRC and ROC. Under these new circumstances, the SEF-ARATS talks were also revived, with results worthy of note. A first achievement was the beginning of the resumption of the three links: mail, transportation and trade, officially restored on 15 December, 2008.⁹⁶ Regular meetings were expected to take place every six months.

On several occasions, towards the end of 2008, President Ma also proposed yet a different conceptual framework: “Special Non-State-to State Relationship:” with the termination of the Period of National Mobilization for Suppression of the Communist Rebellion decided by then President Li Deng-hui in 1991, the ROC had *de facto* acknowledged that the two sides of the Taiwan Strait are under separate rule. This meant that the ROC no longer considered the communist regime in mainland China as a “rebellious group,”

92. At <http://en.wikipedia.org/wiki/1992_Consensus>.

93. At <http://en.wikipedia.org/wiki/Third_Taiwan_Strait_Crisis>.

94. At <http://en.wikipedia.org/wiki/2005_Pan-Blue_visits_to_mainland_China>.

95. At <http://en.wikipedia.org/wiki/Anti-Secession_Law>.

96. At <http://en.wikipedia.org/wiki/Three_links>.

but “a governing authority that has *de facto* rule of the mainland.” Under the eleventh amendment of the ROC Constitution and the “Statute Governing the Relations between the Peoples of the Taiwan Area and Mainland Area,” the relationship between Taiwan and mainland China became one between two regions of one country. From the ROC’s perspective, that country is the ROC. Taiwan and mainland China are not two states but “two areas” that can pursue closer ties, to mutual advantage, and for the present leave aside sovereignty questions.⁹⁷ Many new agreements have since followed: the ECFA, signed in Chong Qing on 29 June, 2010;⁹⁸ direct flights, which now number more than five-hundred every week; tourist visits, students exchanges, the recently signed Shanghai Cross-Strait Service Trade Agreement (21 June, 2013) opening the Taiwan and Mainland market areas to more than 60 kinds of services.⁹⁹ This agreement, however, has encountered opposition, not only on an ideological and methodological basis, but also, and perhaps even more, on purely economic grounds, for fear that the affected sectors in Taiwan may incur serious losses, as already happened after the ECFA.¹⁰⁰

Through this last event it is possible to see the problems involved in the present stage of the relationship between the two governments of the KMT and CCP. Their vision of one China prevails, while the feelings and hopes of common people are ignored. The KMT and CCP will achieve their long-time goal, the unification of China. But to whose advantage? Paradoxically, there is the risk that one of the main forces towards new positive relationships, the economic drive, may backfire, creating a new kind of opposition to unification, no longer political, but an opposition based on economic and social grounds.

Of greater concern, although perhaps not immediately visible, is the pattern that is enacted in the process: a classic Confucian pattern, going back to very ancient times, according to which only those in power have the right to govern the masses, with the assistance of sage advisors, placing “ordinary people at the receiving end of officials’ instructions and decisions:” they simply do not know, they are deemed “incapable of governing themselves.”¹⁰¹ A pattern apparently poised to rule the entire world.

97. At <http://en.wikipedia.org/wiki/Special_non-state-to-state_relations>.

98. C. Hogg, *Taiwan and China Sign Landmark Trade Agreement* in <<http://www.bbc.co.uk/news/10442557>>; see also <http://en.wikipedia.org/wiki/Economic_Cooperation_Framework_Agreement>.

99. “On June 21, Taiwan’s Straits Exchange Foundation (SEF) and China’s Association for Relations Across the Taiwan Straits (ARATS) signed a cross-strait service trade agreement. Taiwan agreed to open up 64 service sectors, including the finance, healthcare and telecommunications sectors, while China agreed to open 80 service sectors, including the finance, healthcare, telecommunications, e-commerce, transportation and tourism sectors.” K. Chen-hero, “Act cautiously on cross-strait pact,” at <<http://www.taipeitimes.com/News/editorials/archives/2013/07/03/2003566207>>. The very fact that non-governmental bodies such as SEF and ARATS inked pacts affecting a nation at large says a lot about the ways democracy is understood and implemented by the KMT and CCP.

100. The DPP Chairman Su Tseng-chang (蘇貞昌) laments: “There was a lack of transparency, a failure to keep the affected sectors informed and the negotiations were conducted without a comprehensive assessment of the potential impact on Taiwan’s economy, in particular small and medium-sized enterprises and the job market,” C. Wang, “DPP Vows to Resist ‘Unfair’ Trade Pact,” at <<http://www.taipeitimes.com/News/taiwan/archives/2013/06/27/2003565769>>.

101. At <<http://www.taipeitimes.com/News/editorials/archives/2013/07/02/2003566122/1>>.

Further, the fact that two non-governmental organizations inked agreements affecting the life of their nations—pending approval from the legislative bodies—is not without meaning. Of course, there was a valid reason—the unsolved problem of the relationship between the ROC and the PRC; nevertheless, such a procedure may also represent a way to leapfrog the uncertainties of democratic discussion in favor of more pragmatic solutions.

Perhaps it is not totally by chance that in December 2012, after Xi Jin-ping described the Constitution of China as the legal weapon for people to defend their own rights, and stated that no organization or individual should be put above the constitution and the law, at the end of May, 2013, some CCP journals expressed the view that the demands of constitutionalism are deeply opposed to China's current situation; constitutional government is not suitable for socialist countries, since it belongs to capitalism and bourgeois dictatorship; constitutionalism is a new way to force China to adopt western political systems. In other words: is the law above the Party, or vice-versa?¹⁰² What would Confucius, or the Confucians, say about this?

It is in any case undeniable that the problem of the international status of Taiwan, of its relationship with the PRC and with other nations, *in primis* the US and Japan, overshadows and polarizes many aspects of its social, economic and cultural life.

The whole sector of individual rights is already, and will continue to be greatly affected by the evolution of the relationships between KMT and CCP.

Individual Human Rights

What we have recounted so far shows that Taiwan has a very rich and instructive background of awareness of and commitment to human rights. It has a tradition of activism, and people capable of organizing activities in view of promoting new achievements. In more recent times, the close exchanges with the United States and the many Taiwanese living there have enhanced the degree of interest and quality of work in view of achieving an improved rights' record.

Practically all walks of life with any connection to human rights are covered by a net of foundations actively working and organizing activities, sponsoring proposals made to the government. It is also necessary to observe, however, that the need for such a commitment is not decreasing because of the continuous opening of new front lines. To quote a recent example: in Taipei, the City government wanted to get back land of which it is the owner, but on which, over time, poor people had built their homes, without legal titles to ownership. For these people there is no provision: an entangled situation, where in any case a basic right seems to be trampled upon. Needless to say, such situations are immediately taken up by the media so that the government is compelled to deal with them in a

102. "Which is Greater? Law or Party?" at <<http://sundayex.catholic.org.hk/node/1373>>. This should not be surprising, since the United Kingdom too has no written constitution, see <https://en.wikipedia.org/wiki/Constitution_of_the_United_Kingdom>.

fair way, with justice and exerting restraint.¹⁰³ Another example is development projects which meet with resistance on the part of the owners of houses to be demolished, in disputes that drag on for years and involve the highest political figures.¹⁰⁴

In a recent seminar on human rights in Taiwan held in the University of Louvain la Neuve in 2011, Fr. Edmund Ryden SJ identified the following main areas of vindication of individual human rights in recent times: the rights of women and sexes; the rights of migrant workers; the issue of death penalty.¹⁰⁵

As for the *rights of women*, the work of vindication of their rights has encountered great success, to the point that Annette Lu (呂秀蓮, Lyu Xiu-lian), the founder of a women's movement, was elected Vice-President of the country in 2000. Women's organizations have tried to modify legislation protecting patriarchal structures; as a result, the rights of women as stated in the UN Convention have entered in the national laws. In the 90s there was a successful campaign against domestic violence and sexual harassment, which ended up with Taiwanese legislation on these topics similar to Western countries.

However, problematic situations exist.

The first is the problem of prostitution. In 1997, Chen Shui-bian, the then mayor of Taipei, banned prostitutes from the capital. Some moved to the nearby cities, some continued working illegally. There were clashes between those who supported the decision of the mayor, and those who defended the right to a voluntarily chosen profession. There has also been a shift: during the 80s, prostitutes were recruited from among Taiwanese and Aboriginal girls; for the Taiwanese at least, it was a way to help their families. Now, prostitutes come mainly from abroad, they are either illegal immigrants from the Mainland, or foreign spouses who, for many reasons, take, or are compelled into taking up prostitution.¹⁰⁶

The second problematic issue is homosexuality, bi-sexuality and transgender (the so-called LGBT¹⁰⁷ groups). In 2003, during discussions on a draft of law on human rights in Taiwan, the proposal was made to include their rights; but for external reasons the project did not succeed.¹⁰⁸ Instead, after the KMT regained power, the Legislative Yuan ratified the UN conventions of human rights (ICCPR and ICESCR), which do not include the rights of homosexuals.¹⁰⁹

103. E.g.: the case of the Huaguang Community in Taipei, covered by Taipei Times, 3 July, 2013 and 4 July, 2013, <<http://www.taipetimes.com/News/feat/archives/2013/07/03/2003566212>> and <<http://www.taipetimes.com/News/feat/archives/2013/07/04/2003566290>>.

104. See: M. Yan-chih and S. Hsiu-chuan, "Meeting Fails to Resolve the Dapu Dispute," at <<http://www.taipetimes.com/News/front/archives/2013/07/06/2003566455>>.

105. E. Ryden, *Réflexions sur les droits de l'homme développées à partir de Taïwan*, op. cit., 75–98.

106. Ibid., 76–7. In his comment, the author challenges the right (intended as a human right) to do immoral things, on the reason e.g. of the right or the need to work.

107. Lesbian, Gay, Bisexual, Transgender.

108. Ibid., 77–8.

109. ICCPR: International Covenant on Civil and Political Rights, entered into force Mar. 23, 1976; ICESCR, International Covenant on Economic, Social and Cultural Rights, in force from 3 January 1976. Ibid., 78.

With regard to homosexuals, three kinds of rights are at stake: the right to be respected and not subjected to discrimination (a right which in principle is due to every human being); the right to marriage¹¹⁰ and the right to have, or adopt, children. According to Taiwan civil law, to get married does not require many formalities: all that is needed is registration at the registration office.¹¹¹ Economically, however, marriage does not offer big advantages, since taxation is on an individual basis and there are no significant reductions for families. As for the right to adopt or have children, it is, together with the other three rights, an ethical issue, and also a social and civil one: how much can the right to be respected be extended so as to include rights that by human tradition belong to heterosexual couples? How much does collective, sanctioned obligation to respect extend? Is it allowed to stretch it to the point of making disrespect for other traditional choices widely accepted and even trendy? From the point of view of human rights, the rights of children have precedence over the rights of couples.¹¹²

In any case, with regard to the rights of sexes, the Taiwanese and Chinese rather conservative stance slows down a process that in other countries, especially Western countries, is magnified to the point of becoming surreptitiously a key issue in social, cultural and even political life. On the other side, in comparison with other Asiatic countries, in Taiwan there is much more equality.¹¹³

The issue of the *rights of foreign residents and workers* involves bigger numbers, and has received mixed responses. Progress on this issue seems slow, also because basically foreigners are brought to Taiwan not for their advantage, but to the advantage of their Taiwanese employers.

The foreign workers number above 350,000, about one-and-half percent of the population of the country. There are some shifts in their provenance, with Thai workers experiencing a decrease (from a peak of 142,665 in 2000 to around 60,000 in 2009), Filipino workers having ups and downs (peak in 1999 with 114,255 units; low in 2001 and 2009 with around 72,000 units), Indonesian workers experiencing an increase (from below 100,000 in 2000–2006 to more than 139,000 in 2009), and Vietnamese workers stabilizing at around 80,000 units.¹¹⁴

110. In Taiwan, same-sex couple marriages are not recognized as such by the law. From time to time there are campaigns in favor of the legalization of such unions. See: “Graduates to Walk Nation to Push Same-Sex Marriage,” at <<http://www.taipeitimes.com/News/taiwan/archives/2013/07/26/2003568209>>.

111. “Starting from May of 2008, significant amendments have been made to the Civil Code. One of the changes regards a law concerning marriage validity. Originally, the requirement was to have an open ceremony with at least two witnesses. This has been changed to a registration system, where the couple must register for marriage at the registration office, regardless of whether they have had an open ceremony or not. Only then will the marriage be recognized as valid,” at <<http://www.taiwan.gov.tw/ct.asp?xItem=44499&CtNode=2468&mp=1009>>.

112. E. Ryden, *Réflexions sur les droits de l’homme développées à partir de Taïwan*, op. cit., 78–9.

113. Ibid., 80.

114. More detailed data and analysis in Ibid., 81–6. The fluctuations are correlated with the relations between governments, with problems of individual behavior of the workers (some of them escape from their

A special group of immigrants is that of foreign spouses. One of the reasons for their coming and being married to Taiwanese is that in the past in Taiwan there were selective abortions, causing the number of males to be in excess with respect to the number of females. Another reason is cultural: Taiwanese girls suffer the psychological wound of not being accepted as females in their families, by their mothers, and develop a need for freedom from the constraints of Chinese male chauvinist society: they leave their towns and villages, go for higher studies and try to achieve economic independence. They refuse marriages which would submit them again to a patriarchal system, especially if their partners are Chinese males who have grown up in a traditional way, under the cultural protection of their families and mothers. They prefer to be childless rather than live according to standards which they deem outdated and to be forgotten as soon as possible.

Since there are few Chinese males who are willing to enter into a new kind of relationship, also because of the pressure from their traditional families, many Taiwanese girls look for a foreign, preferably Western, educated partner, or remain spinsters. They also think of marriage rather late, after or at about the end of their higher studies, when in Chinese tradition the time for marriage is years earlier. As a result, there is a need for young women who are willing to become traditional Chinese spouses. They come from Mainland China, but also from Vietnam and other South East Asian countries.

Generally, their condition are not enviable, especially if they are not Chinese. Not infrequently, Vietnamese spouses become sort of servants in a house where they don't have many rights; in any case the education they are able to provide to their children creates problem for them when they go to kindergartens and primary schools, because of their poor competence in Chinese language. The size of the problem is relevant: in Taipei, one out of six primary school pupils has a foreign mother.¹¹⁵ Some would say that somehow history is repeating itself and that there are resemblances to ancient times when Chinese in Taiwan had a "Chinese grandfather, but no Chinese grandmother," after their migration from Fujian to Taiwan.

In view of improving the situation of foreign mothers, a network of support groups has been created, but a full solution is a long-term issue. Migrant workers face all sorts of challenges, not only in the country where they work, but also in their countries of origin, where their families may break, their sons and daughters grow in difficult environments, and finally they feel estranged, and have less work opportunities, after their return.

In general, migrant workers are exploited in many ways: because of lower wages and because of the heavy fees they must pay to their brokers in order to find a job in a foreign land; because of the dangerous jobs they get, the uncomfortable conditions in which they live, with confined accommodation and different alimentary customs; because they do

employers, or overstay their permit and enter the illegal job market) and with problems of social vindications (protests of Thai and Filipino workers to improve their work conditions; the Filipinos in particular are well-organized and their rallies successful).

115. Ibid., 87.

not have much free time, even for basic religious attendance; because they are not allowed to bring in their families.¹¹⁶

The case of immigrants shows the presence of a major obstacle hindering the full implementation of human rights: the cultural bias.

Les Taïwanais parlent rarement la langue de ces étrangers et ne pensent même pas à l'apprendre, car il y a une sorte de racisme latent *vis-à-vis* des peuples du sud-est de l'Asie. Les bouddhistes taïwanais ne reconnaissent guère les Thaïlandais comme des coreligionnaires. Les musulmans taïwanais sont si peu nombreux et si différents des Indonésiens qu'ils sont mal préparés pour leur venir en aide. Les catholiques, pourtant, ont établi de bons rapports avec les Philippins dès leur arrivée dans le pays, et à mesure que d'autres nationalités arrivent, ils ont étendu leur réseau de soutien. Les Vietnamiens ont découvert parmi les prêtres et les religieuses de Taïwan beaucoup de leurs compatriotes.¹¹⁷

Another aspect of the problem is the competition for jobs between the Aborigines and the immigrants. Employers sometimes prefer immigrants because in this way they can save money and also perhaps more easily control their workforce. This fact however results in an infringement of the basic right of the Aborigines to find a job in their land, since jobs are objectively available to them.

The problem of creating positive social relationships with foreigners living in the same territory is common everywhere, and it is not easy to find means for a peaceful interaction, respectful of justice and legitimate human aspirations for an acceptable quality of life.

The third area of vindication of human rights is the issue of the *death penalty*. Taiwan's records show that the lifting of the martial law in 1987, and of the law for the control and punishment of rebellion in 1997 were been followed by an increase in executions, following a trial in the civil court, with a peak in the three years 1989 (69), 1990 (78, the highest number) and 1991 (59).¹¹⁸

The exact number of death penalties and executions in military courts during the time of martial law is unknown, but is estimated at between 3,000 and 4,000.¹¹⁹ At present, an optional death penalty may be imposed for some offenses: treason, spying, hijacking, murder, theft with murder, abduction, arson, piracy, and sale of drugs. There is a correspondence between the life of the victim and the life of the perpetrator. The death penalty is not imposed on minors and on offenders aged above 80 years.¹²⁰

Executions take place in the prisons of Taipei, Tai Zhong, Tai Nan, Gao Xiong and Hua Lian; before 1995, at 5 AM; between 1995 and 2009 at 9 PM; starting from 2010, at 7.30

116. Ibid., 86–7.

117. Ivi.

118. Ibid., 89–90.

119. Huang Tai-ling, "Top 10 Martial Law 'Wrongs' Listed," at <<http://www.taipeitimes.com/News/taiwan/archives/2004/12/10/2003214466>>.

120. E. Ryden, *Réflexions sur les droits de l'homme développées à partir de Taïwan*, op. cit., 90–1.

PM. The hall of execution is covered with black sand; before being executed, the prisoner has the right to a meal, to a glass of alcohol, to a cigarette. Then he lays on the ground and is killed with a bullet, either in the heart, or behind the ear, in case he accepts to donate his organs, which, however sometimes are not accepted by the hospitals.¹²¹ There is no advance warning; nobody knows the day in which he or she may be executed.¹²²

Some cases have had great impact on the public, where the presence of the death penalty has played a role in making things even more confused, show some special features of the way police conducts investigations, and the problems still plaguing the judicial system in Taiwan.¹²³ These events show that the police prefer to extort confessions, even by means of torture,¹²⁴ rather than to look for clues of events on the spot; and they aim at solving the case, rather than finding out the truth; whether the indicted people are the real perpetrators is less important than to show that the case is solved.

Independently from the proceedings of justice, the fact remains that the death penalty is still applied in Taiwan. In connection with a visit from EU representatives to assess the situation of human rights in Taiwan, on 21 December, 2012 six inmates on death row were

121. "Prisoners' Organs Pose Ethical Dilemma," at <<http://www.chinapost.com.tw/taiwan/national/national-news/2012/12/24/365041/Prisoners-organs.htm>>.

122. E. Ryden, *Réflexions sur les droits de l'homme développées à partir de Taïwan*, op. cit., 91. Y. Kuo-wen and J. Chung, "Ministry of Justice Lifts the Veil on Executions," at <<http://www.taipeitimes.com/News/taiwan/archives/2012/12/23/2003550811>>.

123. Ryden quotes the famous case of the so-called "Hsi Chih trio." In March 1991 an elderly couple was killed in their home. In August the police arrested Wang Wen-hsiao, a young soldier doing his military service. However, due to the numerous wounds inflicted, the police think that some accomplices must have been present. There were also three fingerprints on the wall. Wang named as accomplices his brother and three of his friends, whose names he did not know. Under torture, the brother gave another name, from whom the police retrieved two other names. Wang was condemned to death under military law and executed on January 1992. His brother had to serve two years in jail. The three other indicted, Su, Zhuang and Liu, were forced into signing their confession. However, when in front of the judge, they retracted and accused the police of torturing them. The police denied such allegations; the three were condemned to death. Later, the brother of the executed man witnessed in favor of the innocence of the three friends; the police acknowledged that the fingerprints belonged to the executed man. But for the judge the signed confessions counted as a final proof. In 1995, the then minister of justice, Ma Ying-jiu, returned the file. Due also to a campaign of the father of Mr. Su in 2000, the Supreme Court was compelled to order a new trial, in 2003. The three were acquitted, but the relatives of the murdered old man protested: they believed the first report of the police. The three were tried again in 2007 and condemned to death again. Another appeal followed, until 2010, when, thanks to the scientific report of a Taiwanese expert living in the US, the three were declared innocent. The expert showed that the room where the murder took place was too small for four killers with four knives to kill the two elderly people, six persons in all." In E. Ryden, *Réflexions sur les droits de l'homme développées à partir de Taïwan*, op. cit., 92–3.

124. Chuang Chi-ting, "Human Rights Activists Allege Ongoing Use of Torture," at <<http://www.taipeitimes.com/News/local/archives/2001/03/17/0000077887>>. "Defendants' confessions used to be regarded as the 'king of evidence,' at a time when the skills and technology employed by police conducting criminal investigations were inadequate. Nevertheless, to this day defendants' confessions made during police interrogations still carry a lot of weight in decisions on whether to convict them." Irene Lin, "Court Rules Against Use of Extracted Confessions," at <<http://www.taipeitimes.com/News/local/archives/2001/04/11/0000081216>>. See also: C. Llopis-Jepsen, "Allegations of Torture Should be Investigated," at <<http://www.taipeitimes.com/News/editorials/archives/2007/07/25/2003371197>>.

executed.¹²⁵ The fact sparked protests, also because the executions may have appeared as a way to reaffirm the sovereignty of Taiwan in face of any external pressure.

By chance, around the same time, in India, a young woman was gang-raped and killed; the Taiwan media followed the protests taking place in India and the requests of the death penalty for the perpetrators with great attention and for a long time. This appears to be an indirect argument in favor of upholding the death penalty, by highlighting public outrage at heinous crimes.

Those in favor of death penalty argue on the basis of the great majority of people who want it kept; they speak of “nearly 80 per cent.”¹²⁶ The Ministry of Justice considers the abolition of death penalty a goal that will be eventually reached, but not immediately, and cites cases of slow implementation of legislation even in Western countries.¹²⁷

In fact, there is a discrepancy between the real percentage of those who favor the death penalty, 50%, and the reported percentage, about 78%. When people are simply asked what they favor, 78% say yes, and 22% say no to the death penalty. But when they are led to consider the possibility of offering alternative punishments, only 50% remain favorable to capital punishment.¹²⁸

A campaign against the death penalty has started also in Taiwan, with some tentative results. The Catholic Church is actively promoting the abolition of the death penalty, although with some resistance, together with other Christian Churches. Unfortunately, there is not much support from the Buddhists, the most powerful religious group, who consider the death penalty a political issue. A remarkable exception is the Dalai Lama, who represents Tibetan Buddhism. A reason is the fact that historically in Tibet there has not been a death penalty.¹²⁹

SILENCED VOICES

Opposition to abortion is a corollary of the struggle for ending death penalty. Taiwan has very permissive laws, which make abortion a very easy option. Unfortunately, since unborn babies cannot defend their rights, and since pro-abortion lobbies are strong, any voice vindicating the rights of the unborn is silenced.¹³⁰

125. R. Chang, “Six on Death Row Executed: Ministry,” at <<http://www.taipeitimes.com/News/front/archives/2012/12/22/2003550718>>.

126. “Taiwan Not Ready to Abolish Capital Punishment: DPP Head,” at <<http://www.chinapost.com.tw/taiwan/national/national-news/2012/12/24/365042/Taiwan-not.htm>>.

127. “Ending Death Penalty an Eventual Goal: MOJ,” at <<http://www.chinapost.com.tw/taiwan/national/national-news/2012/12/24/365040/Ending-death.htm>>.

128. Data quoted in E. Ryden, *Réflexions sur les droits de l'homme développées à partir de Taïwan*, op. cit., 97.

129. Ibid., 97–8.

130. In an article inflated with the usual pro-abortion populist rhetoric, an attending physician at MacKay Memorial Hospital in Taipei gives two different numbers for the abortions practiced in Taiwan every year: 70,000 (his own), and 500,000, given by Lue Hung-chi (呂鴻基), a retired professor of pediatrics at National Taiwan University. Chiang Sheng (江盛), “Taiwan Failing on Gender Equality,” at <

As are protests against legalizing gambling on offshore islands: making money has precedence over safeguarding the quality of life of citizens,¹³¹ especially when the billions flowing to Macao, the world's biggest gambling hub, are considered.¹³²

Also threatened are the rights of the biosphere. After indiscriminate pollution during the years of industrialization, environmental protection has become an issue drawing great attention from public opinion. The cabinet-level Environmental Protection Administration (EPA) under the Executive Yuan¹³³ is sensible to all the environmental challenges deriving from human activity on the island, given also the fact that Taiwan has a very delicate environment and periodically faces natural calamities such as typhoons and landslides, earthquakes and draughts.

In this sense, Taiwan is in a better situation than other neighboring countries. However, the fact that the environment needs to be "protected," by itself shows that it is attacked. Such attacks are continually renewed. As an example, new tea plantations appear on high mountains, jeopardizing their delicate ecology and the lives of the Aborigines residing there.

Another issue is the Fourth Nuclear Plant, the construction of which has been halted and started again numerous times, and now seems to have the go-ahead of the government. The events at Fukushima have not been able to change the minds of the profit-oriented groups behind the pro-nuclear energy camp. In the end, the rights of the biosphere are trampled upon in Taiwan as they are elsewhere, here perhaps after more debate, and with a stronger safety net.

FURTHER PERSPECTIVES

Even though there is widespread awareness of the issue of human rights in Taiwan, and many groups are active in monitoring situations, organizing rallies and protests, with the support of the media, there is still no National Committee for Human Rights (NCHR). There are several reasons for this, especially the fact that there is no Asian platform of human rights within which to work; and the fact that Taiwan is not acknowledged as a

times.com/News/editorials/archives/2012/11/09/2003547223/2>. A letter from Edmund Ryden answers by challenging the uncritical assumptions of the author, and expresses the desire that taxpayers' money not be used to finance abortions. E. Ryden, "Taxes not for Abortion," at <<http://www.taipeitimes.com/News/editorials/archives/2012/11/14/2003547629>>. The very fact that the *Taipei Times* hosts such an editorial shows how powerful are the pro-abortion lobbies. To the economic advantage of whom?

131. "Casino Developer Offers US\$2.5bn for Infrastructure," at <<http://www.taipeitimes.com/News/biz/archives/2013/01/24/200353260>>. The money is coming from Bank of America, Deutsche Bank, JPMorgan and Credit Suisse.

132. "When China reassumed sovereignty of Macau from Portugal in 1999 and abolished a longstanding gambling monopoly, us companies rushed in to try their luck. Since then, annual revenue in the former backwater has grown tenfold, stacking up to US\$38 billion, four times that of Las Vegas and Atlantic City combined." H. Dreier, "us Casinos Play Russian Roulette in Macau," at <<http://www.taipeitimes.com/News/editorials/archives/2013/07/08/2003566592/1>>.

133. <[http://en.wikipedia.org/wiki/Environmental_Protection_Administration_\(Republic_of_China\)](http://en.wikipedia.org/wiki/Environmental_Protection_Administration_(Republic_of_China))>.

member state of the UN. However, a NCHR could cooperate with the Control Yuan¹³⁴ with a view to improving human-rights conditions in many sectors of Taiwanese people's lives. The formation of a mature awareness about the issue of human rights should be a task of the government, and not be left to NGOs and activists.

Among the problematic situations in the field of human rights which affect Taiwan, the first is its international status. The fact that a human community is not acknowledged as such with all its rights is a violation of a basic right, which influences all other areas of human rights. Within the country, the problems which immediately surface are that of socio-economic rights, that of administration of justice, that of the relationship with those whose ethnicity and culture are different (Aborigines and foreigners).

Socio-economically, the poverty of the working class is growing, due also to international competition, even though the situation in Taiwan is much better than in most other nations of South-East Asia. Young graduates do not easily find a job; the government decrees the minimum wage, but that sum is not necessarily always given to the workers, because of the many ways employers find to save costs, e.g. by asking an agency to take care of the cleaning, or of surveillance.

The right to fair justice is also a problem. What is lacking, it would seem, is the impartiality and the independence of the judges, with many cases of bribery and partiality, and also of collusion between judges and procurators. A reform of the sector is on the way, but the parliament has always succeeded in placing the discussion among the last issues on the agenda, never coming to a decision. Also, in the course of inquiries, the lack of respect for privacy, the broadcasting of details that belong to personal life, and have the effect of ridiculing those who are suspected of crimes, already infringe the right to presumed innocence. To destroy somebody's image, making him lose face, making him an object of scorn is a sort of extreme punishment, usually perpetrated by the media, which should be targeted and forbidden.

The third area, the rights of Aborigines and foreigners, either workers or residents, trails behind the struggles for the rights of the Chinese majority. In the case of the Aborigines, they should be left free to decide how to live on their lands, without making their resources the object of development projects, which only impoverish them both materially, culturally and spiritually.

In the case of foreign workers, there should be more openness to allow them a normal life, with their families, in the place where they work; and foreign spouses should be respected and treated as effective members of the families in which they enter, not only the nuclear family, but also the extended one.

Perhaps the last mentioned area is the most worrying, even if it is not exclusive of Tai-

134. The Constitution of the ROC establishes five power instances, instead of the usual three of many other nations: to the Legislative, Executive and Judicial Yuan (院, court), it adds the Examination Yuan, in charge of recruiting the personnel of the State, and the Control Yuan, in charge of supervising the functioning of the other branches of power.

wan, Indeed, it touches upon the relationship of human beings with what is beyond them and creates the conditions for the presence of human life on this earth: the relationship with the environment, and the need to conform one's choices to moral values which last, not simply to base them on personal success, measured by standards set by the media.

The emerging of these problems—many others could be listed—points to some special characteristics of Taiwanese culture, as a Chinese culture. Among these special features, the idea of power, which almost reaches a mythical, divine level; and the importance of public image, play a key role. Both characteristics exercise their influence within the cultural space, among individuals, and beyond, among communities.

Human rights express the unconditional value of each person with respect to the tradition to which he belongs, as they express the equal dignity of all human groups, either big or small, either winners or losers in the unending contests of history, because they all belong to the same human race. To a truth and to a unity that is above any established power. What is taking place in Taiwan, the many setbacks notwithstanding,¹³⁵ can be seen as paving of the way for the whole Chinese culture to grow in this direction.

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135. Nowhere a human rights record is perfect, also because of the different interpretations of their objects, in their relationship with moral and natural law. What for somebody is a right, for others is a crime. The quest for human rights is closely interwoven with the quest for truth.

Conclusion

E. DOS SANTOS, M. REBECCHI, T. TOSOLINI

*Homo sum, humani nihil a me alienum puto*¹
Publius Terentius Afer

All the papers included in this Volume attempt to explore the difficult issue concerning the influence that universal human rights declarations, charts and norms have had (or still have) in some Asian countries. The general conclusions seem to indicate that, so far, the relationship between the discourse on human rights and the values professed by most Asian countries is not running very smoothly.

One argument against the application of the international human rights standard rests on sovereignty. Taken at face value, this amounts to the claim that whatever a country does with respect to human rights is its own business. Different societies

1. "I am a human being, I consider nothing that is human alien to me."

have different conceptions of human wellbeing and, therefore, as the theory goes, they have a different attitude towards human rights issues.

A second argument against the implementation of human rights policies in Asia is that Asian societies are structured around duties, not rights, and that any right a person or a community might claim for itself is usually granted to it by their rulers (or whatever religious and political authority is in charge).

A third argument concerns the priority given in Asia to the group or the community over and against the individual. Criticism against individualism depends on stressing social order and harmony, as well as on preserving traditional values of family, community, decorum and duty.

Fourthly, those who defend the rhetoric of Asian values against the discourse of universal rights insist on the idea that it is necessary to strike a balance between civil and political rights on the one hand, and societal and economic rights on the other, so that, occasionally, some civil rights could be sacrificed in the name of economic progress and growth.

Last but not least, Asian people rightly feel that liberal democracies are not as perfect and good as they claim to be: on the contrary, they are perceived as a very subtle means used by Western countries to make inroads into their economics and destroy, or irreversibly break up, their traditions.

Are all these arguments in favor of Asian values (taken *alone*) really formulated by keeping in mind a genuine concern about the cultural, political and economic identities of their countries, or are they not instead elaborated in order to conceal a different, more subtle, agenda?

Do these Asian values help to promote justice and fairness for all, or are they not instead used to legitimate, or reinforce, the political power of the few? Are these values really promoting the equal distribution of goods, services and opportunities which must be guaranteed to every person? Are those values able to defend the rights and support the dignity of the weak, of women, of the outcaste or, more simply, of the needy? Is not fundamentalism (whatever camp it belongs to) sometimes used for very mundane and practical ends, instead of for religious ones, as—for example—not so much to gain heavenly rewards or merits, but, rather, to acquire consensus and support for political purposes?

Yet, as a response to those Asian governments who treat any discourse on human rights as incompatible with the core values of their tradition and culture, could we not also state that good governments are very unlikely in the absence of human rights, for it is precisely these human rights which provide clear and powerful mechanisms for protecting people against any form of authoritarianism and corruption? Is it not true that human rights, even though universal, leave substantial room for variations in implementing universal norms? Are people such as Mahatma Gandhi, Taslima Nasreen, Abdurrahman Wahid, Annette Lu, Gao Jun-ming, Francisco Claver, José Wright Diokno—and many more human rights advocates—not examples of individuals who understood the value of those universal norms, and interpreted and implemented them in significantly successful

ways in their local cultures? Is it not rather obvious that the adoption of some of those universal and inalienable rights—precisely because they are *not* neutral with respect to political forms or cultural traditions—have truly had a positive effect on the quality of life of the countries in question? Did not the improvement in education, and the better knowledge of one's rights, help individuals to be more aware of the preciousness of their life and of the personal contribution they could make to their own society?

Here we could certainly agree with Donnelly when he states that “If the problem with the West is that too many people and institutions are guarding the guardians, the problem with traditional Asian alternatives to human rights, at least as they seem to operate in their contemporary variants, is that too few are guarding, and they have inadequate power.”²

Yet, if we must err it should be on the side of a new balanced approach between the discourse on human rights and the promoters of Asian values, an approach that would preserve and hold together both the dignity of every human being and the richness of the culture or tradition in which they live. This would be a dignity that is derived not only from the uniqueness of one's own humanness (which represents the foundation of any discourse on human rights), but also from one's intrinsic openness to the Transcendent, an openness that eventually could lead us to that God who “so loved the world that He gave His only begotten Son” (*Jn* 3:16), so that through His own flesh our mortal life finds itself forever transformed and redeemed.

2. J. Donnelly, “Human Rights and Asian Values: A Defense of ‘Western’ Universalism,” *op. cit.*, 83

Cumulative Index

Ahmadiyah 66–8, 72–6, 78, 82, 85

Allah 39, 43–4, 59–60, 62, 79

Ancestors 162–63

Apostasy 27, 38, 61–2, 67

Armed Force of the Philippines (AFP) 128–29, 145–46

Atheism 27, 55

Awakening 96, 115

Awami League 35, 38–44

Bangkok Declaration 92, 105

Bhagavad-gita 33–4

Blasphemy 42, 44, 70–1, 74, 77–8, 80

Buddhism 4, 15, 53, 55, 70, 74, 88, 96, 98, 110–14, 116–17, 122, 186

Burakumin 108, 119

Cairo Declaration 175

Caste 19, 23, 29–32, 91, 111–12

Catholic Bishops' Conference of the Philippines (CBCP) 132, 135–36

Chiang Kai-Shek 168, 172, 175, 177

Chinese Communist Party (CCP) 166, 179–80

Christianity 15, 26, 28, 63, 70, 81, 98, 114, 122, 173

Colonialism 21, 36, 63, 91, 127, 129, 158, 161–67, 175

Commission on Human Rights (CHR) 143–44, 148, 152

Communism 51, 55, 69, 94, 129, 131, 140, 145–47, 166, 168, 170, 175–76, 178

Communist Party of the Philippines (CPP) 129, 146, 150

Communitarianism 20, 46, 88, 90, 96

Compassion 100, 114–17, 133

Confucianism 4, 15, 55, 70, 94–6, 98, 100, 102, 122, 160, 179–80

Conversion 44, 55–9, 61–2, 68, 153, 173

Council of Islamic Mission Indonesia (DDII) 65–6

Death Penalty 15, 62, 106, 181, 184–86

Democracy 4, 37, 39, 52, 54, 56–7, 65, 68, 79, 87–8, 91, 93, 95, 97–8, 100, 102–3, 107–9, 139–40, 143, 152–53, 166, 169, 171–72, 179–80, 194

Democratic Progressive Party (DPP) 171–72, 178–79

Dharma 29–30, 32

Dialogue 17, 36, 81, 111, 116, 131

Dictatorship 38–9, 52, 131–32, 134, 136, 138–41, 148–49, 180

Doka-kai (Assimilation Society) 165

Dzimmin (protected people) 61

Education 44, 66, 74, 96, 106, 108, 121, 123, 127, 129, 137, 149, 152, 161, 165, 168, 183, 195

Emperor 81, 102–3, 120, 158, 160, 162

Enlightenment 116, 166

Environmental Protection Administration 187

Equality 27–8, 38, 40–1, 97, 101, 113–14, 120, 123, 163, 178, 182

Ershad 39–43

Ethics 81, 116–17, 136

Ethnic minorities 11–2, 104–5, 110

Ethnocentrism 10–1, 20–1, 46

Fatwa 66, 72, 75–7, 80

Feidie 168

Fundamentalism 3–4, 10, 22, 45, 52, 65, 68–70, 80, 118, 194

Gao Jun-ming 171, 194

Gender 12, 27, 29–31

Genocide 9–10, 146

Gerakan Reformis Islam (GARIS) 52, 66–7

Globalisation 11–2, 14–6, 45

God 18, 26–7, 42, 53–5, 59–62, 113, 118, 124, 195

Hadith 36, 62, 68

Haji pilgrimage 64, 74

Hakka 159, 161

Halal 76

Han 4, 159, 173

Harassment 134, 144–45, 181

Harmony 4, 52–4, 71, 73, 77–8, 80–2, 94–5, 102, 114, 194

Hefajat 42–3, 45, 49

Hinduism 4, 10–1, 15, 22, 28–33, 35, 45–6, 48, 55, 70, 98

Hizbut Tahrir 65–6, 68, 75, 80

Ideology 26–7, 39–40, 45, 51, 53, 63–7, 69, 90, 129, 131, 133, 135, 150, 168

Iglesia Filipina Independiente (IFI) 132

Ikhwanul Muslimin (Islamic Brotherhood) 64–5, 68

Imperialism 20, 24, 91, 151–52

Impunity 52, 117, 127, 130, 132, 145–46, 149, 151–52, 155

Individualism 4, 20–1, 90, 93, 96, 194

Inequality 106, 113–14, 122, 129–30

Injustice 44, 80, 122, 130–31, 136, 163

Institute on Church and Social Issues (ICSI) 131, 133

International Criminal Court (ICC) 10, 14

International Covenant on Civil and Political Rights (ICCPR) 56–58, 70, 79, 84, 181

International Covenant on Economic, Social and Cultural Rights (ICESCR) 89, 181

International Humanitarian Law (IHL) 145–46

Intolerance 4, 52, 61, 76, 79–82, 113

Islamic Defence Front (IFI) 52, 66–9, 74, 76, 78

Islamic People's Forum (FUI) 52, 66

Jamaat 40, 42

Jihad 63–4

Justice-love 114

Khaleda Zia 39, 41

Klesa (earthly illusions) 96

Krishna 34

Kuomintang (KMT) 168, 171–73, 178–81

Liberalism 15, 66, 76, 96

Liberty 27, 38

Lin Xian-tang 165–66

Love 31, 96, 100, 113–14, 122–23, 136

Lu Annette 181, 194

Madrasa 42, 44, 78

Mahabharata 33–5, 47

Mahatma Gandhi 31–5, 46, 194

Mainlanders 168–70

Mao Tse-tung 168

Marcos Ferdinand 4, 129, 131–32, 134, 137–140, 148–49, 151

Martial law 129, 131–32, 135, 138–40, 143, 145, 147–49, 152, 168–70, 172, 174, 184

Marxism 90

Mecca 62, 64

Medina 61, 64

Mendiola massacre 140–41

Ming Dynasty 158–59, 169

Missionaries 44, 63, 161, 170

Monotheism 98, 114

Morality 10, 17, 26–9, 33–5, 46, 57, 102, 115

Moro Islamic Liberation Front (MILF) 128, 147, 150

Muhammadiyah Movement 64–5, 67, 69, 73, 75–6, 79–80, 85

Multiculturalism 59

Mysticism 63, 96

National Security Agency (NSA) 22

National Committee for Human Rights (NCHR) 187–88

Nationalism 129, 139–40, 142, 163

New People Army (NPA) 128–29, 133, 140, 146–47, 150

NGO 13, 44, 81, 130, 135, 139, 144, 152

Nihonjinron 101

Non-attachment 34–5
 Nonviolence 131–32
 Nahdlatul Ulama (NU) 55, 64–5, 68–9, 75–6, 80

Obligations 88, 90, 93, 149
 Orientalism 99
 Overseas Filipinos Workers (OFW), 130

Pancasila 53–5, 65
 People Power Revolution (EDSA) 136–37, 140, 154
 People's Republic of China (PRC) 105, 175–78, 180
 Persecution 20, 41, 135, 167–69
 Piety 33, 94, 96
 Philippine National Police (PNP) 129
 Piracy 160–61, 184
 Pluralism 19, 22, 25, 60, 66, 76
 Poverty 69, 130, 169–70, 188
 Prayer 33, 76
 Propaganda 21, 43–4, 55
 Prophet 36, 43–4, 59, 61–2, 64, 72–3, 79
 Proselytism 52
 Prosperous Justice Party (PKS), 65, 68
 Protestantism 55, 63
 Purification 63–5

Qing Dynasty 158–61, 164, 173
 Quran 36, 40, 59–62, 67–9, 79–80

Race 60, 112, 189
 Racism 96, 106, 184
 Radicalism 52, 62, 67, 69, 82
 Ramadhan 67
 Rebellion 96, 147, 164–65, 178, 184
 Refugees 104, 118, 121
 Relativism 4, 10–1, 17–8, 20–2, 24–5, 46
 Religious Harmony Forum (FKUB) 72, 77
 Revolt 94, 160–61, 164
 Rishi 29–30

Samsara 114
 Sanctions 79
 Sati 22–5, 32, 48
 Satori 115–16
 Sects 55, 66–8, 70, 75, 80
 Secularism 39, 66, 76, 98

Self-determination 12, 163
 Shamanism 165
 Sharia 37–8, 40, 76
 Shia 70, 74–8
 Sinicization 160
 Solidarity 20, 105, 114, 118–19, 136, 170
 Sovereignty 13, 95, 97, 102, 120, 139, 158, 175, 179, 186–87, 193
 Straits Exchange Foundation (SEF) 177–79
 Suchness 114
 Sufism 63–4, 96
 Sunna 36, 40

Taslima Nasreen 41, 43–5, 194
 Terrorism 66, 68, 134
 The National Alliance of Freedom of Religion and Belief (AKKBB) 66
 Tolerance 35, 38, 60, 69, 73, 81, 131
 Torture 24, 57, 129, 142, 145–46, 148–49, 151, 185
 Totalitarianism 65
 Truth 60, 101, 114, 127, 134–36, 185, 189

United Development Party (PPP) 74
 Universalism 4, 10–1, 18, 30–1, 46, 88
 Universal Declaration of Human Rights (UDHR) 4, 9–22, 31, 33, 36–8, 50, 54–5, 85
 Untouchables 30, 32
 Urbanization 69, 96

Varnashramadharma 30–1
 Vienna Declaration 18, 25, 37, 89–90, 105
 Vivekananda Svami 31–2
 Vote-buying 134

Wahabi 63–5
 Wahid Abdurrahman 53, 63–4, 71, 77–9, 83, 194
 White Terror 168–69, 172
 Wisdom 17, 25, 54, 114–16

Yasukuni shrine 120
 Yuanzhumin 173–74

Zen 110, 112–13, 116–17, 126
 Zheng Dynasty 158–61

Asian Study Centre

Xaverian Missionaries – Japan



Asia and Human Rights

Faithful to a tradition of curiosity and interest in the way some basic issues affect, and are affected by, the cultures of selected Asian countries, this year too the *Asian Study Centre* has chosen to focus its attention on the important topic of human rights and how they are received, implemented, and supported in the Asian context. A first general result that emerged from our research reveals that all the countries discussed here (Bangladesh, Japan, Indonesia, Taiwan and The Philippines), despite some reservations, have formally accepted and signed international treaties and declarations related to Human Rights. Yet we have also observed that the question is not formal reception, but actual implementation. In this field, obviously, different countries exhibit different performances —FROM THE INTRODUCTION