

HUMAN RIGHTS AND GLOBAL HUMANITY

Xunwu Chen*

Abstract: This essay purports to explore the conflict between the universal idea of basic human rights and Asian contexts, values, and concepts of good life and happiness. Doing so, it proposes to draw several conceptual distinctions in the present global discourse of human rights. It then examines three Asian value-arguments, namely, the postmodern, the pragmatic, the critical. It further proceeds to defend the pragmatic and liberal argument on the one hand and insists the unity and integrity of the universal idea of basic human rights on the other hand.

Globalization of the human rights ideology is a defining feature of our time. The principle of human rights is part of the spirit of our time. As Seyla Benhabib rightly says, "Since the UN *Declaration of Human Rights* in 1948, we have entered a phrase in the evolution of global civil society which is characterized by transition from international to *cosmopolitan* norms of justice" (Benhabib 2006, 15–16). No wonder, the global philosophical and political discourse of human rights is one of the most sentimental and vital ones today and unprecedented. The ideal of cosmopolitanism epitomizes the ideal of human rights ideology. "Cosmopolitanism imagines a global order which the idea of human rights is an operative principle of justice, with mechanisms of global governance established specially for their protection." (Fine 2009, 8)

Evoking the concept of the human rights ideology, I want to put my cards on the table at the outset. First, in this essay, ideology in itself does not connote anything negative. Instead, it is simply understood as a system of institutionalized beliefs. Second, in the world we live, as I understand it, the norm of human rights is embodied in a system of structuralized beliefs (e.g., various legal and ethical-moral norms). Third, a system of beliefs in human rights is gradually structuralized and institutionalized throughout the globe and cosmopolitanism is part of the spirit of our time. The institutionalization of a system of structuralized beliefs of human rights in the globe is done through "democratic iteration", to borrow a phrase from Benhabib; "Democratic iterations are complex ways of mediating the will-and opinion-formation of democratic majorities and cosmopolitan norms" (Benhabib 2006, 45) Fourth, a system of structuralized beliefs in human rights is part of the social-political power in the globe. "Violations of human rights are no longer judged and combated immediately from the moral point of view, but rather are prosecuted, like criminal actions within the framework of a state-organized legal order, in accordance with institutionalized legal procedure" (Habermas 1998b, 193). Fifth, there is an issue of

*Dr. XUNWU CHEN, Professor of Philosophy, Department of Philosophy & Classics, School of Liberal and Fine Arts, University of Texas at San Antonio, San Antonio, TX 78249. E-mail: xun.chen@utsa.edu.

legitimacy, as well as an issue of justification, regarding particular ideological-political programs of human rights in the globe today. Sixth, the threat of “human rights fundamentalism” is real and dangerous (Ibid, 201).

Today, in the process of its globalization, human rights ideology is in constant conflict with regional and cultural ideologies. Conflicts over human rights in Asia are examples at hand. The rise of so-called Asian-value arguments in the discourse of human rights underscores such conflicts. How best to grasp such conflicts is an important task of the philosophical-political discourses of human rights today. In such a context, cultural imperialism, unreflective human rights fundamentalism, and ethical totalitarianism would not advance the course of human rights in Asia, but only be counter-productive. Reversely, unconstrained multiculturalism and pluralism may damage the integrity of the norm of human rights in Asia and in the globe. Here, the rule that extremity produces self-destruction, which Chinese philosophy emphasizes, indicates: (1) when we push X beyond its limit, we turn X into its opposite or something else; and (2) when we pursue X in extreme manners (unnatural manners); we would arrive at the opposite of X, instead of X.

Now, without further introduction, I shall tackle some fundamental issues on human rights in Asian contexts and the globalization of the human rights ideology. I will use the Chinese context as the paradigmatic illustration.

I. Rights and Politics

According to [BBCNEWS.Com](http://www.bbcnews.com), in December 2009, in responding to China’s execution of a drug-smuggler named Akmal Shaikh, the British Foreign Minister Ivan Lewis had two meetings with the Chinese ambassador to Great Britain Fu Ying. In one meeting, “[the British] Foreign Minister Ivan Lewis told the [Chinese] ambassador ‘China had failed in its basic human rights responsibilities’” (www.news.bbc.co.uk, 12/2009). Reading the news, one cannot help being puzzled by the British foreign minister’s accusation. One cannot help asking: In what way China failed in its basic human rights responsibilities by executing Akmal Shaikh for his crime of smuggling drug? Surely it is one thing to say that there should be leniency and therefore X must not be done. It is quite another to say that if X is done, basic human rights responsibilities are failed, which the British government had been arguing for. In other words, an argument in terms of leniency differs importantly from an argument in terms of rights. The British Foreign Minister’s error is a failure to draw such a distinction.

The bad taste of the British foreign minister raises eyebrows here also because the foreign minister acted to neglect following some basic facts and consciously self-deceived. First, he acted in a way that did not recognize a cultural gap. In the Chinese view, the execution of a convicted criminal in accordance with Chinese laws—especially a criminal smuggling drugs—is not a failure to take hold of a basic human rights responsibility, but an act dutifully carrying out such responsibility. In Chinese laws, criminals such as murderers, rapists, and smugglers of drug, women and children belong in the category of “*shi e bu she* (十恶不赦 the ten evils that must not

be forgiven and must be punished without mercy).” Is it a failure to live up to its basic human rights responsibilities for China to have laws which emphasize punishing crimes of the category of *shi e bu se* or to stipulate that there is such a thing called “crimes of *shi e bu se*”? Even if there may be much to be desired in Chinese laws with regard to embodying the norm of human rights, from the point of view of procedural justice, laws must be enforced as they exist and stand publically. Without procedural justice, there can be no the rule of law. Without the rule of law, laws as the most effective instruments to enact the norm of human rights would be disarmed.

Second, the foreign minister acted in a way which did not recognize a historical context. In modern history, China was ruined by opium and Great Britain was the country that used opium-war to bring China to its modern humiliation. In this context, the British foreign minister’s accusation of China’s failure to live up to its human rights responsibilities by executing a drug-smuggler only fuels Chinese contempt. It even threatens to discredit the brand-name of human rights. For the sake of argument, even if the British foreign minister believes that the crime of smuggling and selling illegal drug does not deserve capital punishment, it is not unreasonable for others to have a totally opposite view. What is the most counter-productive in a cross-culture dialogue of human rights is that one conversational party speaks with the logic of a bandit. The present global discourse of human rights has a political dimension. But politics must not be practice in a way that makes such an important discourse absurd.

Third, the foreign minister acted in a way as if he did not recognize this simple truth: compassion cannot replace the rule of law. To repudiate his claim, I would like to recall here Guanzi—a founding father of traditional Chinese legalist philosophy of law: “Reward and punishment must be credible and well-deliberated ... To crook law and shortcut [governmental] mandate under the name of compassion does not really love people” (Guanzi 1996, 544/ch.16). The concept that capital punishment violates basic humanity and human rights, which the British foreign minister tactically presupposed, is absurd to Chinese mind.

A further point is this. When a criminal incurs damage to other persons and the public good, society has jurisprudence to visit him or her with punishment. This is the essence of the ‘harm principle’ which John S. Mill has stipulated about liberty. According to Mill, where harm is incurred, the jurisprudence of society can be legitimately applied and individual liberty reaches its limit. If we follow Habermas’ insight that basic human rights are legal rights which citizens necessarily grant one another under the rule of law—not identical to moral rights, we cannot reasonably expect Chinese citizens to grant Akmal Shaikh the right to engage in illegal drug-trafficking here—any more than we can expect Chinese citizens to give Akmal Shaikh the green line to rape, murder, loot and steal.

Further questions are as follows. If a nation or human community should tolerate criminals such as drug-smugglers, should such a nation also tolerate criminals such as murderous terrorists? Would not such so called compassion and toleration be a kind of cruelty to those innocent victims? Such questions have particular reality in Chinese culture that emphasizes obligation to social harmony, duty to public good, and the like. Admittedly, what should be included in the concept of basic remains an outstanding question. Still, the view that a criminal’s basic human rights include the

rights to be exempted from capital punishment no matter what crimes he or she has committed is idiosyncratic to Chinese mind and unjustified, and even absurd, in general. Ethnicity, nationality, gender, or religion should not, and cannot, be a legitimate reason for a criminal to be treated preferentially.

In connection with the above, there can be a more general issue of what amounts to living up to obligations to human rights here. In the Akmal Shaikh case, the British foreign minister's view would be correct if, as a form of practice, capital punishment indeed either neglected or violated basic human rights. But the belief that capital punishment neglects or violates basic human rights is not a belief which many of us entertain. One can reasonably insist that making those criminals responsible for their acts not only do not violate their basic rights, but also honor their basic humanity and dignity. Thus, for example, "philosophers, such as Immanuel Kant and G. W. F. Hegel, have insisted that, when deserved, execution, far from degrading the executed convict, affirms his humanity by affirming his rationality and his responsibility for his actions. They thought that execution, when deserved, is required for the sake of the convict's dignity" (van Den Hagg 1986, 1669). In essence, the British foreign minister's free-ride argument in the Akmal Shaikh case is an argument for crooking humanity. It is an argument that does not recognize Akmal Shaikh as a human being who is responsible for his thought and act. But, "Out of the crooked timber of humanity no straight thing can ever be made," said Kant (Kant 1923, 23; Berlin, 1997). Those criminals such as terrorists, drug-smugglers, traffickers of women and children, and murderers must bear responsibility for their acts. Justice does not give those criminals a green-line to go beyond their liberty to benefit themselves by visiting others and society with evils.

Conceptually, taking the Hohfeldian 'model of rights' as succinctly summarized by Leif Wenar as the guide, the anatomy of a right consists of the following: (1) privilege; a privilege is one's entitlement to be exempted from certain general duty; (2) claim; "A claim-right can entitle its bearer to protection against harm or paternalism, or to provision in case of need, or to specific performance of some agreed-upon, compensatory, or legal or conventional specific action"; (3) powers; "To have a power is to have the ability within a set of rules to alter the normative situation of oneself or another"; and (4) immunity; "One person has an immunity whenever another person lacks the ability within a set of rules to change her normative situation in a particular respect" (Wenar 2005, 229, 231, 232). Then, which of the above Akmal Shaikh's basic human rights is violated? Of course, if we follow Jürgen Habermas to see human rights to be rights which citizens necessarily grant one another in order to extend their lives together under the rule of law, we cannot see in any way that Akmal Sheikh's alleged rights to have a green-line to break Chinese laws and commit crimes in China could be rights which Chinese people necessarily grant to this criminal.

In short, in good faith, the problem of the British foreign minister's view is its total failure in recognizing the cultural gap. It is its failure to be sensitive to history, and respecting for the dignity and integrity of Chinese law. This makes his argument for the drug-smuggler in the name of human rights not only unreasonable and absurd,

but also appear to be one of bad faith. That being said, taking the Akmal Shaikh case as the guide, the following becomes self-evident.

First, globalization of human rights ideology must do justice to cultural contexts. Its process must be democratic, not imperialist; inclusive, not exclusive, and dialogical, not oppressive. Inclusion and humanistic attitude—that is, the attitude of open-mindedness to alternative views—are not gifts which one party give to the other party at will, but moral and political duty all parties owe to one another in the global human community. Cultural contexts and values do matter and they are importantly related to concepts of happiness and a good life for cultures and nations that are situated in such contexts. They are also importantly related who and what these cultures and nation-peoples are.

Second, we must not cheapen the universal idea of human rights by labeling anything which we disagree with from the point of view of Western ideologies as a failure to live up to the obligation to basic human rights. For example, we must not turn the norm of human rights into what it is not: a green-line to commit crime against humanity! By this token, we should see the complexity of the ideological struggles over human rights in Asia. They have historical, cultural and philosophical dimensions.

II. Some crucial distinctions

To clarify the horizon of our understanding of globalization of the human rights ideology, we should draw several crucial distinctions here: (1) the distinction between moral rights and human rights; (2) the distinction between a philosophy of human rights and the universal norm of human rights itself; (3) the distinction between the universal idea of human rights itself and a political-ideological program of human rights; and (4) viewing human rights from a moral point of view and political-ideological construction of human rights from an ethical point of view.

The first distinction is between human rights and moral rights. Human rights and moral rights are importantly related, no question of that. That being said, human rights are institutional while moral rights are pre-institutional. While all human rights are moral rights, but not all moral rights are human rights. All human rights are juridical while no all moral rights are juridical. Admittedly, the concept of human rights brings in to the mind rights *qua being a human*. Still, it remains true that the universal idea of human rights is that basic human rights are necessary for human beings to function as human beings under the rule of law and that cannot be reasonably denied by any reasonable persons in any reasonable manners if the rule of law is accepted as the norm of social cooperation. In other words, conceptually, human rights are not merely rights *qua human*, but rights *qua human* under the rule of law.

By this token, a few points are worth emphasizing. To start with, serious violation of basic rights can be a kind of crime called “crime against humanity.” As Seyla Benhabib indicates, “A crime, as distinct from a moral injury, cannot be defined independently of posited law and a positive legal order” (Benhabib 2006, 14). Moreover, as Habermas indicates, basic human rights are rights that citizens

necessarily grant to one another under the rule of law. Without such mutually granting these basic rights, citizens cannot extend their life together under the rule of law. In other words, human rights are not merely any moral rights, but those rights that citizens necessarily assume for one another and grant to one another if they are to extend their lives together under the rule of law. The rule of law is a necessary condition for the rise of human rights. In a logical form, it goes as follows: if X (X= basic human rights), then Y (Y= the rule of law). Furthermore, as Habermas notes, “The concept of human rights does not have its origins in morality, but rather bear the imprint of the modern concept of individual liberties, hence of specifically juridical concept. Human rights are juridical *by their very nature*” (Habermas 1998b, 190). Two things make human rights appear to be identical to moral rights. First, as Habermas indicates, “What lend them [human rights] the appearance of moral rights is ... their mode of validity, which points beyond the legal order of nation-states”(Ibid). That is, the norm of human rights and the norm of moral rights are both universally valid. Second, the important connection of human rights and moral rights can easily make us conflate the two. After all, human rights are rights in virtue of being a human. All there same, human rights should be distinguished from moral rights.

Out of moral rights the moral duty of human beings to humankind arises: that is, the duty that one must always recognize and honor the sovereignty, dignity, rights and freedoms of a human being. Out of human rights arise the legal obligation of citizens, community and governments to citizens—that is, do not violate those basic rights of citizens as a member of a national political community and as a member of a cosmopolitan political community.

The second distinction is that a philosophy of human rights is not The philosophy of human rights, just as a particular white horse is not the universal horse itself, as the Chinese philosopher Zhuangzi would argue. By a philosophy of human rights, I mean philosophy such as natural right theory, Kantian philosophy, Hegelian philosophy, and Habermasian theory, to list just a few. To embrace the idea of universal human rights, one need not embrace a specific philosophy of human rights, even if this specific philosophy is the most popular one. For example, we can embrace the idea of universal human rights as expressed by the United Nations in 1948 by their *Universal Declaration of Human Rights* (UDHR) without embracing natural right theory, or Kantian philosophy. Instead, say, we embrace the idea of universal human rights by following Habermas’s philosophy. Doing so, we will simply make a decision whether a particular philosophy is, or is not, the best theory explaining the universal idea of human rights. It is one thing to reject a philosophy of universal human rights. It is quite another to resist the universal idea of human rights. In other words, there is a distinction between two questions of the idea of universal human rights here. One is the question of the existence of universal human rights and the question of which philosophy accounts for human rights better. Another, which differs importantly from the first one, is what political-ideological program of human rights is more viable and fruitful.

From a philosophy of human rights, we have an account of the origin, nature and scope of human rights. From the universal idea of human rights, we have a legal, as

well as ethical-moral, norm of human rights. From a philosophy of human rights, we have an understanding of human rights. From the norm of human rights, we have an obligation to live up to.

The third distinction is that the universal idea of human rights and its various embodiments. We can refuse to recognize a particular form of claim on embodiment of the universal idea of human rights without rejecting the universal idea itself. For example, we can embrace the idea of universal human rights without embracing a particular political-ideological program of human rights. By a political-ideological program of human rights, I refer to those political-ideological programs and charters of human rights such as the UN 1948 *Universal Declaration of Human Rights*, the *Geneva Convention of 1951* relating to the Status of Refugees and its Protocol added in 1967, the United Nations' 1981 *Declaration of Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, as well as various regional, political programs of human rights such as the 1789 French *Declaration of the Rights of Man and Citizen* and the 1982 Canadian *Charter of Rights and Freedom*. These international treaties are products of democratic process of nations and peoples, not natural given. That is, they as embodiments of the norm of human rights are institutionally established, not pre-politically given. Meanwhile, a political-ideological program designates a particular ethical conceptualization or interpretation of human rights. More crucial, a political-ideological program actualizes a human rights ideology by organizing beliefs of human rights in a totalizing system, institutionalizes such a system, and makes such a system part of the social-political power.

The universal idea of human rights gives us a legal, as well as an ethical-moral, norm. A particular political chapter of human rights—for example, the UN's 1948 Chapter IV - Human Rights—gives a particular paradigm of human rights.

All the same, we can reject a particular chart of human rights without rejecting the idea of universal human rights—say, for the sake of argument, we can reject *The Geneva Convention of 1951* relating to the *Status of Refugees and its Protocol* added in 1967 without rejecting the idea of human rights. We can reject certain political-ideological concepts of human rights without rejecting the idea of universal human rights. It is one thing to resist a particular political-ideological charter of human rights. It is quite another to reject the universal idea of human rights. In this context, we should set aside the concept that only Western ideologies of human rights are legitimate, and any other non-western ideologies are deemed to be false. We are better off by recalling both the Habermasian discourse principle and the democratic principle of law. The Habermasian discourse principle is that only those norms are valid and legitimate which can be consented by all affected parties—that is, have acceptability to all affected parties. The democratic principle of law is that those who are subjects of law must at the same time be co-authors of law.

The fourth distinction is the distinction between the moral association of the idea of human rights with the idea of righteousness and the ethical association of the idea of human rights with the idea of good and happiness. The moral point of view of human rights enables us to criticize and combat intellectually and morally what violates human rights. An ethical point of view requires us to enforce specific

intellectual, legal, and political framework of defending, and promoting human rights with the purpose of promoting common good and happiness. This amounts to saying that there can be legitimate cultural value argument in the discourse of human rights, which belongs in the category of ethical argument.

Moral consideration of human rights associates the concept of rights with duty. Ethical consideration of human rights mitigates the concept of human rights with communal good and welfare. Moral consideration of human rights associates the concept of rights with the concept of justice. Ethical consideration of human rights mitigates the concept of rights with concepts of values—for examples, cultural values.

In light of the four distinctions above, we recognize two kinds of political bad faith in the global discourse of human rights today, and each of them has two sub-division forms. The first form of bad faith consists of two sub-division forms: (1) a refusal to recognize that a particular human rights ideology must prove its universal legitimacy through global democracy and by applying it to local, cultural contexts successfully; and (2) a refusal to recognize the legitimate cultural interpretation of rights. At best, the first form of bad faith in either of the two sub-division forms does not recognize the legitimacy and significance of ethical consideration of the norm of human rights and commits the fallacy of dogmatism. At worst, this form of bad faith practices cultural imperialism. Reversely, the second form of bad faith also consists of two sub-division forms: (1) turning local ideologies into masks to resist modernity and globalization of the norm of basic human rights; and (2) turning local contexts and values into some iron idols and masks of pretension and insensitivity. At best, this form of bad faith fails to connect tradition with the spirit of our time. At worst, this form of bad faith is reactionary.

That being said, while some Asian value arguments must avoid the second form of bad faith, those who reject indiscriminately all forms of Asian value argument may practice the first form of bad faith. Extremity produces self-destruction, as we learn from Chinese philosophy.

III. Three Asian-value Arguments

Now we shall examine some Asian-value arguments in context with the present discourse of human rights. For the purpose of focus, we shall discuss only three Asian-value arguments—namely, the postmodern, the pragmatic, and the liberal.

The postmodern argument advocates incredulity to any meta-narratives of human beings and human rights and therefore rejects the concept of universal human rights. According to this argument, given Asian contexts, Asian values should override the idea of universal human rights in Asian social, political, and moral lives. For example, in “Human Rights: A Bill of Worries”, the writer Henry Rosemont writes:

My own skepticism is directed not toward any particular moral or political theory in which rights play a role, but toward the more fundamental view of human beings as free, autonomous individuals on which all such theories more or less rest. . . . The concept of human rights and related concepts clustered around it, like liberty,

the individual, property, autonomy, freedom, reason, choice, and so on, do not capture what it is we believe to be the inherent sociality of human beings (Rosemont 1998, 55; also, Rosemont 2004, 54).

He insists, “Much more will be gained, I believe, by seeing the Confucian vision as an alternative to ours, and one that may, with emendations, be valuable for the ‘global village’” (Rosemont 1998, 60). In the above, Rosemont rejects the idea of universal human rights and proposes Confucianism as an alternative ideology to the human rights ideology today.

Herbert Fingarette also says: “I am quite prepared to attack the doctrine of individual rights . . . It is against the background of a Confucian vision of human life that this corrosive effect of rights-based morality comes clearly in focus” (Bockover 1991, 191). Again, for Fingarette and Rosemont, Confucianism and the human rights ideology or what Fingarette calls “the doctrine of individual rights” opposes one another.

It is noteworthy here that the post-modern reading of Confucianism is flawed. It is true that there is no concept of human rights in Confucian philosophy. Still, this does not mean that Confucianism is anti-right philosophy. Platonic philosophy has no concept of human rights but is not anti-rights. Aristotelian philosophy has no concept of human rights but is not anti-rights. Indeed, in a final analysis, as Weiming Tu and others argue, Confucianism is compatible to the universal idea of human rights. That is, the Confucian vision of human life does not reject the idea of human rights, but emphasizes respecting for basic human dignity. If one does not operate with a merely functionalist concept of human rights—that is, basic rights are basic entitlements to function as human beings, one may appreciate that human rights and human dignity are not separable but entail one another. Noteworthy, in later 1970s and early 1980s, the philosophy which Chinese intellectuals evoked to resist the abuse of individual rights in mainland China was Confucianism, not any Western philosophies.

Notwithstanding, by rejecting the idea of universal human rights, the postmodern argument may run against the spirit of our time. An undeniable fact is that the idea of universal human rights triumphantly enlightens and lifts up human civilization of our time since the end of World War II. No wonder, while postmodern argument remains influential in the discourse of human rights in Asia, it is not the argument which many feel to be defensible and would like to embrace. One cannot help thinking here that has the post-modern argument drawn a distinction between human rights and moral rights, its view would be improved. Admittedly, the concept of universal humanity or global humanity still receives bad philosophical press. Still, the idea of global justice and the idea of a cosmopolitan order of the global human community, in both of which the norm of human rights is a juridical norm, remain two most enlightening ideas of the spirit of our time. Also, one cannot help thinking that the post-modern argument suffers the flaw of throwing out the baby with the bathing water. It is intended to reject given philosophies of human rights or some particular paradigms of human rights, but unfortunately claims to reject the idea of universal human rights itself.

The pragmatic argument and the liberal argument differ from the postmodern argument. The pragmatic argument states that any applications of the idea of universal human rights in Asia must take into consideration of the Asian regional, historical contexts; the universal principle of human rights must be understood in a way that reflects the Asian historical, cultural, and practical realities; accordingly, an Asian articulation of the idea of universal human rights is both legitimate and necessary. The 1993 *Bangkok Declaration* has a pragmatic argument.

Article 7 of *the Declaration* reads, “Stress the universality, objectivity and non-selectivity of all human rights and the need to avoid the application of double standards in the implementation of human rights and its politicization and that no violation of human rights can be justified”. Article 8 reads, “Recognizing that while human rights are universal in nature, they must be considered in the context of a dynamic and evolving process of international norm-setting, bearing in mind the significance of national and regional particularities and various historical, cultural and religious backgrounds” (<http://www.unchr.ch/htm/menu5/wcbangkok.htm>).

In both articles, *the Bangkok Declaration* defends the idea of universal human rights, declaring that “no violation of human rights can be justified.” Meanwhile, *the Declaration* argues that application of the idea of universal human rights in Asia must do justice to the Asian historical, cultural, and regional conditions. It challenges (1) the universality of the Western interpretations or ideological-political programs of human rights and (2) the universality of some political charters of human rights that are established by the international community, for example, in the *Universal Declaration of Human Rights* by the United Nations in 1948. However, it does not reject the concept of universal human rights.

Not surprisingly, various governments in Asian countries including the governments of China and the so-called four mini-dragons appeal to the pragmatic argument, insisting that applications of the idea of universal human rights in Asia must respect Asian contexts and values. They insist that Asian ideological articulations of the idea of universal human rights produce diversity in embodiments of universal human rights, but no rejection of the universal idea of human rights. Fair to say, to bring about diverse embodiments of X is one thing. To disintegrate X is quite another. To be creative and responsive in redeeming the claim of X in particular contexts is one thing. To reject X is quite another. In short, a pragmatic argument is not a postmodern argument.

This is not to say that we should accept uncritically any Asian ideological constructions of universal human rights. Rather, we ought to recognize the legitimacy of Asian ideological constructions of universal human rights and at the same time, ought not to fear to negotiate with such Asian ideological constructions. Asian understanding of the idea of universal human rights itself should be the object of critical examination. Still, in essence, Asian constructions of the universal idea of human rights represent an attempt to mitigate the idea of human rights with the Asian ideas of good life and happiness. They remind us of the value of ethical consideration of the idea of human rights.

The pragmatic argument challenges us to live in the tension of ideological diversity in actualization of the idea of human rights in the globe. The challenge is

reasonable. As Guanzi said: “One should not try to make a road of a thousand miles be exactly the same all the way like a rope. One should not try to model ten thousand houses to be exactly the same. A great person focuses on righteousness in contexts, not on invariance of the precedence)” (Guanzi 1996, 515/ch.11). We should recognize the legitimacy of Asian ideological construction of human rights, amid a demand that such Asian ideological program must be subjected to critical scrutiny, reflection, evaluation and judgment from the critical point of view of human reason, and be opened to inter-cultural appropriation.

The liberal argument is that people can endorse the idea of universal human rights from different philosophical bases, including different value-bases. The argument does not challenge the idea of universal human rights or certain ideological-political programs of human rights developed by international communities, for example, *the Universal Declaration of Human Rights* by the United Nations in 1948. Instead, it insists that embracing the idea of universal human rights and given ideological programs need not mean embracing specific Western philosophies of human rights. For example, one can embrace the United Nations’ charter of human rights from the basis of Confucian philosophy or Taoist philosophy, instead of Kantian philosophy or Lockean philosophy.

Weiming Tu’s view is an example of the liberal argument at hand. Tu argues that one can embrace the idea of human rights, as exemplified in the UN Declaration of Human rights, without embracing Western individualism and some Western liberal values. He suggests that one can embrace the idea of human rights on the basis of Confucian values. According to Tu, the Confucian norms of humanity, harmony, piety, loyalty, trust, and self-discipline are compatible with the idea of human rights and universal human rights can be housed in the Confucian home.

Moreover, “The potential contribution of in-depth discussion on Asian values to a sophisticated cultural appreciation of the human rights discourse is great ... The perceived Confucian preference for duty, harmony, consensus, and network ... needs not to be a threat to rights-consciousness at all” (Tu 1998, 299). Tu endorses those internationally established political programs of human rights such as *the Universal Declaration of Human Rights* of UN in 1948. He says, “The universality of human rights broadly conceived in the 1948 Declaration is a source of inspiration for the human community” (Ibid, 297). However, Tu insists that the global discourse of human rights should allow the participation of Asian philosophies and values including Confucianism and Confucian values.

Like Tu’s view, Charles Taylor’s proposal on the matter of human rights and Asian value is also another example of liberal argument at hand (Taylor 1999, 124–144). Taylor suggests that different people and nations should be free to house the universal norms and standards of human rights in their own metaphysical-religious bases. Furthermore, what Joseph Chan characterizes as “ecumenical approach” is essentially based on the liberal argument. (Chan 1999, 212) Liberalism in this context entertains diversity and emphasizes toleration of diversity, including conceptual diversity. But liberalism here is not soft-postmodernism or hard-postmodernism.

The liberal argument is for unity through inclusion and toleration of diverse ideologies of human rights. Its radical claim is that a universal idea should, and can,

be accepted by and housed in different local philosophies and ideologies. It does not matter whether local philosophies and ideologies are proper embodiments of the universal idea. What matters is that they accept and endorse it. The argument recognizes that each nation and people has its cultural and practical identity, center of values and happiness, and world outlook; genuine global human rights movement and global democracy should be a democratic process of inclusion, negotiation, and discursive engagement. We are better off by recalling what Isaiah Berlin said: “Every nation has its own tradition, its own character, [and] its own face. Every nation has its own moral gravity, which differs from that of every other; there and only there its happiness lies—in the development of its own national needs, its own unique character”(Berlin 1997, 37). At the core of the pragmatic argument is the moral aspiration that every civilization has its own face, life, center of gravity, and center of happiness.

The challenge that each of the three arguments mentioned above poses is different. The postmodern argument suggests a search for an alternative ideology to the human rights ideology. Meanwhile, both the pragmatic argument and the liberal argument endorse the idea of universal human rights, amid their difference. For the purpose of focus of this paper, I shall set aside the postmodern argument here, and discuss furthermore only the pragmatic and liberal argument.

In essence, the pragmatic argument insists a more local, cultural ideology of human rights. What is insisted is still an ideology of human rights, but more cultural and local. Intellectually, the pragmatic argument insists that the validity claim of universal human rights must be, and can only be, redeemed in particular practical contexts as well as particular cultural space and time. Admittedly, the pragmatic argument can be politicized and used as a cover to defend the *status quo* of some totalitarian practices in Asian cultures. But a politicized pragmatic argument should be distinguished from the true one. Institutionally, the pragmatic argument is more appealing from the legal point of view. As Habermas suggests, construction of law always involves a three dimensional consideration: the moral, the ethical, and the pragmatic. The ethical and pragmatic concerns in law inevitably give weight to a pragmatic argument. Meanwhile, this argument should not be a resistance to international laws geared to protect basic human rights and to resist the idea of global justice in terms of basic human rights. It should not be a form of ethical-moral, and political bad faith.

Meanwhile, the liberal argument insists that a same political-ideological operational program can be housed in different philosophical home-bases. It does not challenge the concept of global, unified modernity. What it insists is that the global, unified modernity in the substantive, operational level can live, and should live, with diverse philosophical orientations. Granted that Donnelly is right in saying, “Unless societies possess a concept of human rights they are unlikely to have any attitude toward human rights” (Donnelly 1999, 69). It does not follow that having a concept of human rights means having a liberal, individualistic concept of human rights which Donnelly advocates and which does not presuppose a plausible concept of social duty as its necessary counterpart. Institutionally, the liberal argument can be strengthened

the legal point of view. The ethical and pragmatic concerns in law inevitably can lend weight to a liberal argument.

In short, while both the pragmatic argument and the liberal argument emphasize respect for Asian values, we should not read them as advocating cultural relativism or global skepticism on the matter of human rights. Relativism is the doctrine that all truth and values are culturally relative, not universal. But both arguments recognize the idea of universal human rights and acknowledge the universal truth of the idea of human rights. Admittedly, both arguments leave much to be desired. For both arguments, the concern about unity of modernity and the integrity of the global discourse of human rights must be addressed. Cultural and local contexts must not be turned into a mask to resist those international and global laws and treaties which are established democratically and collectively by nations-peoples. Meanwhile, philosophies or cultural ideologies that do not support or even are incompatible to the idea of universal human rights should be rejected.

IV. Unity and Diversity: How to Avoid Human Rights Fundamentalism?

We are now in the position to address the issue about the unity of the universal idea of human rights amid cultural diversity and how to avoid what Habermas dubs as “human rights fundamentalism”. Human rights fundamentalism suffers two fatal flaws. First, in it, the idea of universal human rights must be mitigated by nothing and negotiation with no one in its embodiment in social-political life. Second, the integrity of the universal idea of human rights is achieved by absolute global moral solidarity, not through the mediation of international laws and global treaties. As a result, it often privilege a given interpretation and social-political programs of human rights. We need a more humanistic concept of moral solidarity here. Global moral solidarity requires loyalty to universal reason, truth, and justice. Such an obligatory loyalty does not presuppose the loyalty to either a specific philosophy or a specific ideological-political program. Thus, the unity of the universal idea of human rights requires moral solidarity but can allow ethical diversity under a unified legal platform.

By this token, the unity of the universal idea of human rights requires that all nations and peoples on the earth accept the norm of human rights as a core norm of evaluating human practices, government policies and measures, and social institutions such as the law and likewise, not that everyone endorses the idea of human rights from the same philosophy or everyone indiscriminately implements a same ideological-political program of human rights regardless of variance of cultural and historical contexts and realities. It requires that all nations and peoples be human-rights-sensitive, and participate reflectively in articulating universally accepted laws and convents embodying, protecting and enhancing human rights, especially basic human rights. It requires that all nations and peoples abide by internationally and globally established laws, convents, and codes of human rights, as long as they stand as international or global laws, convents, and codes of human rights that are democratically recognized in the globe. Meanwhile, the diversity of human rights ideologies in the globe allows nations and peoples to integrate the universal idea of

human rights with their cultural values, doing justice to their historical, cultural situations. It allows nations and peoples to develop their national ideologies that are consistent with the universal spirit of human rights on the one hand and have their cultural characteristics on the other hand.

My view here can be defended with the transcendental argument and the immanent argument. The former is that the universal cannot, and should not, be identified with any particulars; that the universal is not identified with any particulars is what preserves the unity of the universal. Thus, for example, Laozi argued that we could have the unity of the *dao* if and only if we went beyond metaphysical realism; for him, the universal *dao* should not be identified with any metaphysical presentations of the *dao* (Laozi 1996, 87/ch.1). For Laozi, the *dao* is united precisely because it includes all; the *dao* can include all precisely because it is not identified with any particulars.

Zhuangzi seconded Laozi by arguing that only if the universal is not identified with any particulars, the unity of the universal can be preserved. He criticized that those who subscribed to metaphysical realism indulged themselves in the kind of “three in the morning and four in the afternoon” talk. Zhuangzi illustrated error of metaphysical realism with the following allegory: “A monkey keeper once was giving out nuts and said, ‘Three in the morning and four in the afternoon.’ All monkeys became angry. He then said, ‘If this arrangement makes you unhappy, then there will be four in the morning and three in the evening.’ All the monkeys were cheerful” (Zhuangzi 1996, 141/ch.2). Zhuangzi pointed out that in the above example, the change of expression did not change the truth, despite the fact that those monkeys thought otherwise. Thus, Zhuangzi famously asserted, “If one takes one’s fingers as the standard fingers, none of fingers of other persons can be fingers. If one takes this particular horse as the standard horse, none of other horses can be horses” (Ibid, 140/ch.2)

The immanent argument is that the universal dwells in the particulars, but is not identified with any particulars; the universal is one, but its particulars are diverse; the diverse embodiments of the universal do not dissect the universal. Habermas also reminds us of the immanent argument when he says the follows: “The gradual embodiment of moral principles in concrete forms of life is not something that can safely be to Hegel’s absolute spirit. Rather, it is chiefly a function of collective efforts and sacrifices made by sociopolitical movements. Philosophy would do well to avoid haughtily dismissing these movements and the larger historical dimension from which they spring” (Habermas 2001, 208)

Ideological diversity of human rights is inevitable given that human rights are legal rights. As discussed above, three kinds of concerns of human rights are addressed when the norm of human rights is embodied in municipal laws: the pragmatic, the ethical, and the moral (Habermas 1998a, 159-162). The pragmatic concerns and the ethical concerns of human rights in nations and peoples are inevitably diverse. Therefore, we should seek an inclusive global ideology of human rights that preserves unity through acknowledging legitimate diversity. We should appreciate the challenge that legitimate globalization of human rights can only be done through a true, global democracy under the rule of law.

This leads us to the concern about human rights fundamentalism. Human rights fundamentalism is a form of political bad faith and detrimental to globalization of the human rights ideology today. First, it replaces law-based global democracy by imperialism in global discourse of human rights and therefore deprives any established ideologies of human rights in the globe their legitimacy. Second, it distorts the global communication of human rights and as a result, deprives claims of human rights in the globe their real basis of rationalization. Third, it invites non-cooperation in various countries in the course of globalization of the human rights ideology.

How we can avoid turning the human rights ideology into human rights fundamentalism? The question brings into light the law of *wu ji bi fan* (extremity produces self-destruction; when things reach beyond their limits, they turn into their opposites). The law has two precepts: (1) When we push X beyond its limit, we turn it into its opposite or something else; (2) When we pursue X in an extreme manner, we would arrive at the opposite of X, instead of X. *Dao De Jing* states: “When things reach their limits, they turn into their opposites. Going to the limit of a thing violates the *dao*. What violates the *dao* will perish” (Laozi 1996, Ch.55/108). *Dao De Jing* therefore warns us of this: “From calamity, happiness arises/ From happiness, calamity is latent.”; “The Way of the universe is to reduce whatever is excessive and to supplement whatever is insufficient/Mankind practices the wrong and unnatural way/ The way of mankind is to reduce the insufficient to offer to the excessive [this is why the way of mankind is wrong]” (*Ibid*, ch.58/109, ch.77/115).

We can see what is wrong with the British foreign minister’s argument in the Akmal Shaikh case. First, it pushes the concept of basic human rights beyond its limit. As a result, he turns basic human rights into what they are not—for example, they are not a green light to smuggle drugs and opium. Second, using a wrong and bad example, the foreign minister tactically practices human rights fundamentalism. As a result, the minister’s radical argument does not serve to facilitate globalization of human rights, but introduces bad taste and poisons the atmosphere of constructive dialogue.

Of human rights fundamentalism, Habermas warns us particularly: “Human rights politics of a world organization” can invert into “a human rights fundamentalism” under certain conditions (Habermas 1998b, 200). In light of the above, I would like to repeat the following.

First, with regard to implementation of the norm of human rights in local contexts, we must avoid the two kinds of bad faith mentioned at the outset:(1) a refusal to recognize that a particular human rights ideology must prove its universal legitimacy through global democracy; and (2) a refusal to recognize that we must be sensitive to local contexts wherein the norm of human rights ideology would be applied. These bad faiths would turn a human rights ideology into human rights fundamentalism.

In addition, pushing the idea of human rights beyond its limit, as the British foreign minister does in the Akmal Shaikh case, turns a human rights ideology into a fundamentalist one. It turns the idea of human rights into what it is not or something

else on the one hand, and leads us to the opposite of the destination of globalization of the human rights ideology on the other hand.

Furthermore, the importance of globalization of the human rights ideology is not a legitimate reason to conduct an offensive war to against nations and regimes whose human rights records are poor, even deplorable. International human rights intervention must never be an excuse to promote Western hegemony or for stronger nations to colonize weaker nations. International human rights intervention must be decided by a more inclusive, democratic procedure that creates the best possible condition of rational deliberation. No offensive wars sole for the purpose of advancing a particular ideological program or philosophy of human rights are justified and justifiable, akin to no offensive wars to force other nations and peoples to accept a particular religion are justified and justifiable.

Conclusion

In conclusion, a viable global ideology of human rights can only be developed through a global democracy in global discourse of human rights and institutionalization of human rights. Such a democracy should have the following features:

First, to be inclusive, we should bear in mind what Laozi said, “Toleration makes greatness” (Laozi 1998, 92/ch.15). An inclusive global democracy implies intellectual and moral toleration and will include reasonable Asian value arguments in the discourse of human rights. It will be a constellation of modern democracies. And “modern democracies”, says Benhabib, “act in the name of universal principles, which are then circumscribed within a particular civic community. This is the ‘Janus face of the modern nation’ in the words of Jürgen Habermas” (Benhabib, 2006, 32).

Secondly, being not merely procedural, but also substantial. That is, such a global democracy is in all ideological fronts—intellectual, moral, ethical, legal, and likewise. By this token, with regard to human rights in Asia, at the end of the day, the outstanding question for us is not whether the idea of universal human rights should be integrated with core Asian values in Asian contexts, but how they should be integrated. The question should be how is a democratic ideological construction of universal human rights with Asian values in Asian contexts possible.

References

- Benhabib, Seyla. 2006. *Another Cosmopolitanism*. Oxford: Oxford University Press.
- Berlin, Isaiah Berlin. 1997. *The Crooked Timber of Humanity*. Princeton: Princeton University Press.
- Bockover, Mary I. (Ed). 1991. *Rules, Rituals and Responsibility: Essays Dedicated to Herbert Fingarette*. LaSalle: Open Court Publishers.
- Chan, Joseph Chan. 1999. “A Confucian Perspective on Human Rights for Contemporary China,” in Joanne R. Bauer and Daniel Bell (ed), *the East Asian Challenge for Human Rights*. Cambridge: Cambridge University Press.

- Donnelly, Jack. 1999. "Human Rights and Asian Values: A Defense of 'Western' Universalism", in Joanne R. Bauer and Daniel A. Bell (ed), *The East Asian Challenge for Human Rights*. Cambridge: Cambridge University Press.
- Fine, Robert. 2009. "Cosmopolitanism and human rights: radicalism in global age," in *Metaphilosophy*, 40:1.
- Guanzi. 1996. *Guanzi Jiao Zheng*, in *Completed Works of Teachers*. Beijing, China:: Unity Publishing House. Vol.5
- Habermas, Jürgen. 1998a. *Between Facts and Norms*. Cambridge, Mass.: MIT Press.
- . 1998b. *Inclusion of the Other*. Cambridge, Mass.: MIT Press.
- . 2001. *Moral Consciousness and Communicative Action*. Cambridge, Mass.: The MIT Press.
- www.news.bbc.co.uk.
- Van Den Haag, Ernest. 1986. "The Ultimate Punishment: A Defense," *Harvard Law Review*, Vol.99.
- Kant, Immanuel. 1923. *Gesammelte Schriften*. Berlin: de Gruyter. Vol. 8.
- Laozi. 1996. *Laozi Dao De Jing*, in *Completed Works of Teachers*. Beijing, China:: Unity Publishing House. Vol.3.
- Rosemont, Henry, Jr. 1998. "Human Rights: A Bill of Worries", in Wm.Theodore de Barry and Weiming Tu (ed), *Confucianism and Human Rights*. New York: Columbia University Press.
- . 2004. "Whose democracy? Which Rights?" in Kwong-loi Shun and David Wong (ed), *Confucian Ethics*. Cambridge: Cambridge University Press.
- "Report of the Regional Meeting for Asia of World Conference on Human Rights", in <http://www.unchr.ch/htm/menu5/wcbangkok.htm>, (entered 7/6/2007).
- Taylor, Charles. 1999. "Conditions of an Unforced Consensus on Human Rights," in Joanne R. Bauer and Daniel Bell (ed), *the East Asian Challenge for Human Rights*. Cambridge: Cambridge University Press.
- Tu, Weiming. 1998. "Epilogue: Human Rights as A Confucian Moral Discourse", in Wm.Theodore de Barry and Weiming Tu (ed), *Confucianism and Human Rights*. New York: Columbia University Press.
- Wenar, Leif. 2005. "The Nature of Rights", *Philosophy and Public Affairs*, 33:3.
- Zhuangzi. 1996. *Zhuangzi*, in *Completed Works of Teachers (Zhu Zi Ji Cheng)*. Beijing, China:: Unity Publishing House. Vol.3.