Reassessing Human Rights Protection in Malaysia and Singapore

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ABSTRACT

This paper reassesses the perspectives on human rights that remain relevant in contemporary Southeast Asia. It assesses the supposed dichotomies between Western and Asian perspectives on human rights: universalism versus relativism, individualism versus communitarianism, and socio-political rights versus economic-social rights. These tensions are often false and should be rejected. Despite the deep flaws inherent in the "Asian values" approach, however, its ideology remains a powerful internal framework that continues to influence the political and judicial elite in Malaysia and Singapore. This is chiefly because of the lack of any competing theory regarding the conceptualization of human rights in the Asian context. I point out the gap in the jurisprudence in this area and conclude with some general observations on how to advance a model of rights protection to fill this lacuna.

Keywords: *Human rights; Asian values; Malaysia; Singapore*

INTRODUCTION

Theories of human rights over the past half century have largely fallen into two broad categories: the universalistic conception of human rights and the relativistic approach. The former, so-called "Western", paradigm has been accused of advocating an individualistic approach to human rights that prioritizes the individual's rights *against* society; by contrast, non-Western approaches emphasize socio-political and economic stability, privileging community and duties over the rights of the individual. Although the "Asian values" model has been criticised as a construct used by authoritarian regimes to undermine civil liberties under the guise of maintaining political stability, little effort has been made to move beyond this stagnant approach or to develop a more nuanced theory of human rights through a Southeast Asian lens.

The result is a lacuna in the jurisprudence dealing with the challenges of accommodating fundamental liberties within the constitutional framework of Southeast Asian countries, particularly Malaysia and Singapore. This lack in the theoretical jurisprudence has resulted in constitutional quagmire for many countries in the region. Strong protection of individual civil liberties is instinctively viewed as a Western approach inappropriate for the Asian context. This has led to an undermining of civil liberties in situations where there appears to be a potential clash between communitarian goals and individual rights, such as cases involving freedom of religion or freedom of expression.

The aim of this paper is to provide an analysis of the so-called Western and non-Western models of human rights protection and to reassess the themes in light of contemporary developments internationally and domestically. This paper proceeds in two main parts. Part I identifies the themes that highlight the supposed tension between Western and Asian perspectives on human rights. In determining the extent to which the supposed Western and Asian divide is accurate, I evaluate the three main dichotomies in the debates: first, universalism versus relativism; second, individualism versus communitarianism; and, third, civil-political rights versus economic-social rights. These dichotomies frequently obscure more than they illuminate: the tensions presented are often false and based on flawed assumptions about the concepts used.

In Part II, I reassess these themes in light of developments since the 1990s — when the concept of "Asian values" was most in vogue — and examine whether the tensions identified continue to frame discourse in this area after the 1997 Asian financial crisis. In doing so, I examine both the *external* and *internal* approaches to "Asian values". First, I assess the perception of "Asian values" *externally* as a conceptual contribution to international human rights discourse. Debate surrounding "Asian values" has evolved from highly politicised debates with stark dichotomies to a more balanced discourse, which recognises the need for an Asian perspective in order for rights to achieve legitimacy in the Asian context.

Second, I analyse the *internal* or domestic framework of "Asian values" within the states that were its chief proponents, chiefly Malaysia and Singapore. The legacy of the "Asian values" ideology in the 1990s needs to be assessed according to its impact on two separate layers of society. The first layer — the political elite and the courts — continue to perpetuate similar claims: communitarianism and economic priority remain justifications for state intervention and a restrictive approach to civil liberties. But the political mobilisation of the second layer of society — the citizenry — shows that such claims are increasingly being rejected.

In the final and concluding section, I argue that both the external and internal approaches point toward the need for synthesis into a more developed model of rights

protection. In considering how to advance this new approach, I make preliminary observations gained from reassessing Western and Asian perspectives on human rights protection and also from the direction in which the discourse has shifted. It is increasingly clear that Southeast Asia needs to move definitively beyond the remnants of the "Asian values" approach of the 1990s and chart an approach that offers better accommodation of individual civil liberties through more rigorous constitutional protection. Such an approach requires development, but the stage is set for a definitive move beyond "Asian values" towards a more nuanced and contextualised approach of rights protection in the region.

I. TENSIONS BETWEEN WESTERN AND ASIAN PERSPECTIVES ON HUMAN RIGHTS

Before showing that a contemporary approach toward rights protection is needed for Southeast Asia, I assess the landscape of the international human rights movement to show how the current status quo has left an unsatisfactory gap from the Asian rights perspective. There have been, broadly perceived, two competing accounts of how rights are protected: the Western universalism account and Asian relativism approach. Each approach has been associated with certain positions regarding the universalism of rights or the priority placed on the individual and economic development. But these tensions are false ones. I show how these supposed polarisations are unsatisfactory to begin with. In order to articulate a coherent approach for rights protection in any context — Western or Asian — we need to move beyond such dichotomies definitively.

Universalism versus relativism

The first dichotomy between Western and Asian perspectives on rights is the supposed divide between whether rights are universal or culturally relative. One account views human rights as universally applicable to all human beings indiscriminately. Cultural relativists challenge this concept, arguing that rights are dependent on cultural norms and therefore differ from culture to culture or from nation to nation. The "Asian values" ideology is one main example of cultural relativity. Malaysia and Singapore, under the strong leadership of Mahathir Mohamad and Lee Kuan Yew respectively, viewed universal human rights as an alien imposition from the West, reflecting specific Western values, and argued for an approach based on "Asian values" instead.

I am sceptical about cultural relativism for at least three reasons. First, relativists themselves lack clarity in using relativism as a conceptual argument. Emphasising "Asian values", such as the importance of family and community, does not preclude a society from acknowledging other supposedly "Western" rights-related values. If the argument is simply that some values are given greater priority than others, this is simply a matter of balancing competing values — an exercise that is commonly carried out even in Western countries, for example via the concept of proportionality in the UK as

influenced by the European Convention of Human Rights. This does not mean that from one culture to the other. Many Western European countries, for instance, are committed both to social discipline and liberal rights (Freeman, 1996: 356).

Second, it is neither accurate nor meaningful to speak of an overarching homogenous concept of "Asian values" for a region as diverse as Asia, where cultural and religious norms, political history, and economic conditions differ between countries — and sometimes even within states (Dalton & Ong 2005: 20). Besides differences based simply on ethnicity or religion, there are differences in culture between the different layers of *society* itself. Priorities and perceptions differ between the governmental elite and the public; between the urban middle class and the working class; between civil society activists and religious conservatives. Economic and social class are more important factors in determining one's perception of rights compared to traditional "cultural" values (Ghai 2009: 13-22).

Third, a related, but distinct, argument is that material bases and the state's political power influence the conception and protection of rights more than culture (Ghai, 2009: 114). The apathy of the ruling party in Malaysia and Singapore toward rights protection and its strong, authoritarian method of governance is more greatly influenced by the executive's continued monopoly of political power for over half a century since independence rather than a commitment to specific cultural values.

Individualism versus communitarianism

Another theme that emerges from the polemic between Western and non-Western human rights perspectives relates to the importance of the individual vis-à-vis the community. The supposed contrast between Western and Asian models of human rights lies in the perceived priority of the Western approach on an individual's rights against society; by contrast, the Asian approach emphasises socio-political stability and duties over the rights of the individual (Donnelly, 2003: 107-123). The "Asian values" prong attempts to carve out its own niche to state-community relations as superior to the individualistic, rights-oriented approach of Western democracies (Thio 1999: 22). In the words of Lee Kuan Yew (Burton, 1993: 20-21): "Asia has never valued the individual over society. The society has always been more important than the individual."

There are several fundamental problems with this supposed dichotomy. It is artificial to ascribe rights-related values as Western and community-related values as Asian. Values relating to order or the importance of the family and community are important not only to Asian societies. The debate between the priority placed on societal order and individual rights is also a source of tension between the conservative and liberal traditions in the West. Emphasis on individualism also varies according to different Western political cultures: the United States for instance has a greater

emphasis on the individual compared to other Western European countries (Freeman 1996: 355).

Second, even if there are identifiable "Asian values" that priorities the community over the individual, it does not follow that such values are necessary to ensure community and political stability. Taking away from individual liberties does not necessarily lead to an increase in community stability. Indeed, I argue that the *inverse* is true and that an approach that focuses on community rights, rather than an individual's rights, inevitably runs into sensitive issues of appearing to prefer one community's rights over the others. The tension between the Malay-Muslim community and the non-Muslim community over the *Lina Joy* (2007) 3 ALL MAL. REP. 693 decision in Malaysia on apostasy clearly illustrates this. The Federal Court's evasion of responsibility to the Syariah Court, instead of upholding the right to convert as part of Lina Joy's constitutional right to freedom of religion, inevitably came to be perceived as a decision in favour of the Muslim-Malay majority.

Economic priority and "Asian values"

The third issue that is frequently used to support the argument that developing countries have different priorities from Western developed nations is that economic development must be given precedence over civil and political rights. Developing countries argue that they cannot afford the "luxury" of civil and political rights which developed countries can because of their economic prosperity. Malaysia, Singapore, and China argue that economic development is the main priority for developing countries and that strong, authoritarian governance is needed in order to steer their countries in this direction.

There are at least two problems with this view. First, I am sceptical of framing the debate in terms of economic and social rights versus civil and political rights. Such a dichotomy presupposes an entirely economic and narrow definition of development. This view is blinkered: development involves more than mere economic growth (Sen 2001: 93). Amartya Sen is right that development must be understood as a "process of expanding the real freedoms that people enjoy" and that human rights are a constituent element of this (Sen 2001: 3). To approach economic and social rights as separate from civil and political rights is based on the misunderstanding that both sets of rights are mutually exclusive and that priority must be given to one *at the expense* of the other.

Second, the emphasis of developing countries is really on economic *priority*, in terms of GNP growth or output, rather than on the *fair* distribution of economic *opportunities* to individuals (Donnelly, 2003: 111). This dimension is highlighted by the constitutionally protected privileges of the Malay ethnic *majority* in Malaysia under article 153 of the Malaysian Constitution. This is used as the basis of a national

economic policy that effectively forms an affirmative action regime in favour of the majority Malay group for government positions, scholarships, business contracts and so forth – a policy that has caused increasing resentment among other communities and reinforces divisions along the lines of ethnicity and class (Ghai, 2009: 143).[1] Ethnic minorities — such as the Chinese and Indians — do not receive an equal distribution of such rights, raising the question of whether economic and social opportunities are indeed available for *all* citizens.

PART II   BEYOND "ASIAN VALUES": REASSESSMENT OF THE THEMES

The second part of this paper reassesses the themes identified in Part I in light of developments since the 1990s in human rights discourse. I examine, in particular, whether — and to what extent — there has been a movement away from the "Asian values" approach in the decade following the 1997 Asian financial crisis.

The discourse on human rights in Asia has both an *external* and an *internal* component. The *external* component refers to the "Asian values" debate as part of the international human rights discourse on theories of rights protection and economic development. "Asian values" in this context contributes to the global dialogue as a subject of political and academic debate. The external contribution of "Asian values" to the international discourse requires reassessment after the Asian financial crisis: how have the debates surrounding universalism and relativism evolved since the 1990s and in what direction is the contemporary human rights discourse heading?

The *internal* component, which is distinct from the external debates regarding rights, relates to the immediate and practical issue of whether remnants of the "Asian values" ideology continues to have an impact internally *within* the Asian states concerned. In this section, I assess whether "Asian values" continues to have an influence domestically within the countries that were particularly forceful in propagating the ideology, chiefly Malaysia and Singapore.

The External Human Rights Discourse on "Asian values"

On an international level, the dialogue on "Asian values" has evolved through several stages (Peerenboom, 2003-2004). The concept of "Asian values" first emerged on the international human rights discourse in the 1990s in a highly political manner: the concept was conceived by Singapore's Lee Kuan Yew and Malaysia's Mahathir Mohammad, gained momentum through China's White Paper on Human Rights in 1991, and achieved the support of other ASEAN states in the 1993 Bangkok Declaration. The debates at this stage were heavily politicised and polemic, with

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[1] *Bumiputera,* literally translated, means "sons of the land". It is used to refer to the Malays, who form the ethnic majority group, and other indigenous ethnic groups, such as the *Orang Asli,* Ibans, Kadazans, etc.

"Western" universalists and "Asian" cultural relativists having clearly polarised points of view. The 1997 Asian financial crisis dealt a crippling blow to Southeast Asian states, which had previously argued "from a position of economic and social success" (Economist, "Competitive Order", 1992).

Despite pronouncements by detractors of "Asian values" that the debate was over (Fukuyuma 2001: 151), a second wave to the "Asian values" debate arose after the 1997 crisis. In this second stage, the discourse was no longer dominated by politicians, but by scholars. As a result, the debates became less politicised and more academic (Peerenboom 2003-2004: 52). The debate moved beyond sharp dichotomies, such as universalism versus relativism or individualism versus communitarianism, toward achieving more balanced viewpoints. There has been an increasing recognition of the need to accommodate competing tensions by focusing on how to make rights more culturally legitimate and toward achieving a cross-cultural global consensus on such rights.

So what next for the discourse on human rights in Asia? Does the "Asian values" concept add any value to the international dialogue on human rights — if indeed it ever did? I argue that the "Asian values" concept is useful not because of its intrinsic substance but because of the gap that it highlights, although ultimately fails to fulfill: the lack in the international human rights discourse of a localized Asian perspective on rights. In general, the international dialogue has moved beyond simply dismissing the "Asian values" concept outright as a political construct with little use besides serving as a tool for authoritarian governments, as was often done in the first stage of the debates. Instead there is an increasing appreciation that contextual perspectives would be useful in illuminating rights protection in a specific cultural context and there is an increasing sense that there are "legitimate differences in the values at stake" (Castellino & Redondo 2006: 18). This awareness should not be confused with the argument that the "Asian values" thesis is *itself* conceptually useful. Scepticism about "Asian values" is justified: whether the concept is called "Asian values", or given a less politically obvious label, it is difficult to escape the political roots from which it was generated and its distinctive characteristics, which are neither intellectually satisfying nor easily aligned with liberalism. But the recognition that Asian perspectives cannot simply be ignored shows that a more nuanced Asian viewpoint than the political "Asian values" concept needs to be articulated.

The third stage in the evolution of the Asian perspective on rights, then, must be to develop a comprehensive theory that draws together the strands that have emerged from the debates into a distinctive Asian model. As Peerenboom (2003-2004: 70) notes, "the debates over Asian values, Confucianism, and communitarian alternatives to liberalism have suffered from the lack of a systematic, coherent theory…." The evolution of the "Asian values" debate has set the stage by drawing out the main issues

that need to be explored, i.e. cultural differences, religious views, communitarianism, and economic and social rights. It also exposed the flaws in rejecting universal or liberal rights for individuals due to a negative reaction to Western imposition. The next step should be to find a synthesized Asian model that attempts to accommodate these tensions in a politically sensitive manner.

The Internal Perspective on Rights Protection in Southeast Asia

The propagation of the "Asian values" by Southeast Asian governments and the subsequent evolution of the debate after the Asian financial crisis is illustrative of the *external* impact of "Asian values" on an international arena. This outward facing approach of "Asian values" should not be confused with the *internal* impact of "Asian values" domestically. The internal approach to "Asian values" is inward looking: it focuses on the internal experience of the Southeast Asian countries after the 1997 Asian financial crisis. Detractors of the "Asian values" concept see the approach as having being discredited internationally after the financial crisis (Thompson, 2001: 211), but the question of its internal domestic impact remains. Although "Asian values" is no longer used as a buzzword in the Southeast Asian region, the extent to which remnants of the "Asian values" ideology continues to operate within the states that had been its strongest proponents — Malaysia and Singapore — requires assessment.

This section examines whether the significant themes of the "Asian values" ideology remains the implicit internal framework under which the political actors and legal adjudicators in Malaysia and Singapore operate. I focus on the institutions and actors in these states responsible for shaping the state's domestic policy. Senior government officials in both countries propagated the "Asian values" concept and its characteristics formed the top-down approach used by the executive, the legislature, and the judiciary. This ruling elite forms what I call the first layer of society. The second layer consists of the public or the citizenry.

Remnants of the "Asian Values" ideology: Two layers of society

The rhetoric of the ruling layer of society post-crisis no longer emphasizes cultural relativism or "Asian values", but remnants of the ideology that Singapore and Malaysia have unique needs because of their particular local circumstances remain. These states remain protective of their right to determine their own approach toward human rights and economic development, and remain skeptical of perceived Western-oriented perspectives on civil and political liberties.

In Malaysia, the spectre of the racial riots of May 13, 1969, and claims of national security continue to be invoked to justify the use of measures such as, until recently, preventive detention laws criticized for being used by the government to silence

dissenters.[2] The Internal Security Act ("ISA") 1960 was used controversially in 2008 to detain a prominent online news editor, an Opposition MP, and a newspaper journalist ("Raja Petra, Teresa Kok and Sin Chew reporter arrested under ISA", 2008). The journalist's detention was due to her coverage of a campaign speech made by a member of the ruling coalition's main component party — the United Malays National Organization ("UMNO") — in which the politician referred to the Chinese ethnic minority as "immigrants" and "squatters" (Bhatt, 2008). Selective usage of the ISA by the Government has been criticized repeatedly: in this case, for instance, the preventive detention law was used to arrest the journalist on charges of racial instigation for reporting the incident, but not against the politician who had made the provocative remarks in the first place ("MCA shocked by arrest of reporter and not perpetrator", 2008).

The Opposition MP was accused of "racial incitement" by petitioning a mosque to reduce the volume of its *azan* call to prayer, despite the mosque committee chairman's statement that no such petition had been received ("Teresa Kok released from ISA detention", 2008).[3] The Home Minister's defence of the arrests bears traces of the Mahathir Model ideology that "societal unity" must be prioritised at all costs.[4] The Minister emphasised that "freedom without responsibilities has ramifications" and "we do not want anything that can threaten peace in the country"("Raja Petra, Teresa Kok and Sin Chew reporter arrested under ISA", 2008).

The current Prime Minister, Najib Razak, took over as Malaysia's sixth premier in 2009 with his own concept of 1 Malaysia. This ideology with its emphasis on unity and mutual respect, remains very much in line with the Mahathir Model of "Asian values" ("National unity ultimate objective of 1Malaysia, says Najib", 2009). Unity is declared to be the chief emphasis of 1Malaysia supported by values of mutual respect, piety, moderation in conduct and speech, and prudence in decisions and actions ("1Malaysia Official Website"). Najib himself stressed that 1Malaysia was "not a new concept" and that its "ultimate objective of national unity was the main vision of past leaders" ("National unity ultimate objective of 1Malaysia, says Najib", 2009).

The continued emphasis on economic development is also clear in the 1Malaysia concept: Najib called 1Malaysia a "continuation of the agenda of nation-building" and emphasized that unity was needed for a smoother process of development ("National

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[2] The current Prime Minister, Najib Razak, announced on September 15, 2011
[3] Tan and Kok were both released after less than 20 hours raising the question of whether there was a reasonable suspicion that they had been threats to national security in the first place. In an attempt to justify the detention, the Home Minister said Tan had been arrested out of a concern for *her* safety. *Sin Chew reporter goes home a day after ISA arrest,* STAR (MALAYSIA), Sept. 14, 2008,
http://thestar.com.my/news/story.asp?sec=nation&file=/2008/9/14/nation/2025921.
[4] *Operasi Lalang,* an internal security operation, was carried out under then Prime Minister Mahathir Mohamad in 1987, where 106 persons, chiefly comprising those critical of the government, were detained. Although *Operasi Lalang* was more widespread than this 2008 instance, the rhetoric used by the Home Minister is chillingly similar. On the ISA generally, *see Yatim, R. (1995).*

unity ultimate objective of 1Malaysia, says Najib", 2009). Economic progress remain a priority: another of Najib's initiatives as Prime Minister was the liberalization of the financial services sector in 2009 by removing the requirement for companies to reserve a 30% equity for Malay investors and opening up foreign stakes in investment banks and insurers, followed by the launch of a New Economic Model in March 2010("Government does away with 30% bumi equity requirement", 2009, "Najib unveils New Economic Model", 2010).

Najib's 1Malaysia campaign has been criticized by Anwar Ibrahim, former Deputy Prime Minister and current Opposition figure, as a cosmetic attempt by the new premier to win back ethnic minority voters after the ruling party's disappointing performance in the 2008 general elections ("Anwar trains his sights on 1Malaysia", 2009). He points out that despite calls for unity; the Government's training courses for Malay civil service employees continue to push Malay interests and to caution wariness against the Chinese and Indian ethnic minorities. Also, although Najib's economic liberalisation is a step in the right direction, he has steered away from dealing with Malaysia's clear economic elephant in the room: the affirmative action policy for the *bumiputera* majority ("PM: Affirmative action a vital component in new economic reality", 2010).

The Government remains extremely cautious concerning the exercise of civil liberties, particularly those relating to freedom of expression and assembly. The reaction of the ruling party to the recent *Bersih* 2.0 rally for electoral reform on July 9, 2011, is an illustration of this.[5] The rally was organized as a peaceful demonstration specifically campaigning the Electoral Commission for an overhaul of the electoral roll, the use of permanent ink for voting forms, the introduction of a minimum 21-day campaign period before elections, and free and fair media access by all contesting parties. The rally was declared illegal by the Home Ministry on the grounds that it would threaten public order, security, economic prosperity, and the country's multicultural harmony ("*Bersih* declared unlawful organization", 2011). Police and army forces used tear gas and chemically laced water to disperse the July 9 demonstrations when several thousand protesters marched in Kuala Lumpur, and over 1600 arrests were made. In a special session held the following day, Malaysia's Prime Minister continued to condemn the rally, stressing that street demonstrations lead to chaos and were not part of Malaysian culture, while praising the "silent majority" for being peace-loving citizens ("PM: Please don't make demonstrations part of Malaysian culture", 2011).

Across the border from Malaysia, Singapore exhibits characteristics that have been called little more than an "'Asian values' redux" (Leong 2008: 132). The key principles of the "Asian values" approach — its emphasis on cultural determinism,

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[5] *Bersih* is the Malay word for "clean".

social order, and a restrictive approach to liberal rights — are simply present in a "different format" (Leong 2008: 126). He uses the term "Singapore Exceptionalism", adapted from the concept of "American Exceptionalism", to describe the ruling elite's continuing view that Singapore is "unique and exceptional". The state continues to be fiercely defensive of its own view of Singapore's priorities; the Ministry of Home Affairs is clear that "what works" is "stable, effective government" — not "any abstract ideal of liberal rights" advocated by Western liberals (Ong-Chew, 2004, Leong, 2008: 129).

Next, turning to the judiciary: Singaporean and Malaysian courts also remain highly restrictive in matters relating to protection of constitutional liberties, adopting a strictly literalist mode of constitutional interpretation. The courts in both Malaysia and Singapore continue to be highly deferential toward the executive in matters relating to restrictions on fundamental liberties, despite the framework of constitutional — not parliamentary — supremacy (Thio 2008: 266). Traces of cultural relativism and "Asian values" also underlie the courts' approach to constitutional interpretation. In *Chee Siok Chin* [2006] 1 S.L.R. 582 the Singaporean court emphasised that "[s]tandards set down in one country cannot be blindly… applied without a proper appreciation of context" and there are "greatly varying value judgments as to what may be tolerable or acceptable in different and diverse societies" (para 132).

In Malaysia, while the judges do not explicitly refer to "Asian values" in their judgements, elements of the ideology can be seen in the courts' approach to cases that require balancing libertarian rights against perceived community interests. Consider the religious conversion case of *Lina Joy* [2007] 3 All Malayan Reports 693. The Federal Court —the highest appellate court in Malaysia — ruled that a Muslim who wishes to convert out of Islam cannot do so with a certificate of apostasy from the Syariah Court. As the Syariah Court — a religious forum by definition — has never issued such a certificate to any living Malay-Muslim in Malaysia, this creates a situation of practical impossibility for Muslims who wish to convert, despite the Article 11 guarantee in the Federal Constitution of the right to "profess and practice" one's religion.

The majority's decision showed clear concerns about community stability and religious harmony. In the leading judgment, the Chief Justice stated that the effects of allowing apostates to convert out of Islam would be to cause "chaos among Muslims" (para 13). In the High Court [2004] 2 Malayan Law Journal 119, the judge expressed similar sentiments, warning that it would "create chaos and confusion with the administrative authority" and "the Muslim community and the non-Muslim community as a whole" (para 10). The tenor of the judgments suggests that remnants of the "Asian values" paradigm continue to influence the jurisprudence of the Malaysian courts — the rights of the individual are still seen as secondary to societal stability.

The experience of Malaysia and Singapore show that while the "Asian values" thesis may have been dismissed internationally, its internal impact cannot be underestimated. The rhetoric of relativism remains an influential internal framework used by powerful executives in both countries to shape government agenda and continues to influence the language of constitutional adjudication in both countries.

Who speaks for whom?

So, the political elite and the adjudicators — the first layer of society — continue to perpetuate familiar claims that societal and economic stability necessarily require priority over individuals. But to what extent do these claims legitimately represent the position of the people who make up the second layer of society? The Mahathir and Lee Kuan Yew administrations were powerful political regimes that effectively took charge of speaking for the people of Malaysia and Singapore respectively. During the 1990s, rapid economic growth and strong leadership under these prime ministers led many to accept "the government's claims that the rights of the individual were incompatible with, and secondary to, community interests (Amnesty International (1999)). This has changed over the past decade. There has been increasing awareness and political participation among the second layer of society, particularly in Malaysia.

The emergence of public awareness and challenges to the ruling party's monopoly on power in Malaysia is attributable to several factors. The first is the rise of awareness among the middle class. An educated and urban middle class always has clear potential to be a social base for political change and the "Asian values" discourse was, at least partly, an effort by the Government to co-opt and depoliticize the middle class (Thompson 2001: 160). The current middle class has become increasingly disillusioned with claims made by the ruling party, which is seen as out of touch with the needs of the younger generation, and public dissatisfaction has increased after several issues.

Second, the sacking of Anwar Ibrahim as Deputy Prime Minister, and his subsequent controversial detention and trial for alleged sodomy charges in 1999, served as a key event in politicizing the middle class in Malaysia. It represented "a watershed in public perceptions of human rights", prompting many Malaysians to question the extent to which Mahathir's executive had undermined constitutional safeguards for fundamental liberties (Amnesty International 1999). As Thompson (2001: 160) notes, Anwar's *Reformasi* campaign found popular resonance with a Malay middle class provoked by Mahathir's treatment of Anwar.[6] The *Reformasi* movement articulated a cultural argument *in favor* of democracy, mobilising the middle class to resist the Government's argument to dismiss democratization as a Western phenomenon (2001: 161-62). Following his release from prison after the Federal court overturned his sodomy conviction in 2004, Anwar returned to politics in 2008 to mobilize the

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[6] *Reformasi* is the Malay word for "reform".

Opposition. Support for Anwar continues to be strong not only among the Malay middle class but also among the non-Malay ethnic communities.

The third major factor that has played an immense role in the articulation of dissatisfaction with the status quo has been the growth of new media, such as online independent newspapers, political blogs, politician websites, and Twitter. Public cynicism regarding the independence of the mainstream media is largely due to the government-linked nature of all the main media sources in Malaysia.[7] The situation is aggravated by the Printing Presses and Publications Act 1984, s.3, which subjects the renewal of all print media permits at the "absolute discretion" of the Home Affairs Minister, placing such publications under the continued influence of the state. As a result, the public has turned to alternative media sources — independent news websites and social media networks — to obtain information. These sources were instrumental in the lead up to the March 2008 elections by publishing critical coverage of the government and in exposing several public scandals.

The combination of these factors culminated in an unprecedented result during the March 2008 general elections when the National Front ruling coalition lost its two-third parliamentary majority and five out of the 13 state governments to the Opposition coalition led by Anwar Ibrahim.[8] This setback for the ruling party — the worst in half a century — was indicative of the change in public perceptions towards the government and the growing dissatisfaction of the second layer of society with the status quo. The public also expressed evident discontent toward the Government's restriction of the July 2011 *Bersih* 2.0 demonstrations. Dissatisfaction with the Government's attitude toward the rally was explicitly discussed on websites and social media networks — the vigour of these debates stands in marked contrast to the citizenry's cautious approach less than a decade ago toward such public displays of discontent.

The changing face of the second layer of society in Malaysia throws the two layers of society into stark contrast: it has become increasingly clear that it is no longer easy for the ruling elite to claim that it speaks for society as a whole. The political reality of the 21st century requires a more legitimate and developed theory of rights protection that acknowledges the voices of the second layer of society.

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[7] United Malays National Organisation ("UMNO") possesses a significant share in the conglomerate, which controls two of the country's main newspapers and several major television channels. The investment arm of the Malaysian Chinese Association ("MCA") owns the other leading English newspaper, the Star. Both UMNO and MCA are component parts of the ruling coalition.

[8] The Opposition Coalition was made up of the Parti Keadilan Rakyat (People's Justice Party or "PKR"), the Democratic Action Party ("DAP"), and the Pan-Malaysian Islamic Party ("PAS").

CONCLUSION

In drawing together the material discussed in this paper and in moving toward a contemporary approach for the protection of human rights in Asia, I advance three main observations. First, the way forward for a contextual Asian model is to build on cross-cultural theories of human rights. Approaches that focus on broadening universal consensus of rights through cross-cultural dialogue, such as those advocated by Abdullah An-Na'im (1992, 2009), Francis Deng (2009) and Onumo Yasuaki (1999), are realistic in recognising that rights require political legitimacy in order to be accepted in different cultural contexts. While intercultural approaches should form the foundation on which rights protection in Southeast Asia should be based on, I go further than An-Na'im does: the problem with An-Na'im's focus on cultural legitimacy through dialogue (1992: 5), even for existing international human rights standards, is that it can mean that cross-cultural analysis may lead to the revision of these standards. Cultural legitimacy and dialogue may be needed to broaden the scope and implementation of such rights (Na'im, 1992: 21), but I believe that there is sufficient political consensus on certain international standards, such as the UDHR, for there to be a core of human rights that should be regarded as universal because of the common consensus surrounding them

My second thesis is that we need to be skeptical of framing tensions between supposed competing interests — and that we should move beyond such dichotomies definitively. The suggestion that an individual's autonomy has always to be balanced against the society's need for protection against the harms of such liberties requires scrutiny. The individual-community dichotomy can also be framed as a balance between liberty and security — an image that has become increasingly topical in the West after September 11, 2001. Jeremy Waldron (2003: 208) challenges this perceived "balance" and argues that detracting from one does not necessarily enhance the other — so, a diminution in liberty may not in fact have the desired consequence of an increase in security. This call for caution is equally relevant in the Asian context where governments too often use national security as a justification for preventive detention measures that restrict individual liberties. Additionally, prioritizing communitarian concerns to maintain social cohesion by adopting a restrictive approach to individual liberties through adjudication frequently leads to inverse effects for social stability. Decisions like *Lina Joy*, with its emphasis on the group concerns of the Muslim community rather than the individual's right to religious freedom, ultimately results in increased polarization between the Muslim and non-Muslim communities.

My third, and final, thesis is that an approach based on deliberative and cross-cultural models of human rights needs to be constructed in a manner that is specifically sensitive to the local context for which it is meant to apply — in this case, Malaysia and Singapore. This is to ensure that this model is uniquely tailored to take into account the

specific circumstances that Asian governments claim pose different challenges from Western states, such as multiculturalism, religion, colonial history, and economic development. Such a model needs to be developed from the Asian perspective in order to be able to substantiate its claim that it is developed *for* Asian contexts and to avoid the sensitive reaction to Western impositions from governments that have experienced colonial interventions (Yasuaki 1999: 105). Such an approach needs to be culturally *sensitive* — not culturally relative. There is a crucial distinction between using cultural differences to claim subjectivity of perspectives as a justification for refusing to engage with aspects of human rights that are deemed politically inexpedient, and recognizing that sensitivity is required in approaching such rights to ensure they are politically legitimate for individuals in local contexts.

Development of these strands in a careful and thoughtful manner into a balanced conceptualization of rights from an Asian perspective will be a significant step forward in advancing rights protection in Malaysia and Singapore. The "Asian values" ideology is theoretically unfounded and politically outmoded. It is time for a fresh perspective and definitive move toward a more sophisticated model that better encapsulates contemporary political realities and can guide a more sensitive balancing of interests in regional human rights protection.

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