ARE THE PRINCIPLES OF HUMAN RIGHTS "WESTERN" IDEAS? AN ANALYSIS OF THE CLAIM OF THE "ASIAN" CONCEPT OF HUMAN RIGHTS FROM THE PERSPECTIVES OF HINDUISM

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SUMMARY

Although the modern concept of human rights is claimed to be a Western concept, not all human rights principles have their roots in Western civilization nor are all human rights principles necessarily mere Western principles. Not every form of extreme individualism and excessive liberalism is part and parcel of universal human rights. Those who have claimed that the notion of human rights is the product of Western Christian civilization have sought to project the selective nineteenth-century values (values of the peak period of colonial domination) backwards into the past. They have not taken into full account the developments that took place prior to the colonization period.

The universality of human rights is based on universal values found in all major civilizations of the world. Hinduism as derived from ancient Hindu scriptures is not inimical to human rights. Secularism in the conduct of the domestic affairs of the State, universalism in human approaches to the outside world, and adherence to the principle of peaceful co-existence when dealing with foreign powers of different faiths and beliefs, are some of the key elements deeply rooted in ancient Hindu political thinking. Although Hindu practice since the onset of the "dark age"[1] may be opposed to certain

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1. The "dark age" has different meanings including: 1) the period that ensued the feuds among the ruling class prior to the Arab invasion of ancient India; 2) the period of Hindu-Muslim conflict in the aftermath of the invasion of ancient India; 3) the period of British colonial rule over India; and 4) the post-Puranic period during which Hinduism became more insular and caste based. Here, the reference is to the latter. *See generally* INDIA THROUGH HINDU CATEGORIES (McKim Marriott ed., 1990).

human rights principles, Hindu scriptures written at the advent of Hindu civilization embody the idea of universal fraternity and the equality of all living human souls. The current practice of the Hindu State of Nepal and the predominantly Hindu-dominated State of India (both of them being full democracies by modern standards) demonstrates that Hinduism is capable of reforming itself and incorporating diversity and pluralism.

INTRODUCTION

In the aftermath of the so-called "Islamic Revolution" in Iran in 1979, an Iranian delegate to the United Nations (UN) Human Rights Committee stated that international human-rights instruments, such as the 1948 Universal Declaration of Human Rights (UDHR) and the 1966 Covenants on Human Rights, contained provisions whose implementation would be contradictory in a country where Islamic law was observed.[2] Another delegate from Iran stated to the Human Rights Committee that whenever divine law (i.e., Islamic law) conflicted with man-made law (i.e., human rights law), divine law would prevail.[3]

However, in contrast to this position of Islamic Iran, Quaid-I-Azam M.A. Jinnah, the founding father of Islamic Pakistan who secured the separate statehood for the Muslims of colonial India on the basis of Islam, stated in his speech to the first constituent Assembly of Pakistan on September 11, 1947:

> You are free, you are free to go to your temples, you are free to go to your mosques or to any other place of worship in this state of Pakistan. You may belong to any religion or caste or creed—that has nothing to do with the business of the state. We are starting with this fundamental principle that we are all citizens and equal citizens of one State. Now I think we should keep that in front of us as our ideal and you will find that in course of time Hindus will cease to be Hindus and Muslims would cease to be Muslims, not in [a] religious sense, because that is the personal faith of each individual, but in the political sense of the State.[4]

At the 1993 World Conference on Human Rights in Vienna (Vienna Conference), a number of other Asian countries, including China, Indonesia, and Malaysia, advanced the view that human rights should be viewed in the context of a nation's history and culture.[5] Paragraph 8 of the Bangkok Declaration on Human Rights (Bangkok Declaration) states that although Asian countries "recognize . . . [that] human rights are universal in nature, they must be considered in the context of a dynamic and evolving process of in-

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2. *See Report on the Human Rights Situation in the Islamic Republic of Iran by the Special Representatives of the Commission*, U.N. Doc. E/CN.4/1987/23 (1987).

3. *See id.*

4. MAHOMED ALI JINNAH, SPEECHES AS GOVERNOR-GENERAL OF PAKISTAN 1947-48, at 45-46 (1962).

5. *See U.S. Slams Chinese-Led Go-Slow*, TERRA VIVA, June 18, 1993, at 1.

ternational norm-setting, bearing in mind the significance of national and regional particularities and various historical, cultural and religious backgrounds."[6]

A scholar and seasoned diplomat of Singapore stated recently that East Asians do not believe in the extreme form of individualism practiced in the West.[7] He said East Asians agree that every individual is important.[8] However, he or she is not an isolated being, but a member of a nuclear and extended family, clan, neighborhood, community, nation, and State.[9] There is an Asian version of a social contract between the people and the State. Lee Kuan Yew, the former Prime Minister of Singapore, has tried to advance similar ideas and distinguish East Asian values from those of the West.[10]

During the Vienna Conference the Chinese delegation had this to say:

> The concept of human rights is a product of historical development. It is closely associated with specific social, political and economic conditions and the specific history, culture and values of a particular country. Different historical stages have different human rights requirements. Countries at different development stages or with different historical traditions and cultural backgrounds also have [a] different understanding and practice of human rights. Thus, one should not and cannot think [of] the human rights standard and model of certain countries as the only proper ones and demand all other countries to comply with them. It is neither realistic nor workable to make international assistance or even international economic co-operation conditional on them.[11]

The idea of a so-called "Asian" concept of democracy is not a new phenomenon. It has different forms and features every time it reoccurs. It has been used quite frequently since the early 1960s by various Asian political leaders to justify, *inter alia*, either a one-party system of government or a party-less one. For example, the Chinese appear to have now invoked a similar concept to maintain the present political order in China.[12] The Chinese have moved away from the economic dogmas of communism in the

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6. *Bangkok Declaration on Human Rights*, DPI/1373-93 (1993); *Bangkok Declaration on Human Rights*, Mar. 29-Apr. 3, 1993, *reprinted in* HUMAN RIGHTS AND CHINESE VALUES (Michael C. Davis ed., 1995). The Bangkok Declaration was adopted by the Regional Meeting for Asia and the Pacific held in Bangkok, Thailand in 1993. *See Bangkok Declaration on Human Rights, supra.*

7. *See* Tommy Koh, *The 10 Values That Undergird East Asian Strength and Success*, INT'L HERALD TRIB., Dec. 11, 1993, at 9, *available in* 1993 WL 9781429.

8. *See id.*

9. *See id.*

10. *See* Fareed Zakaria, *Culture Is Destiny: A Conversation with Lee Kuan Yew*, FOREIGN AFF., Mar.-Apr. 1994, at 109, 109-26.

11. Pieter van Dijk, *A Common Standard of Achievement: About Universal Validity and Uniform Interpretation of International Human Rights Norms*, 13 NETH. Q. HUM. RTS., 105, 105 (1995) (quoting speech of Liu Huaqui, head of the Chinese delegation at the World Conference on Human Rights, Vienna, Jun. 15, 1993).

12. *See generally* THE EAST ASIAN CHALLENGE TO HUMAN RIGHTS (Joanne R. Bauer & Daniel A. Bell eds., 1999).

process of introducing market-oriented economic reforms, but appear determined at the same time to resist pressure to introduce similar reforms in political affairs.[13] It is in this state of affairs that the Chinese have joined forces with nations in Southeast Asia who hold similar attitudes towards human rights.

The following is one explanation behind the idea of the concept of "Asian" democracy:

> Asian authoritarians usually present an argument with three stands. First, they say, "Asian values" emphasise the rights of the community over those of the individual, so Asians do not necessarily want democracy. Second, an authoritarian system, rather than a democratic one, provides the most stable foundation for economic growth. Third, attempts to impose democracy on developing Asian nations usually end in failure.[14]

On the basis of assertions of this nature, many people in the West believe that because most Asian Governments are not fully democratic, they reject the passionately held Western belief that human rights are universal.[15] The questions to be asked in this context are: Is the belief that human rights are universal a Western belief? Are human rights principles Western principles? Are human rights principles the same everywhere, or can human rights standards be subjected to local, cultural, or ideological interpretations? These are the issues that this article aims to examine.

This article will argue that although there are cultural differences, and that the state of economic development and developmental priority of a State can have a certain impact on the implementation of human rights, most fundamental principles of human rights are universal. These principles apply equally to all human beings whether they live in an Islamic State, a Southeast Asian State, or any other State of the world. Basic principles of human rights are not necessarily only Western principles, but are to be found in all great civilizations and religions of the world. What is necessary is to unearth the roots of human rights principles in other civilizations and to not confuse the inalienable rights of human beings with other political and social policies of certain countries of Western Europe and North America. It is in this context that this article will pay particular attention to the tenets of Hinduism, the most ancient of all modern religions.

I. THE ORIGIN OF HUMAN RIGHTS: WESTERN, ORIENTAL, OR AFRICAN?

Many people believe that the concept of human rights is basically a

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13. *See* Hiddo Houben, *China's Economic Reform and Integration Into the World Trading System*, 33 J. WORLD TRADE 1, 1-18 (1999).

14. *Asia's Mandela (Myanmar Releases Dissident Aung San Suu* Kyi), ECONOMIST, July 15, 1995, at 12, *available in* 1995 WL 9569792.

15. *See* George Hicks, *'Greater China' Should Think Again About Being So Different*, INT'L HERALD TRIB., Nov. 23, 1993, at 4, *available in* 1993 WL 9780987.

post-World War II concept, developed largely during the formative years of the UN by Western countries. Of course, one may not have much difficulty in agreeing with this belief because no general history of the law of human rights exists as such prior to the establishment of the UN. However, to contend that the concept of human rights is basically a Western concept is to ignore the practices of other great ancient civilizations of the world. For example, Jack Donnelly[16] wrongly assumes that "most non-Western cultural and political traditions lack not only the practice of human rights but the very concept. As a matter of historical fact, the concept of human rights is an artifact of modern Western civilization."[17]

The absence of sufficient literature unearthing and analyzing the practices of ancient States of Asia, Africa, and other parts of the world does not signify that human rights have their origin only in Christian Western civilization. It is true that the great civilization of the Western world, perhaps more than any other civilization, has made a significant contribution to the development of modern international human rights standards. However, that is not to say that other civilizations had no practice of human rights or no knowledge of the concept itself. This misunderstanding by Western writers is partly due to their narrow Euro-centric perception of international law.[18] As stated by Dinah Shelton,[19] until recently

> [t]here was little knowledge of law during antiquity, with few ancient treaties and laws available for study. . . . [M]ost well-known writers of "classics" of international law were European lawyers, neither historians nor anthropologists nor, generally, trained in comparative law. . . . [M]any scholars have dealt extensively, if not exclusively, with doctrine rather than with state practice.[20]

Few attempts have been made to study, understand, analyze, and unearth practices of States from other parts of the world. This is necessary to ascertain the contribution made by other civilizations to the development of international law in general and international human rights law in particular. If one with limited knowledge of other civilizations claims that these non-

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16. Jack Donnelly is a Professor at the College of the Holy Cross. Donnelly's publications include: THE CONCEPT OF HUMAN RIGHTS (1985); UNIVERSAL HUMAN RIGHTS IN THEORY AND PRACTICE (1989); *The Emerging International Regime Against Torture*, NETH. INT'L L. REV. 1 (1986).

17. Jack Donnelly, *Human Rights and Human Dignity: An Analytical Critique of Non-Western Conceptions of Human Rights*, 76 AM. POL. SCI. REV. 303, 303 (1982).

18. *See generally* SURYA P. SUBEDI, LAND AND MARITIME ZONES OF PEACE IN INTERNATIONAL LAW 67-69 (1996).

19. Dinah Shelton is currently a Law Professor at the University of Notre Dame School of Law. Shelton's publications include: PROTECTING HUMAN RIGHTS IN THE AMERICAS: CASES AND MATERIALS (4th ed. 1995); INTERNATIONAL ENVIRONMENTAL LAW (1991); MANUAL OF EUROPEAN ENVIRONMENTAL LAW (2d ed. 1997).

20. Dinah Shelton, Universal Recognition of Human Rights (1987) (paper presented at the 18th Study Session of the International Institute of Human Rights in Strasbourg) (on file with author).

Western civilizations did not respect human rights, an informed observer would find it difficult to concur with such a statement. If one claims that human rights principles are "Western" principles because State practice of human rights in the pre-UN era was limited to Western States, then States belonging to other civilizations that are equally proud of their ancient heritage are likely to resent such lines of argument.

Thus, the claim that human rights values have become universal through Western prescription, and that all States should respect this "Western" universal concept of human rights is bound to raise objections from other States. Specifically, from Asian States who are not only becoming increasingly aware of their traditions, but also are in the process of unearthing the practice of their ancestors and disseminating the knowledge acquired. After all, it was Asian civilizations that had a profound contribution on the development of international law until they came under colonial domination.[21] For instance, explaining the contribution of Asian States during the early and pre-colonization period of the sixteenth, seventeenth, and eighteenth centuries, C.H. Alexandrowicz, a famous historian of the law of nations, states: "[T]he European agencies in the East learned the lesson of coexistence of Hinduism, Islam, and Christianity in India (particularly on the west coast) and transplanted their experience to the West, which had been so long incapable of extricating itself from the obsession of religious wars."[22]

Alexandrowicz examines the significance of Kautilya's[23] *Arthasastra*[24] (fourth century B.C.) for the law of nations. He states that the "Kautilyan principles, whether in their original formulation or reproduced in the later classic works, exercised a definite influence on our [Western] system of the law of nations which the European agencies were compelled to apply in a non-discriminatory manner, irrespective of race, colour or creed."[25] Alexandrowicz then concludes that "the tentative reformulation of some of [the *Arthasastra*'s] principles [between the sixteenth and eighteenth centuries] exercised a measure of influence on the European negotiator and can be traced in the vast number of transactions from which our [Western] rules of international law were ultimately drawn."[26]

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21. *See* discussion *infra* Part II.

22. C.H. Alexandrowicz, *Kautilyan Principles and the Law of Nations,* 41 BRIT. Y.B. INT'L L. 301, 312 (1965).

23. Kautilya was Chandragupta Murya's Chancellor. Chandragupta was a king in ancient India in 3-4 B.C. *See* THE TIMES ATLAS OF WORLD HISTORY 17 (Geoffrey Parker ed., 1993) [hereinafter THE TIMES ATLAS].

24. One of the most significant sources of classical Hindu literature is Kautilya's *Arthasastra* which dictates the principles of inter-sovereign conduct in India and Further India. *See* KAUTILYA, ARTHASASTRA (R.P. Kangle trans., 1963); KAUTILYA, ARTHASASTRA, (R. Shamasastry trans., 1951). Kautilya's *Arthasastra* provides the most systematic and complete code of rules dealing with inter-sovereign conduct. *See* Alexandrowicz, *supra* note 22, at 302.

25. Alexandrowicz, *supra* note 22, at 312.

26. *Id.* at 320.

Indeed, it was in the writings of Kautilya that we see the seeds of modern constitutional monarchy. Kautilya stated that "[i]n the happiness of his subjects lies the king's happiness; in their welfare his welfare. He shall not consider as good only what pleases him but treat as beneficial to him whatever pleases his subjects."[27] Kautilya was stating that a king had to follow an order based on *dharma*.[28] Indeed, Hinduism attaches a number of qualifications to the exercise of State power by a king. First and foremost, the king himself must be a *dharmic* person. Second, a king should always be responsive to the wishes of the people and be guided by the advice of the elder statesmen of the society in making decisions. Kautilya stated that

> any matter in dispute shall be judged according to the four bases of justice. These in order of increasing importance are:
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> - *Dharma*, which is based on truth;
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> - Evidence, which is based on witness;
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> - Custom, i.e. the tradition accepted by the people, and
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> - Royal Edicts, i.e. law as promulgated.[29]

The very concept of *dharma* in Hinduism contains many tenets of modern principles of human rights.[30]

The Hindu concept of right and wrong is based on a collection of sacred scriptures and divine revelations as embodied in the four *Vedas*,[31] and other religious texts which are known as *Dharmasastras*. These texts include 108 *Upanishads*,[32] 18 *Puranas*,[33] 100 *Up-Puranas* and a number of *Smritis*.[34] In-

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27. *Arthasastra* 1.19.34. *See* KAUTILYA, THE ARTHASHASTRA xi (L.N. Rangarajan trans., 1987) [hereinafter *Arthasastra*].

28. *Dharma* is the early Buddhist conception of virtue or righteousness. It is the view that the origin of Indian traditions of international law should be sought in *dharma*, the law of righteousness. *See generally* UPENDRA NATH GHOSHAL, A HISTORY OF INDIAN POLITICAL IDEAS (1959).

29. *Arthasastra* 3.1.43-45. *Arthasastra, supra* note 27, at VIII.ii.

30. The very concept of '*dharma*' is about right and wrong. In other words, it is based on the belief of giving one what is lawfully due to him and preventing others from denying him his rights. *See generally* KAMALA SUBRAMANIAM, MAHABHARATA (1977).

31. The *Vedas* are the oldest religious literature of the world, and the highest religious authority for the Hindu. The *Vedas* consist of two main divisions, the *Mantras* and the *Brahmanas*, both are equal in authority. The *Brahmanas* are a commentary on the *Vedas*. *See generally* THE BRHADARANYAKA UPANISAD: WITH THE COMMENTARY OF SANKARACARYA (1950). The composition of the *Vedas* began c. 1450 B.C. *See* THE TIMES ATLAS, *supra* note 23, at 16. The composition of the *Upanishads* began c.800-400 B.C. *See id.* Of the four *Vedas*, the *Rigveda* is presumed to have been written about 2500 B.C. *See id.* See H.D. GRISWOLD, THE RELIGION OF THE RIGVEDA (1971), for a very enlightening analysis of the history, content and context of the *Vedas*.

32. *Upanishads* are the well-known scriptures of the Hindus, containing the philosophy of the *Vedas*. In total, there are 108 *Upanishads*, 11 of which are called major *Upanishads*. *See* HINDU SCRIPTURES (R.C. Zaehner trans., 1966).

33. *Puranas*, a branch of Brahmanical sacred literature are comprised of two divisions, the *Mahapuranas* (major *Puranas*) and the *Upaparanus* (lesser *Puranas*). *See* GHOSHAL, *su-*

deed, as observed by Arthur Eyffinger,[35] "[u]nlike Confucianism, Buddhism, Islam or Christianity, Hinduism cannot be linked to a single source—prince, prophet or redeemer—nor can its genesis be fixed at a certain date."[36] The *Vedic* texts speak of a peaceful and orderly people engaged in the fulfillment of their life in accordance with *Rita.*[37]

The very word "*dharma*" is derived from the verbal root *dhr*, which means "to uphold" or "to maintain" the law and order, or eternal order, of the world.[38] As John M. Koller explains:

> The various senses of dharma all refer to what must be done to maintain and support the individual, the family, social class, and the whole society. Since what must regularly be done constitutes a rule of action, the various *dharmas* are simply so many different rules of action - the rules that apply to a stage in life, to a social class, to being a king, to being a human being, and so on.[39]

Those people who lived in antiquity in the fertile valleys and along the banks of the Indus River (the modern day Punjab area) were called Hindus by foreigners. However, these people of Aryan race did not describe themselves as Hindus. They were the followers of the eternal cosmic order called *Rita* as described in their religious texts, the *Vedas*. This *Vedic* concept of *Rita* became known as *dharma* later during the *Puranic* Age,[40] and it was the believers or followers of this *dharma* that came to be known as Hindus. From then onwards, Hinduism become a synonym for the eternal *dharma.*

Dharma, as stated by Koller, "used in a legal sense, . . . refers to the laws and traditions governing society, informing every citizen of the rules governing social life."[41] He explains that "[*d*]*harma* is usually classified according to the requirements of one's position in society and stage in life, for these represent the main factors of time, place and circumstance that deter-

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pra note 28, at 580.

34. *Smritis*, also *Dharmasastra*, are a branch of Brahmanical sacred literature dealing with civil and religious law and a source of social order (or state law). *See id.* at 582.

35. Arthur Eyffinger is the author of the following works: GROTIUS POETA: ASPECTEN VAN HUGO GROTIUS' DICHTERSCHAP (1981); INVENTORY OF THE POETRY OF HUGO GROTIUS (1982); GENESIS AND FORMATIVE YEARS IN RETROSPECT (1981).

36. ARTHUR EYFFINGER, THE INTERNATIONAL COURT OF JUSTICE, 1946-1996, at 202 (1996).

37. One of the most important concepts to be found in the *Vedas* is *Rita* (i.e., cosmic law and order). Thus, not only is the universe law governed, but everything has its own nature or *dharma* (law of its own being). Cosmic order or lawfulness therefore displays itself in nature and man's social, moral, and personal life alike. *See generally* PRATIMA BOWES, THE HINDU RELIGIOUS TRADITION: A PHILOSOPHICAL APPROACH (1977).

38. The Author's own translation from Sanskrit.

39. JOHN M. KOLLER, THE INDIAN WAY 62 (1982).

40. The puranic age is believed to be about the fifth to sixth century B.C. *See generally* A HISTORICAL ATLAS OF SOUTH ASIA 161-85 (Joseph E. Schwartzberg ed., 2d. ed. 1992).

41. KOLLER, *supra* note 39, at 62.

mine one's own specific *dharma*."[42] Ariel Glucklich observes that "*[d]harma* is not a *what*, it is *how*: there is the *dharma* of conduct, of course, and this we usually understand as law and morality."[43] *Dharma* is the law of righteousness that regulates relations between the individual, the family, the community, and the State. Paul Younger states that the term *dharma* refers to order as it is manifest not only in different aspects of human life and activity, but also in the entire cosmic order:

> The basis of the concept of *dharma* is cosmic order. If the cosmos did not have some measure of structure and order, neither society nor the individual would know where they stood. Society is an extension of this cosmic order, in that its boundaries reach into the cosmic realm, and in that its regulations are designed to serve the order of the cosmos. Society is not an autonomous order marked out in terms of the accidents of military conquest or of tribal migrations, but it is an aspect of cosmic patterns and is related to the animal and angelic orders on either side. As a result of its cosmic connections, society is not free to establish regulations which serve its own purposes, but is obliged to order its life in a way which brings order to the larger cosmic framework as well. Society is not the slave of divine purpose, but it is part of [a] larger order and its behaviour should never become an occasion for the disruption of the vegetable, animal, or heavenly realms.[44]

The life of the individual is also viewed as part of the great cosmic order because his every day life is regulated by the rise and set of the sun. Younger states that

> [i]n addition to reflecting on the order of the heavenly bodies, the . . . [Hindu] also observes the behaviour of the planets and animals around him, and carefully adjusts his life to suit the crops or the cattle from which he gains his livelihood. The individual's *dharma* is derived from tradition and not primarily from his own observations, but it is always understood as a part of the total cosmic order in the midst of which he finds himself.[45]

The social order developed through the *srutis, smritis*, and especially the great popular epics such as the *Mahabharata* and the *Ramayana*[46] is also viewed within the context of this larger cosmic order. The *srutis,* the *smritis*, and other *dharmasastras* that contain not only the rules for society, but also rules on politics, prescribe a regime of social order based on *dharmic* order within which one can find the tenets of the modern rule of law. The concept of *dharma* in its original sense means the maintenance of peace and security

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42. *Id.*

43. ARIEL GLUCKLICH, THE SENSE OF ADHARMA 7-8 (1994).

44. PAUL YOUNGER, INTRODUCTION TO INDIAN RELIGIOUS THOUGHT 35-36 (1972).

45. *Id.* at 36.

46. These epics are originally said to have been composed no later than 530 B.C. Even the present form of the *Ramayan* is believed to have been prepared about 303 B.C. and the *Mahabharata* about 200 B.C. *See generally* THE VISHNU PURANA: A SYSTEM OF HINDU MYTHOLOGY AND TRADITION (H.H. Wilson trans., 3d ed. 1972).

through law and order within the larger cosmic order.[47] From this perspective, the concept of *dharma* appears to be a secular and universal concept, which has little to do with various Hindu gods and goddesses. Eyffinger rightly observes that

> indeed a quite unique characteristic of ancient Indian thinking with respect to international relations was its insistence on universalism. This notion had religious as well as political connotations, as is illustrated by the postulated universality of the individual soul. In political theory this concept was exemplified by a view of world government based on non-violence towards all creation and the indiscriminate quality of mankind. With regard to inter-state conduct, no distinction was recognised between believers and non-believers.[48]

As Younger writes:

> While the separate kingdoms of India could on occasion be identified with a particular philosopher or artist who was patronised by the court, there was no particular religious identity associated with the various kingdoms. The religious wars of Europe had no parallel in India, because the State was not defined in terms of "tribal" loyalty to a single religion, culture, or ideology. In the absence of an ideological identity, the State was seen as a structure for the maintenance of power and was developed in terms of realistic measures to maintain power against both external and internal threats. These political forms may at times seem amoral to outside observers, but they were consciously designed that way. Neither State nor society were to be seen as more than an ark of stability that provided protection against chaos and a platform for the individual's quest of salvation.[49]

Since time immemorial Hindu philosophy has embraced the idea of harmony and fraternity among all human beings and equality of all human souls.[50] As pointed out by Pratima Bowes,[51] there is a verse in the *Atharva Veda* (VII.52) which suggests that *Vedic* scholars meant to include people other than themselves in their thoughts because in their opinion the divine spirit within the strangers and themselves was the same:[52]

> Let us have concord with our own people, and concord with people who are strangers to us; Asvins, create between us and the strangers a unity of hearts. May we unite in our minds, unite in our purposes, and not fight against the divine spirit within us. Let not the battle-cry rise amidst many slain, nor the arrows of the War-God fall with the break of day.[53]

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47. The Author's own interpretation of the concept of *dharma*.

48. EYFFINGER, *supra* note 36, at 204-05.

49. YOUNGER, *supra* note 44, at 45.

50. *See infra* text accompanying note 109.

51. Pratima Bowes was a Professor at Shri Shikshayatan College, Calcutta, India in 1958 and a Lecturer in Philosophy at the University of Sussex in 1971. Bowes' publications include: THE CONCEPT OF MORALITY (1959); CONSCIOUSNESS AND FREEDOM: THREE VIEWS (1971).

52. *See* BOWES, *supra* note 37, at 39.

53. HYMNS FROM THE VEDAS 205 (Abinash Chandra Bose trans., 1966).

The content of Hindu scholastic teaching to this day includes the very message of universalism contained in the *Vedas* written at least 3000 years ago.[54] The Brahmins[55] since time immemorial have been required to begin their day by chanting the prayers from the *Vedas*, which basically state that God lives in the heart of each man.[56] In addition, the *Vedas* command the Brahmins to strive by their deed, thought, and speech for the achievement of the well-being of all living things. The following two verses from the *Yajurveda* can be cited as examples:

> May peace prevail in the sky, may peace prevail in Outer Space; May peace be on the earth, and may peace be in waters; May peace be in plants and may peace be in the whole environment; May peace be in the universe and in all things; and may that peace come to me!
>
> O Strong One, make me strong. May all beings look on me with the eye of friend! May I look on all beings with the eye of friend! May we look on one another with the eye of friend![57]

A systematic attempt to codify the scattered rules of public and private Hindu law was made by a sage called Manu in approximately 880 B.C.[58] Although other sages such as Narada and Yagyabalkya have also presented their treatises of Hindu law, the so-called Code of Manu or *Manusmriti*[59] is perhaps the most comprehensive and widely-accepted code of both private and public Hindu law. Because all the *smritis* were composed no later than the second or third century B.C., they reflect the Hindu tradition and practice of that time. However, *smritis* such as the *Manusmriti*, *Yagyabalkyasmriti*, and *Naradasmriti* still appear to influence modern legislators in predominantly Hindu States such as India and Nepal when enacting laws governing relations between individuals as well as relations between individuals and the State.[60] This is because in spite of several attempts made by personalities such as Sankaracharya[61] to modernize and harmonize tenets of Hinduism with the changing world, no comprehensive and cohesive modern

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54. *See* THE TIMES ATLAS, *supra* note 23, at 16-17.

55. *Brahmins* are the representatives of the Veda, the priestly caste or priesthood which is the first caste. *See* PAUL DEUSSEN, SIXTY UPANISADS OF THE VEDA 414, 956 (1980).

56. The verses read: "I take refuge in Ric, the word; I take refuge in Yajus, the mind; I take refuge in Saman, the breath; I take refuge in sight and hearing . . . [Therefore,] Earth, Ether, Heaven! The adorable glory of Savitar, the God of Intellect, we contemplate; May he arouse our intellect." HYMNS FROM THE VEDAS, *supra* note 53, at 212-13 (*Yajurveda* 36.1,3).

57. *Id.* at 216-17 (*Yajurveda* 36.17-18).

58. *See generally* THE LAWS OF MANU (George Buhler trans., 1886).

59. *See id.*

60. *See generally* MINISTRY OF LAW & JUSTICE, THE PROVISIONS OF THE NAPOLEONIC-STYLE CIVIL CODE (THE MULUKI AIN) OF NEPAL (1990).

61. Sankaracharya's publications include: THE BRHADARANYAA UPANISAD (1950); THE UPANISHADS (1951); EIGHT UPANISADS (1977); BRAHMA-SUKRA SHANKARA-BHASHYA (1960); ATMA BODHA (KNOWLEDGE OF THE SELF) OF SRI SANKARACHARYA (1971); THE BHAGAVAD GITA (1977); BRAHA-SUTRAS (1978).

work of general acceptance has come into existence in Hinduism. Thus, when it comes to deducing rules of Hindu law on any subject, one has to refer to the *smritis* and other treatises composed or written more than 2000 years ago.

Another treatise of considerable significance is Kautilya's *Arthasastra* completed around the fourth century B.C.[62] Because Kautilya was Chandragupta Maurya's[63] Chancellor, *Arthasastra* deals mainly with the art of governance of a kingdom by a king. It contains detailed rules of government and administration.[64] According to Alexandrowicz:

> *Arthasastra* constitutes a divorce of politics (internal and external) from moral philosophy and creates a dichotomy typical of Brahmin learning which contrasted sharply with the Buddhist concept of the supremacy of moral law over and above politics. In terms of European philosophy it might be comparable with the efforts of those theologians and lawyers who tried to extricate the *jus gentium* from the grip of theology.[65]

Alexandrowicz goes on to state that

> [s]overeignty is vested in the ruler (dynasty); but his position within the State is of a peculiar nature, for he is part and parcel of the caste system (*varna*), a social structure of divine origin based on a hereditary division of social functions. The remarkable feature of this system is the separation of the religious function from political power. The first is exercised by the brahmans, the highest caste, while the second is vested in the rulers' or warriors' caste (*Ksatriyas*). A logical consequence of this separation of power was the secularisation of the royal function in the hands of the *Ksatriyas* and this led further to a secular concept of the law of inter-sovereign conduct, a development quite different from that in Europe at a much later date (Middle Ages).[66]

This is indeed the origin of the secular policy of modern India, a country with the largest Hindu and third-largest Muslim population in the world.[67] Thus, secularism in the conduct of the domestic affairs of the State, universalism in human approaches to the outside world, and adherence to the principle of peaceful co-existence when dealing with foreign powers of different faiths and beliefs, are some of the key elements deeply rooted in ancient Hindu thinking. Alexandrowicz writes that the trend of secularization introduced by Kautilya, and supported by the mutuality of interests arising out of the East Indian trade, "precipitated the breaking down of barriers and counteracted the prohibition of dealings with 'infidels,' which resulted

62. *See Arthasastra, supra* note 27.
63. *See* discussion *supra* note 23.
64. *See Arthasastra, supra* note 27, at 42-91.
65. Alexandrowicz, *supra* note 22, at 304.
66. *Id.* at 305.
67. *See generally* PRANAY GUPTE, INDIA: THE CHALLENGES OF CHANGE (1989).

in the protracted religious conflicts in the Christian and Islamic worlds."[68] Indeed, evidence suggests that even Muslim emperors of India (i.e., Emperor Akbar[69] onwards, including Jahangir[70] and Shah Jahan[71]) came to terms with the Hindu policy of co-existence, which contributed to the decline of the *jihad* ideology,[72] not only in India, but also in the Ottoman Empire.

II. HUMAN RIGHTS AND THE MAJOR CIVILIZATIONS OF THE WORLD

The proposition that human rights are universal because all major civilizations, either ancient or modern, embrace the basic elements of the human rights concept is supported by Shelton:

> An overview of international law reveals examples of individuals being afforded rights by treaty, including asylum and religious liberty, during early historical periods and in all regions of the world. Similarly, international law early imposed duties directly on individuals, reflected in prohibitions on piracy and war crimes and later on the slave trade . . . . Human rights law is linked to the evolution of international law in general. Both probably have their origins in the relations and conflicts, which developed between the first human societies, which modern scholarship indicates emerged in Africa perhaps a million years ago . . . . However, as we have no record of the law and customs of these early societies, we must turn to the historical period of antiquity for the first expressions of international law where we may seek out concern for human rights.[73]

Indeed, if we look at the practices of all major ancient civilizations we find that every one of them had a system designed to protect the individual's safety and dignity both in times of war and peace.[74] After outlining a brief survey of human rights history in State practice, Shelton rightly concludes that "[d]ifferent cultures and different legal systems vary in the priorities and emphases given to particular rights, [and] vary according to traditions and perceived threats. Yet there exist today commonly shared legal norms

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68. Alexandrowicz, *supra* note 22, at 319.

69. The accession of Emperor Akbar took place in 1556. *See generally* THEORDORE DE BRAY, SOURCES OF INDIAN TRADITION (1958). The Mughal Conquest of Chitor, Gujarat, took place in 1569-86, and of Bengal, Kashmir, in 1569-1586. *See id.* The Promulgation of Din-I-Ilahi, Akbar's "Divine Faith" took place in 1582. *See id.*

70. Reign of Jahangir was from 1605-1627. *See id.*

71. Reign of Shah Jahan was from 1627-1658. *See id.*

72. In Islam, the "jihad" is waged against the enemies of God. The Muslims refer to the "jihad" as a holy war. *See generally* JOHN H. HANSON, JIHAD AND MUSLIM AUTHORITY IN WEST AFRICA (1996); GERALD JAMES LARSON, INDIA'S AGONY OVER RELIGION 126 (1995).

73. Shelton, *supra* note 20.

74. For the practices of African, Asian and Latin American civilizations see W. Preiser, *History of the Law of Nations: Basic Questions and Principles, in* ENCYCLOPEDIA OF INTERNATIONAL LAW 126, 126-60 (1986); VISWANATHA, INTERNATIONAL LAW IN ANCIENT INDIA (1925); David J. Bederman, *Religion and the Sources of International Law in Antiquity, in* THE INFLUENCE OF RELIGION ON THE DEVELOPMENT OF INTERNATIONAL LAW 3-29 (Mark W. Janis ed., 1991).

accepted and recognised by all States."[75]

Not only Western States, but also other States of other parts of the world had their own way of ensuring an orderly and civilized society in the absence of which there could be no State or society. For instance, the right to life, perhaps the most important right of any human being, is protected in all major Asian civilizations. The Buddhist and Gandhian philosophies are based on the principle of non-violence and are deeply rooted in ancient Hindu thinking.[76] The very notion of non-violence is designed to protect the person of every human being. Every human being had some measure of protection under the law of the State of their domicile. The modern concept of human rights is an expansion, consolidation, codification, and crystallization of that State practice. Human rights were not invented overnight out of nowhere. They are the products of history. They have their roots in the practice of States and societies the world over. When they found their way into national codification, they also found their way into treaties and ultimately into the body of the law of nations.

While some human rights norms are new and part of a progressive development of human rights standards, others derive in part from the law of antiquity. Some also derive from religious books and texts of all the great religions, which have certain teachings in common for an orderly national and international society. Therefore, it is incorrect to say that human rights are the product of Western Christian civilization alone; human rights are universal because certain norms of the modern concept of human rights are to be found universally. They are universal because every human being living in every corner of the world needs the protection of such rights, and every civilized society in every orderly and civilized country has recognized them as such since time immemorial.

There is a rather narrow or mistaken belief on the part of many writers, both of Western[77] and non-Western origin,[78] who confine themselves when examining the history of the law of nations to the developments that have taken place since the nineteenth century. These writers argue that modern international law is a creation of Western Christian civilization. The conclusion one arrives at depends on how far back in history one goes in unearthing the practices of States. If the examination is limited to the nineteenth century and onwards, then the conclusion would be based on a rather narrow Euro-centric perception of international law. However, if the inquiry goes farther back in history, taking into account all evidence available in writing since the days of thriving ancient civilizations of other regions of the world, then the conclusion is a broader global one based on a universal outlook of the history of international law.

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75. Shelton, *supra* note 20.

76. *See generally* BHIKHU PAREKH, GANDHI (1997).

77. *See generally* A. NUSSBAUM, A CONCISE HISTORY OF THE LAW OF NATIONS (1954).

78. *See* OBED Y. ASAMOAH, THE LEGAL SIGNIFICANCE OF THE DECLARATIONS OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS 1 (1966).

In fact, while "universalism was the life-breath of ancient Indian thinking," most of the Western thinking within Christendom believed in a discriminatory concept of international law until as late as the first half of the twentieth century.[79] Western thinking within Christendom believed that "the rules of civilised conduct among nations applied to States within Christendom alone and that no rules of a binding nature could govern the relations of a Christian State with a non-Christian State."[80] As Nagendra Singh[81] observes:

> A survey of the ancient history of India reveals that no distinction between believers and non-believers was recognised in regard to inter-State conduct. . . . This universality of application which is a distinct Indian contribution to the development of international law dates back two thousand years. It was perhaps the outcome of universalism of thought and it gave birth to several basic principles of international law, some of which, originating from India, took centuries to evolve before they could be universally recognised in the world.[82]

Indeed, it was Ashoka, the great Indian king, who, after the Kanlings War (261 B.C.), proclaimed universal peace and respect for the rights of others in the following words: "His Sacred Majesty Ashoka desires that all living beings should have security of existence for which men should exercise self-control and not to take by force what others possess. All should enjoy peace of mind by co-existence and not by mutual interference and recrimination."[83]

Perhaps it was this universalist culture of ancient India and Southeast Asia that made it possible for European traders to establish a foothold on equal terms in that region of the world. These traders, who later represented the States they came from, entered into numerous treaty relations with the States of South and Southeast Asia as equal partners benefiting from that region's well-developed system of trade and commerce. During these early years there was no issue of inferior and superior civilization. Inter-State commercial relations were even free of religious bias. According to Alexandrowicz, "[t]he Hindu world had several centuries before the Christian era developed a machinery of inter-state negotiation which reflected the high level of political organisation of these States."[84]

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79. ENCYCLOPEDIA OF INTERNATIONAL LAW 237, 239 (Nagendra Singh ed., 1984).

80. *Id.*

81. Nagendra Singh has held many positions, including President of the International Court of Justice in 1985-1988, Fellow of the British Academy, Fellow of St. John's College in Cambridge, and President of the World Association of Judges. Singh's publications include: INTERNATIONAL CONVENTIONS OF MERCHANT SHIPPING (1963); THE DEFENSE MECHANISM OF THE MODERN STATE (1964); SHIPOWNER (1967); NUCLEAR WEAPONS AND CONTEMPORARY INTERNATIONAL LAW (1989).

82. *See* ENCYCLOPEDIA OF INTERNATIONAL LAW, *supra* note 79, at 239.

83. *See id.* at 241.

84. C.H. Alexandrowicz, *The Afro-Asian World and the Law of Nations*, 123 RECUEIL DES COURS 207, 207 (1968).

It was Hugo Grotius, the famous Dutch jurist, who attempted to secularize the law of nations in the West through his famous monographs, keeping in tune with the reality of his contemporary world.[85] However, when the European nations succeeded in colonizing States in Asia and Africa, many Europeans forgot that they had previous dealings with these territories on an equal footing, and began asserting their supremacy over the people within their colonial domination. Moreover, the people under colonial domination were now termed "backward."[86] Thereafter, international law began to be perceived as something European or Western in character because most colonial powers dealing with faraway territories were European.[87] This perception of international law ignores the history of the law of nations prior to colonization. When the colonial territories lost their political independence they were treated as never having existed in the past. However, there are writers who exposed this contradiction. For instance, J.C. Van Leur, a prominent Dutch historian, exposed, as described by Alexandrowicz, "the fallacy of projecting the present into the past and interpreting history by *ex post facto* standards."[88] Thus, international law was universal prior to colonization and has once again become universal after decolonization.

History has come full circle. Hugo Grotius and his contemporary writers had a broad global outlook as they were living in an era of global interaction among equal trading nations of the world, both Western and non-Western. Grotius regarded international law as universal when he published his great monographs in the beginning of the seventeenth century.[89] However, the publicists of later date, who were heavily influenced by colonial State practice, have sought to project nineteenth-century international law backwards into the past, and have claimed that international law is the product of Western Christian civilization. Therefore, the perception of human rights as the outcome of Western civilization is a historical contradiction. Those intellectuals of the Third World who argue that the current concept of human rights is basically Western in character undermine their own glorious history prior to colonization, as well as the contribution made by their own civilizations to the development of international law.

III. ACCOMMODATION OF THE ASPIRATIONS OF THE DEVELOPING COUNTRIES

It is true that certain people of Western origin were instrumental in developing the modern concept of human rights through the mechanism of the

85. *See* HEDLEY BULL ET AL., HUGO GROTIUS AND INTERNATIONAL RELATIONS (1992); OPINIONS OF GROTUIS AS CONTAINED IN THE HOLLANDSCHE CONSULTATIEN EN ADIJSEN (D.P. de Bruyn trans., 1894).

86. *See* SUBEDI, *supra* note 18, at 67-70.

87. *See id.*

88. *See* J.C. VAN LEUR, INDONESIAN TRADE AND SOCIETY 125 (1955).

89. *See supra* note 85 and accompanying text.

UN during its early years. This resulted in the adoption of the UDHR on December 10, 1948 by the General Assembly of the UN.[90] However, these Westerners were not the only persons who helped develop the modern concept of human rights; nor did they ever claim that through the UDHR they were advancing the values of Western Christian civilization. They were decent people concerned about the future of humanity and the betterment of the post-World War II world. They could have come from any part of the world because history tells us that such decent people with a vision lived not only in the West, but also in other parts of the world. Moreover, in the small team of people who are believed to have played a leading role in drafting the UDHR, were people not only from the West, but also from China, Chile, and Lebanon.[91]

It is also true that at the time of the adoption of the UDHR, the UN and the General Assembly were dominated by Western States. As a result, the General Assembly passed many resolutions during this time to suit the interests of Western States.[92] However, when the decolonization process accelerated, Western States were no longer the majority in the General Assembly.[93] In fact, most of the international human rights law that exists today was formed after the developing countries gained a majority in the General Assembly.[94]

Many declarations and resolutions of the UN adopted since the late 1960s express the aspirations of developing countries. That is one reason why it is inaccurate to say that international human rights law is basically an imposition of Western values on other States, or that there are human rights concepts considered to be "Western," "Eastern," or "African." Human rights are international, universal, and represent the aspirations of humanity as a whole.

The record of Asian States' ratification of major international human

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90. *See The Universal Declaration of Human Rights*, U.N. Doc. A/810(III) (1948), *reprinted in* BASIC DOCUMENTS IN INTERNATIONAL LAW 255 (Ian Brownlie ed., 4th ed. 1995). *See generally* NEHEMIAH ROBINSON, THE UNIVERSAL DECLARATION OF HUMAN RIGHTS (1958); THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: A COMMENTARY (Asbjorn Eide ed., 1992); J.C. SALCEDO, HUMAN RIGHTS (1948); ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW 922-26 (1995); Karl Joseph Partsch, *Human Rights in General, in* 1 UNITED NATIONS LAW: POLICIES AND PRACTICE 603-11 (Rudiger Wolfrum ed., 1995).

91. Rene Cassin of France, John Humphrey of Canada, Eleanor Roosevelt of the United States, Hernan Santa Cruz of Chile, Charles Malik of Lebanon, P. C. Chang of China, and Fernand Dehousse of Belgium have been credited for playing the leading role in preparing the draft Universal Declaration of Human Rights of 1948.

92. The Uniting for Peace Resolution of the General Assembly of 1950 is an example.

93. By about the mid-1960s, the developing countries had numerical majority in the UN General Assembly. *See generally* Virginia A. Leary, *The Effect of Western Perspectives on International Human Rights, in* HUMAN RIGHTS IN AFRICA: CROSS-CULTURAL PERSPECTIVES 15-30 (Abdullahi Ahmed An-Na'im & Francis M. Deng eds., 1990).

94. Examples are the 1966 Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights. *See* BASIC DOCUMENTS ON HUMAN RIGHTS 114-43 (Ian Brownlie ed., 3d ed. 1992).

rights instruments is less encouraging than those of States from other regions of the world.[95] However, the Bangkok Declaration demonstrates that almost all Asian States express their support for all major international human rights instruments.[96] Of course, compared to other regional declarations adopted prior to the Vienna Conference, the Bangkok Declaration seems to be the least progressive because of a number of qualifications attached to the realization of international human rights standards.[97] However, that does not mean that Asian States have a human rights agenda different from the international agenda. Rather than focus on civil and political rights, Asian States have put a great deal of emphasis on economic and social rights. Furthermore, they have criticized Western States for their double standards and for using human rights as a condition for extending development assistance.[98]

In short, the rapidly growing economies of Asia have let Western countries know that they are no longer prepared to be told by the West what they should or should not do within their territory. It is natural that when nations become more prosperous and more powerful, they try to find their own independent role and place in the galaxy of nations. They are no longer prepared to tolerate the interventionist attitude of the West, or accept the imposition of imprudent and perhaps harmful social and economic policies driven by Western countries, whether through direct or indirect means. During the Cold War, human rights issues were used by Western and Eastern bloc countries as political weapons against each other. In a way, Asian States are trying to do the same with the West by according prominence to rather vague and perhaps ambitious notions, such as the right to development, which they say is a "universal and inalienable right and an integral part of fundamental human rights."[99]

However, they do not appear to be rejecting the universality of human rights. Strictly speaking, they cannot turn the clock back. In other words, Asian States have long participated in the process that has made human rights universal, and no turning back is possible. Many of the provisions of international human rights instruments can now be regarded as part of customary rules, binding on all States. Let us take the provisions of the UDHR as an example. It is a widely-held view that these provisions have now become part of customary international law. Indeed, the former Secretary-General of the UN, Javier Perez de Cuellar, said in 1988 that "the gradual and growing acceptance [of the UDHR] and the evidence of general practice by the international community have led to the conclusion that the Declaration constitutes binding law as international custom, in accordance with Ar-

95. For a comparative chart of ratification of major international human rights instruments by States see 13 NETH. Q. HUM. RTS. 341-55 (1995).

96. *See Bangkok Declaration on Human Rights, supra* note 6.

97. *See id.*

98. *See id.*

99. *See id.*

ticle 38 of the Statute of the International Court of Justice."[100] Similarly, through widespread acceptance by States of the 1966 Covenants on Civil and Political Rights, and on Economic, Social and Cultural Rights, most of their provisions could now be considered part of customary international law.[101]

These instruments not only represent the values that the West stands for, but also the values the entire human race stands for. Many of the international instruments on human rights were adopted at the initiative of developing countries, including Asian States. When the international community calls upon Asian States to fulfill their obligations under international human rights instruments they cannot be dismissed as Western attempts to impose their will on Asian States. The provisions of these international instruments represent the opinion of the international community from which no State, whether an Asian or non-Asian State, should derogate. They are universal rights and should be respected universally.

IV. DIFFERENCE BETWEEN WESTERN VALUES AND HUMAN RIGHTS

Every society, whether Western or Oriental, has its virtues as well as its vices. The history of the West is not as sacrosanct or completely glorious as writers like Donnelly would like us to believe.[102] Like the history of other civilizations, the history of the West is also replete with all types of uncivilized events. In fact, it was Europe that provided a fertile ground for a variety of evil ideologies, including nazism,[103] fascism,[104] racism,[105] apartheid,[106]

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100. P.H. KOOIJMANS, HUMAN RIGHTS, UNIVERSAL VALUES? 9 (1994) (quoting Dies Natalis' address at the 41st Anniversary of the Institute of Social Studies on October 12, 1993).

101. *See The International Covenant on Civil and Political Rights, reprinted in* BASIC DOCUMENTS IN INTERNATIONAL LAW 262 (Ian Brownlie ed., 4th ed. 1995); *The International Covenant on Economic, Social and Cultural Rights, reprinted in* BASIC DOCUMENTS IN INTERNATIONAL LAW, *supra* at 270; *see also* E.W. Vierdag, *Some Remarks About Special Features of Human Rights Treaties,* NETH. Y.B. INT'L L. 25, 119-42 (1994); G.C. Jonathan, *Human Rights Covenants, in* ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW 915-22 (1995).

102. *See* Donnelly, *supra* note 17.

103. Nazism was the policy of Adolf Hitler's Germany. It was based, *inter alia*, on racial hatred against the Jews. The word "Nazi" stands for the National Socialist German Workers Party which was led by Hitler. *See* J.M. ROBERTS, THE PENGUIN HISTORY OF THE WORLD 50 (1987).

104. Hitler of Germany, Mussolini of Italy, and Franco of Spain pursued a policy which came to be known as a fascism. *See id.*

105. Racism is basically a European "disease" that grew over the centuries following various phases of Crusades. *See* Brian Moynahan, *A Licence to Kill, in* THE SUNDAY TIMES PAGES FROM HISTORY: THE TYRANT'S CHARTER 6-7 (1999). It was Pope Urban II who preached the first crusade in 1095. *See id.* He told his audience of churchmen, knights, and commoners that the Turks, "despicable degenerate and enslaved by demons," had overrun the Holy Land and were massacring Eastern Christians. *Id.* That is why he called for all those "resplendent in the name of Christ" to hasten to exterminate this vile race from our lands" and to liberate Jerusalem. *Id.*

106. Apartheid is a Dutch word. The policy of apartheid was practiced by European settlers and colonizers in South Africa against the native people of African origin until the be-

and slavery.[107] Many of the horrendous atrocities committed against the people of Asia, Africa, and other parts of the world are attributable to European colonizers and settlers. When people began to talk about human rights in Europe they initially meant rights for people of European origin only. The idea of a Europe-wide protection of human rights did not have the intention of including people of non-European origin. The idea of human rights for all in many Western societies came to being by default rather than by design. It was something forced upon them by the situation.

The Western concept of equality and freedom meant initially freedom and equality only for men of their own societies. In fact, the Magna Carta itself was adopted to grant certain rights to the feudal lords of society rather than to the people at large. Although it has played a catalyst role in the promotion of human rights, and the rule of law and democracy worldwide, it has also been referred to as the "baron's charter."[108] Women did not have equal rights in many Western societies until a few decades ago. They had to struggle hard to secure voting rights in all leading Western societies. In contrast, men and women have always been treated equally in ancient Hindu scriptures. With or without Western influence, it would have been unthinkable in India and Nepal not to give voting rights to women when the concept of elections was introduced.[109] The current practice of the Hindu State of Nepal and the predominantly Hindu-dominated State of India (both of them being full democracies by modern standards), demonstrates that Hinduism is capable of reforming itself and incorporating diversity and pluralism.[110]

It should be borne in mind that Hindu practice and philosophy have not gone hand in hand since the corruption of the Hindu scriptures by the privileged class, or since the caste system began in many Hindu societies many years ago.[111] The caste system itself is by and large a product of the post-

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ginning of the 1990s.

107. Slavery was an extreme form of inhumane and degrading treatment of people of Afro-Caribbean origin practiced in many European and North American societies. The people of Afro-Caribbean origin were forced out of their countries and brought to work as free labor, and sold in markets as if they were cattle. It was the hard, long campaign of William Wilberforce and his fellow campaigners that led to the abolition of slavery in England. There is a museum devoted to the work of William Wilberforce in Kingston-upon-Hull, England. The museum displays the documents relating to the campaign. *See* IAN RUTHERFORD, HISTORY OF WILBERFORCE HOUSE (pamphlet, on file with Hull City Museums and Art Galleries, Kingston Upon Hull City Council).

108. The barons of the time had forced King John to sign the Magna Carta in order to enhance their own interests. *See generally Power to the People: Magna Carta, in* THE SUNDAY TIMES PAGES FROM HISTORY (1999).

109. Even male Hindu Gods are seldom worshipped without their female counterparts. A male God is accompanied by a female Goddess on an equal footing. For instance, the name of the most widely worshipped Hindu God Krishna is always preceded by his wife, Goddess Radha's name, and this God's name is known and pronounced collectively as Radha-Krishna.

110. *See* Surya P. Subedi, *The Journey From an Oligarchy to a Parliamentary Democracy: A Case Study of Parliament in Nepal*, 4 J. LEGIS. STUD. 163, 163-182 (1998).

111. The modern day caste system is an example of such corruption of the Hindu scriptures. The caste system does not represent true Hindu religious values. The caste system has

Upanishad period. The *Vedanta Darshan*[112] (the *Vedanta* philosophy), a powerful stream of Hindu political thinking has never accepted the division of human beings in different castes. According to this philosophy, the soul in every human being is the same, therefore, all human beings should be treated as such.[113] There were a number of learned women scholars, such as Gargi and Maitrayi, who commanded a high degree of intellectual influence in ancient India. It was only in the later years that women were forbidden from reading the *Vedas* and were gradually relegated to subservient status in practice. Pointing to the vices of modern Hindu societies of India and Nepal, where the male members of the family and society have hitherto dominated every aspect of social and family life, people are tempted to claim that human rights are not recognized in Hinduism.

Similarly, by pointing to the vices of Western society, certain people of other regions argue that they do not want "Western" democracy in their country. Indeed, today's Western societies suffer from a rapid decay in morality and an unprecedented level of violent crime, drug-related problems, vagrancy, vandalism, etc.[114] At the same time, the governments of these countries are not able to do much about it. Partly because an extreme form of individualism has taken over several aspects of social life, and the "I-want-it-all" consumer culture has become the order of the day. As a result, many Western governments are waking up to the fact that they have let things go too far. Yet, the society that has hitherto allowed an extreme form of individualism is not easily prepared to take on the role that the government is asking them to take. Other societies, well aware of this state of affairs, argue that they do not wish to repeat the mistakes of the West by according an unfettered freedom to individuals of their societies who have not yet abandoned many virtues such as family values. Here is where the authoritarians creep in and exploit these sentiments to undermine international human rights standards.

The mistake many people make is to regard the vices of Western societies as part of the human rights package, and attribute the failures of West-

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to do with the later-day division of labor in society. Those who were given menial work were later relegated to the so-called 'untouchables' because of the nature of the unhygienic work that they were required to do. Equally corrupt is the practice of unequal relations between men and women. Contrary to popular perception, this is not something that is sanctioned by ancient Hindu religious scriptures.

112. *Vedanta darshan* or philosophy is based on the *Upanishads*. All 108 *Upanishads* are said to have been composed after the *Vedas* were composed (c. 7th or 8th centuries B.C.) and contain the central aim and meaning of the teaching of the four *Vedas*.

113. According to the *Isa Upanishad*, one should know that "all this, whatever moves in this moving world, is enveloped by God . . . [A]ll things which move and change derive their significance from their relation to the one eternal truth." *See* THE PRINCIPAL UPANISHADS 567 (S. Radhakrishan trans., 1953). In other words, the *Upanishad* states that there should be no division among human beings because God inhabits in each of us. *See id.*

114. *See generally* Martin Bright, *Most Moral Village Values Blair's Crusade: One Community's Bid to Stop Their Clean Streets Becoming Mean Streets Would Delight the PM*, OBSERVER (London), Sept. 12, 1999, at 16, *available in* 1999 WL 23553870.

ern governments and societies to the international human rights regime. Aung San Suu Kyi, the Nobel Peace Prize laureate, correctly points out that "[i]t is insinuated that some of the worst ills of Western society are the result of democracy, which is seen as the progenitor of unbridled freedom and selfish individualism."[115] However, she concludes that the worst ills of Western society "can be traced not to the democratic legacy[,] but to the demands of modern materialism" that has resulted in a society "where cultural and human values are set aside and money values reign supreme."[116]

No human rights instrument requires any State to follow the Western method of governance. Moreover, there is not a single type of clearly definable uniform democracy called "Western democracy." This is because the Americans, British, Danish, Dutch, French, Germans, and Swiss all have their own system of government. None of the international treaties on human rights signify that other States should subscribe to any of these Western systems of government. There could be as many forms of democratic governance as there are States. Indeed, addressing the Vienna Conference, former Secretary-General of the UN, Boutros Boutros-Ghali, rightly stated that

> democracy is the private domain of no one. It can and ought to be assimilated by all cultures. It can take many forms in order to accommodate local realities more effectively. Democracy is not a model to copy from certain States, but a goal to be achieved by all peoples![117]

What is required by international human rights law is that people in every country be sufficiently empowered to freely elect representatives who could enact laws for their country according to the wishes of the electorate. In other words, the people of any given country should be able to participate in the governance of their own country. In fact, democracy is no more than a set of rules made for the people by the representatives of the people. What the international human rights regime demands of a State is a system under which its citizens are able to freely participate in the governance of their country, and the rules laid by the representatives of the electorate are rigorously respected. That is one reason why democracy is often equated with the rule of law.

CONCLUSION

Every community, society, and nation is different from others and has its own value system. For this reason, there can be no denying that Asian countries have their own values, and it is quite natural that they wish to protect their values. Other States should respect this. However, so far as the re-

115. Aung San Suu Kyi, *The Culture of Democracy and Human Rights Is Universal*, INT'L HERALD TRIB., Dec. 7, 1994, at 4, *available in* 1994 WL 9796191.

116. *Id.*

117. UNITED NATIONS DEPARTMENT OF PUBLIC INFORMATION, WORLD CONFERENCE ON HUMAN RIGHTS 18 (1993).

spect for fundamental principles of human rights is concerned, it is as much deeply rooted in Asian culture as it is in Western culture. Not everything that Western politicians claim to be human rights for their own political gains are universal human rights. These "rights" may be considered human rights in their countries, but not in other societies. For instance, the Netherlands may very well recognize a marriage between two males or two females as being as valid a marriage as between two individuals of the opposite sex. However, other nations do not have to follow suit if they are not prepared to do so, or if it is not fitting in their value system.

Not every form of extreme individualism and excessive liberalism is part and parcel of universal human rights. As in other areas of human activity, there can be regional as well as national variations when it comes to implementing new rights of such character. Asian States have not, and do not have to, make a wholesale subscription of every Western value or ideology as and when it appears, even if it is described in the rights language. Asian States have their own value system and culture that is by and large consistent with the fundamental principles of human rights found in the UDHR and the two 1966 Covenants on Human Rights. That is one reason why it can be said that, legally and strictly speaking, there is no concept called "Asian democracy" or "Western democracy." Democracy is universal. It means the respect for the rule of law, whether it is in an Asian country, a Western European country, or a North American country.

Of course, there is some measure of truth in the assertion that Western States try to impose their system, whether political or economic, on other societies. They do this through direct means such as trade and aid, or indirect means such as the monetary and economic policies imposed through the financial arms of the West—the World Bank and the International Monetary Fund. This is, and has always been, part of the political game played by the major powers to enhance their position at the world stage because it is economic dominance that they want to achieve through the imposition of their system on weaker societies. For instance, Western countries that sell weapons to dictators of many Third World countries, while at the same time ignoring their human rights violations, also preach their human rights values to other countries, or use the human rights agenda to secure economic advantage. The U.S. policy towards China is an example. [118]

However, that does not mean that Asian, African, or other societies should not respect the universality of human rights nor deny their people the rights they deserve as human beings, and the rights they need for the pursuit of their happiness. What is understandable is the position of certain Asian political leaders who argue that their state of economic development does not yet make it possible for them to implement all norms of human rights at a pace desired by the people of the country or the international community. For instance, Indonesian Foreign Minister Ali Alatas stated in an interview

118. *See* Houben, *supra* note 13, at 1-18.

during the Vienna Conference that "[w]e [developing countries of Asia] don't dispute the universality of human rights. What we do say, however, is that the implementation of human rights should be in the national context."[119]

If that is what is meant by the "Asian" concept of human rights, one can agree with this opinion because it is the duty of the State to promote and protect the rights of its citizens. If the State itself is not yet in a position to fully realize the rights of its subjects because of its state of economic development, but is nevertheless committed to respecting the universality of human rights, then that State has a reasonable case for not implementing human rights in their entirety for the time being. That is one reason why the Vienna Conference adopted not only a Declaration on Human Rights, but also a Program of Action designed to achieve the objectives of the Declaration in the years to come.[120]

The Vienna Declaration and Program of Action do not only speak of civil and political rights, but also give a significant importance to social, economic, and cultural rights, including the right to development.[121] If the States of Asia dispute the universality of human rights they would be undermining not only the universality of civil and political rights, but also the universality of economic, social, and cultural rights which they cherish. The Vienna Declaration, which was adopted by consensus, states that "[a]ll human rights are universal, indivisible and interdependent and interrelated."[122] Because all 171 States participating in the Vienna Conference, including Asian States, supported this position, it would be against the well-established international law principle of good faith for any State to dispute the universality of human rights.

That is not to say that all rights recognized in a Western society are human rights. Only those rights that have been more or less universally accepted, and that have been recognized by the international community as part and parcel of human rights, are in fact human rights. Asian States are under no obligation to import every Western value, even if described in the rights language of the West. However, what they should not do is deny the universality of those rights that they themselves have recognized as human rights through treaties and declarations, and that are deeply rooted in their own culture. As discussed previously, some of the universal values of hu-

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119. *There Is a Difference in Opinion: Interview,* TERRA VIVA, June 18, 1993, at 6. Indonesian Foreign Minister Ali Alatas expressed more or less the same opinion in his speech to the World Conference on Human Rights. *See id.;* U.N. Doc. A/48/214 (1993).

120. *See Vienna Declaration and Program of Action of the World Conference on Human Rights,* U.N. Doc. A/CONF.157/23 (1993).

121. The 1993 Vienna Human Rights Declaration confirms that the right to development is a "universal and inalienable right and an integral part of fundamental human rights"; however, it continues to state that "[w]hile development facilitates the enjoyment of all human rights, the lack of development may not be invoked to justify the abridgement of internationally recognized human rights." *Id.*

122. *Id.*

man beings found in certain Asian cultures go much further back in history than do the values of the West.

The UDHR itself may be the idea of the leading visionaries from the West, but many of the values embodied in it are universal. These values existed in many Western and non-Western societies before the adoption of the UDHR in 1948. To maintain that the concept of human rights is a Western concept, or that they were created by the adoption of the UDHR, is to ignore the history and contributions of other civilizations. Such a narrow outlook would undermine rather than strengthen the universality of human rights.