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## **UNIVERSALIZING HUMAN RIGHTS: THE ASEAN WAY**

### **Abstract:**

The Asian Values debate sparked by highly influential former Prime Ministers Mahathir bin Mohammad of Malaysia and Lee Kwan Yew of Singapore in the 1980's and 1990's sought to challenge and perhaps discredit the dominant "Western" human rights discourse by providing a viable alternative to western universalism steeped in cultural relativism and regional particularism. The literature surrounding the Asian Values debate generally notes its decline in the aftermath of the Asian economic crisis of the late 1990's and takes for granted that this strain of thought is no longer relevant without providing evidence for such a wide ranging claim. Not only have scholars and regional analyst decided to no longer focus on Asian Values but some insiders such as Villanueva have gone so far as to declare Asian Values dead. It is my argument that Asian Values is still present and can be proven by analyzing ASEAN legal texts such as the ASEAN Charter, ASEAN Human Rights Declaration and ASEAN Intergovernmental Commission on Human Rights Terms of Reference as well as internal negotiation dynamics surrounding the AHRD. Some ASEAN states in their internal negotiations surrounding the ASEAN Human Rights Declaration demonstrated a continued discourse of "Asian Values" which while no longer being mainstream is indeed still prevalent and influential in the region.

### **Keywords:**

ASEAN, AICHR, Human Rights Southeast Asia, Asian Values, ASEAN Values, ASEAN Way

**JEL Classification:** F50, N96

## **Introduction**

In November 2012, the Heads of State of ASEAN at its 21<sup>st</sup> ASEAN Summit adopted the ASEAN Human Rights Declaration (ASEAN Secretariat 2012). Commentary surrounding the AHRD as with other recent ASEAN documents (i.e. ASEAN Charter) were highly polarized with civil society groups and NGOs criticizing ASEAN duplicity by adopting a document seen as falling below international standards of acceptability (APWLD 2012, Human Rights Watch 2012, ICJ 2012) and general pragmatism of limitations entailed by the 'ASEAN Way' (common fair among diplomats and scholars) of ASEAN integration (Asplund 2012, Ng 2012a, 2012b, Southwick 2012) alongside views of optimism (American Bar Association 2012). It is my argument that the current AHRD does not break new ground in terms of human rights standards but rather is part and parcel a continuum of past ASEAN behavior stretching back to the 1993 Vienna Declaration on Human Rights. Furthermore, I posit that the AHRD seeks not to reject international human rights standards and norms but use international standards of sovereignty mixed with relativist discourse to constrain and manage structurally, a critical transnational epistemic threat to state authoritarianism and elite order. I will demonstrate my argument by showing a clear line of logic whereby ASEAN states utilize international sovereignty norms embodied in United Nations canon that structurally informs principles of ASEAN as a grouping and by corollary its regional human rights standards. This logic is structurally path dependent upon ASEAN's procedural norms and attempts to confuse universalist human rights discourse by intentionally enjoining relativist notions into regional human rights standards. This paper will first trace ASEAN human rights relativist discourse and reasoning followed by a structural analysis of ASEAN human rights mechanisms and lastly an analysis of ASEAN declarations and legal texts which are designed and constrained by ASEAN's structural features that constrain and attempt to orderly manage the epistemic threat of human rights discourse and groups within the construct of 'reasonable' international standards.

## **Challenges to Human Rights in Southeast Asia: ASEAN Normativity & Structure**

This section will detail ASEAN norms, structure and legal framework in order to demonstrate the structural and social impediments to constructing and instituting binding and universal human rights standards. The "ASEAN Way" denotes a dual faceted modus operandi and constitutive norms that inform members as well as third party states regarding intergovernmental relations in ASEAN's regimes (Acharya 1997, 2001, 2005, Ba 2009, Jones 2011, Stubbs 2008, Nischalke 2002). ASEAN constitutive norms are composed of **regulative** norms consisting of integrity of state sovereignty and independence, no external interference or subversion (TAC Article 10), non-interference in internal affairs and peaceful settlement of disputes (TAC Article 2, 11, 13) and **procedural** norms of consultation and consensus in decision-making process of (Narine 1997: 365, 1999: 360, Sebastian and Lanti 2010: 155). ASEAN's core legal texts - 1967 ASEAN Declaration, 1971 ZOPFAN Declaration and 1976 TAC form the basis of

ASEAN's regime principles and norms. Formalization of ASEAN norms with specific reference to the UN Charter are enshrined in the ASEAN Charter in dual layered legitimacy (ASEAN Charter, Articles: Preamble, 1, 2(a, b, c, d, e, f, j)). An important caveat is that ASEAN regulative norms enshrined in the abovementioned simply reiterate ipso facto regulative norms of global governance found in the UN Charter (Acharya 2001, Jones 2007, UNC Article 2.1, 2.3, 2.4). Bearing this in mind it becomes apparent that ASEAN as a post-colonial/Cold War entity simply coopted the language and internalized wholesale, global norms of regulation for its regional regime thus laying the contextual framework which informs ASEAN conduct and its repertoire concerning regional integrative initiatives.

Taking into context ASEAN's formative period, it can be argued that ASEAN was a mechanism for consolidation of weak states with intramural territorial disputes and internal communist insurgencies. Thus ASEAN in its incipient form as argued by Jones (2009: 14, Jones 2010: 485, Narine 1999: 359) is a regional mechanism to allow breathing space for nominally developmental capitalist conservative regimes to nation-build by the promotion of internal security and stabilization of external affairs. This is evidenced by the words of former statesman Lee Kwan Yew (2000: 369-370) who stated "we needed stability and growth to counter and deny the communists the social and economic conditions for revolutions...While ASEAN's declared objectives were economic, social and cultural, all knew that progress in economic cooperation would be slow. We were banding together more for political objectives, stability and security." Given the exigent nature of security threats internal and external it is not surprising that ASEAN took its organization form. However, the foundations of ASEAN's procedural and regulatory norms have inhibited formal change and are currently being employed to blunt progressive reform and change in ASEAN's human rights regime. Difficulties in altering ASEAN norms have been evidenced since 1998 when then Thai Foreign Minister and former ASEAN Secretary General Surin Pitsuwan attempted a policy shift from non-interference to 'flexible engagement' (Collins 2012: 39, Haacke 1999) and throughout the 2000's with reference to the Burmese junta, however the later within a context of bringing Burma into the ASEAN fold of its status quo and elite serving interest while obviating external intervention (Acharya 2001: 108-115, Jones 2008: 273-274, 2010, 2011a: 15, 2012). Thio (1999) sees ASEAN's structure as one that militates against self-reinforcing triggers and almost wholly dependent on political will of its members. As Leviter (2010) argues this paradox has been aggravated further by the enlargement of ASEAN and interpretation of norms and view towards organizational shifts concerning its old and new member states.

ASEAN's constitutive norms are crucial to understand the resistance to institutional change and inevitable disappointing final drafts which as Leviter (2010) and Volkmann (2008) argue are the result of a difference of understanding concerning non-interference, democracy, human rights and national interests which lead ASEAN to the

lowest common denominator outcomes and weak systems of enforcement. Furthermore, as ASEAN agreements are **soft law** based on relations-oriented dynamics of a social community which lacks binding and enforceable status, such agreements and their derivative institutions, committee's etc. are limited to official level advocacy and advice (Leung 2004, Leviter 2010, Orosa 2012). The problem with ASEAN's structural configuration lay in its constitutive norms which at once strengthen and shield the state with regards to external actor's latent interference while preventing a disparate collection of states from enacting meaningful internal change. This proceeds due to procedural norms of decision-making which were designed for nascent newly independent states in an environment entirely dissimilar from now. Conversely, consistent reference to UN norms imbue ASEAN states with a significant level of arguable legitimacy and maneuvering room as this is indeed the bedrock of international society and order. Thus as late as 2003 ASEAN Secretary General Yong reiterated on the verge of the second Iraq war the fundamental nature of UN norms and principles as focal points of national to regional institutional inflection and ASEAN institutionalism by stating "ASEAN members clearly differ in many aspects, such as political ideologies and government systems, levels of economic development, sizes of population, cultural affinities, world views and external relations. The ASEAN membership is never intended to replace the national policy of each member government. But it is the indispensable "glue" binding these countries together in "unity in diversities"...[ASEAN members] uphold the principles and purposes of the UN as enshrined in the Charter of the United Nations."

### **Asian Values and Illiberal discourse in ASEAN**

Asian Values as a popular discourse began with a misappropriated interview of Fareed Zakaria where former Prime Minister Lee Kwan Yew intimated a confluence between economic success of modernity with core values that 'East Asian' societies of Confucian stock hold dear; family as center of the individual and society, hard work, respect, thrift, piety, need for order and delayed satisfaction for long-term rewards (Zakaria 1994: 113-114). Asian Values as an aspirational discourse began as early on as 1988 with Goh Chok Tong addressing common values but found traction in the Singaporean Government's White Paper of 1991 which stated that "individual abstract virtues, such as honesty, justice, or compassion, are universal...a major difference between Asian and Western values is the balance each strikes between individual and community...no Asian society has successfully modeled itself upon a Western prototype" (Singapore 1991:5). The Asian Values debate which began in the early 1990's, was discredited by the 1997 crisis and is being reconstituted again was first propagated by former Prime Ministers Mahathir Mohammad and Lee Kwan Yew. This conceptualization of cultural differentialism challenged the dominant paradigm of universal human rights by positing a differential and hierarchical philosophy of rights directly in opposition and offering an alternative to 'Western' hegemonic rights values. Sani (2010) Sani et. al. (2009) argue that Asian Values was split between a 'Mahatir Model' based on anti-

hegemonic/neo-imperialism fused with Islamism embodied in his 1980's 'look East' policy whereas Leong (2008) considers the Singapore School to be based on selective exceptionalism and a discourse of western social deconstruction. Central to the Asian Values debate is the deconstruction of universalist Western Values by creating hierarchy/prioritizing rights (namely economic over political and social) and creating a façade built around cultural relativism. Cultural relativism as espoused by Boas is the understanding that 'civilization [culture] is not absolute, but that it is relative, and that our ideas and conceptions are true only so far as our civilization goes... subordinate [to the prior], is to show how far each and every civilization is the outcome of its geographical and historical surroundings (Boas 1887: 589)." Conceptualizing the aforementioned is critical to AV as it stipulates that any [*sic*] civilization (culture in contemporary parlance) can only be understood in the time and space with which it develops/occurs and more importantly, by those who are part of and fully understand the previous (Fettner 2002: 198). In this equation a 'westerner' could never understand, thus, critique nor criticize such discourse as they have neither the cultural nor civilization capacity nor tools to do so. Conversely, the same applies to any geographic space thus the only universalism is reductivism as to each their own and to each cultural specificity and essentialism holds sway as there cannot be absolute values or principles in guidance or for standard bearing (Goodhart 2003: 939, Renteln 1985: 514).

Thompson (2001) elaborates in stating that the Asian value system stands in opposition to Western liberal democracy with neo-Confucian values of family, order, and deference of the individual as core principles. Organically this model is fused with a developmental state prerogative whereby citizens defer to authoritarian government by not engaging in social activism and allowing significant latitude to government in directing economic, social and political spheres on the premise that social cohesion, order and stability are essential (Thompson 2000: 654). Jones (2011a, 2011b) and Thompson (2001) argue that the rationale behind this is that ASEAN states are hardly progressive cosmopolitan states but rather profoundly illiberal and underpinned by varying degrees of authoritarianism that sees human rights and associated groups as a threat to traditional patterns of rule, thus the occasional recourse to ASEAN Way principles of non-interference and sovereignty. By historical evaluation of China, India and Mughals Sen (1997a, 1997b) concludes that there is no statistical correlation for premises furthered by supporters/propagators of Asian Values as there are just too many factors involved in determining economic success. Furthermore, Sen (1997a, 1997b) states that the philosophical logic which is the foundation of this discourse is self-immolating as it presupposes a unified "Asia" and its people in opposition to the "West" but the whole premise of this logic is that culture is unique and singularly specific to the culture to which the debate is being centered thus it contradicts itself on its own merits (Dalton and Ong 2005).

Thompson (2001) concludes that the alternative discourse brought about by Asian Values has three essential thrusts: depoliticization of rising middle class political aspirations via a plea to nationalism, rejection of an evolutionary path of modernity and vindicating the developmental paternalistic state trajectory of authoritarian rule while Rodan (1996) adds that it serves domestic political purposes of creating otherness or 'non-Asianness' among those who would seek to disagree with its tenets. The central focus of this approach is to isolate the benevolence and performance legitimacy associated by tapping into the modern world economy while isolating and rejecting attendant perceived negatives of western modernity and economic development, namely individualism (atomistic vision of citizens), calls for a greater liberalization/reform of rights and political systems which are seen as contingent with rising standards of living. Put simply economic modernity as brought by the 'West' is wonderful and has brought many individual and social goods as harnessed by the Asian state but the attendant negatives of individualism, cultural decadency and decay, obscenity, profane secularism and autonomy of rights can wait (till when one only can assume not anytime soon) (Bruun and Jacobsen 2000: 2-3).<sup>1</sup> Thus the employment of relativist discourse indeed seeks to blunt reform (Harris 2000:9) by utilizing particularist understandings of 'culture' as an abstract that blurs, confuses and misconceptualizes human rights universality with communal duties and responsibilities. Communal duties and responsibilities in this sense sees individuals as contingent upon community rights thus changing the matrix of conceptualization as to where stability and rights actually emanate. Indeed from this relativistic perspective the individual is lost without the community as their rights and liberties as humans are dictated by a socio-political abstract which must then be guided by leaders in government as a community without leadership is by modern definition of the states system, failed or anarchic. The ultimate legitimation of such discourse is of course stability and social order to wit economic success is predicated but paternalistically asking people to wait assumes a fear of decline or inability to continue developing thus can be construed as a philosophy of fear which knows no end as it is defending itself against an abstract in geography, ideas, values, constructs and concepts.

### **Regional Human Rights: ASEAN Interpretations of Universalism From Vienna to Present**

This section will trace ASEAN re-interpretations of international human rights in regional declarations and legal text within the context of the preceding 'Asian Values' discourse and Donnelly's critique of rights/entitlement. It will be shown that human rights standards at the regional level of ASEAN are rhetorically equivalent to international standards but are stripped of their universal potency by accentuating and emphasizing

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<sup>1</sup> As of 2012 Malaysian GDP per capita (PPP) was \$17,200 while Singapore's GDP per capita (PPP) stood at \$61,400 (CIA Factbook)

particular textual understandings of international human rights declarations and transposing these into ASEAN human rights standards. International human rights declarations of the Vienna Declaration and Programme of Action stand as a benchmark for ASEAN's retrogressive stance and standards of human rights and in fact mirror and inform ASEAN declarations regarding human rights such as the 1993 Joint Communique, ASEAN Charter and ASEAN Declaration on Human Rights.

The AHRD references the UDHR and essentially takes verbatim civil, cultural, economic, social and political rights. The AHRD lays claim that its contents are universal and dispels hierarchy in its general principles by stating that "all human rights are universal, indivisible, interdependent and interrelated" (AHRD, Article 7) in line with the UDHR. However, subsidiarity, deference to national prerogatives and discrepancy with universality displays itself by the understanding that "enjoyment of human rights and fundamental freedoms must be **balanced** with the performance of corresponding duties as every person has responsibilities to all other individuals, the community and the society where one lives. It is **ultimately** the primary responsibility of all ASEAN Member States to promote and protect all human rights and fundamental freedoms (AHRD, Article 6)." The polemical notion of balancing rights and responsibilities between individual and community masks the nature of an abstract "community" and/or "society" in Southeast Asia as advocacy groups and transnational NGOs are to different degrees subject to state prerogatives of openness and access which leaves the notion of 'civil society' or for that matter individual in an asymmetrical position vis-à-vis governments who act on and behalf of the "community/society".

The seeming oxymoron of balance with illiberal governments is nothing new to the region and its human rights regime. In the lead up to the 1993 Vienna Conference on Human Rights, NGO's which drafted recommendations for the UNGA conceded political space for exploitation by recognizing "human rights are universal in nature, they must be considered in the context of a dynamic and evolving process of international norm-setting, bearing in mind the significance of national and regional particularities and various historical, cultural and religious backgrounds" (Bangkok Declaration, Article 8). Particularism recognized by this epistemic community was considered legitimate as the 1993 VDPA noted that "having taken into account the Declarations adopted by the three regional meetings at Tunis, San José and Bangkok" (Ibid, Preamble) and subsequently was verbatim restated, recognizing that "all human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of **national** and **regional** particularities and various historical, cultural and religious backgrounds must be borne in mind" (VDPA, Article 5). ASEAN leaders wasted no time in reaffirming relativist allowance in such an international legitimizing document by further stressing "that human rights are interrelated and indivisible ... they should be addressed in a **balanced** and integrated manner and

protected and promoted with due regard for **specific** cultural, social, economic and political circumstances” (ASEAN Joint Communiqué, Article 16). The VDPAs key principles were re-asserted by the ASEAN Inter-Parliamentary Organization and particularism upheld by stating that “taking in account the need for full respect of their human rights as well as their duties to the community. Freedom, progress and national stability are promoted by balance between the rights of the individual and those of the community” (AIPO, Article 1).

In terms of human rights standards the Bangkok Declaration and VDPA are all standard bearers for the KLD and AHRD in that balancing will inevitably be incumbent upon national governments to interpret. This is problematic as there is no standard set of practices due to national interpretation of derogation. This is best demonstrated by limitation clauses whereby individual rights are nationally interpreted for legal limitation based on ‘just requirements’ of “national security, public order, public health, public safety, public morality, as well as the general welfare of the peoples in a democratic society” (AHRD, Article 8), “morality, public order and the general wellbeing of society” (AIPO, Article 22). Just requirement for legal limitations of rights finds its basis in the UDHR which stipulate just requirement limitations for “morality, public order and the general welfare in a democratic society” (UDHR, Article 29.2). though Tang argues that this clauses legal intent is meant to be read broadly and interpreted narrowly but consistent reference to just limitations seems to find strong traction in ASEAN when combined with extreme cultural diversity/practice, relativist notions of balancing, national and regional interpretations that fail to allow for concrete substance in standard setting (cited in Eldridge 2002: 61). If rights are reduced by relativist claims of legitimation and given deference in declaratory structures that help to build international customary law of *opinio juris* the obstacles to creating viable human rights standards in ASEAN seem to be taking steps backward rather than forward.

To simply state that ASEAN elites from Lee Kwan Yew to Najib Razak lack the linguistic ability to articulate rights language would be nefarious in the least as regional leaders have considerable political acumen and are well versed in rights and political discourse. Regional rhetoric can still be seen erring on the side of balance towards the state at the behest of elites up to present. The following are examples of contemporary elite discourse concerning balancing language indicative of a distinct lack of rights cultural repertoire up to present.

Malaysia under the premiership of Najib Razak has seen a rather dramatic regression in its stance towards human rights generally and an upsurge in state supported Islamic rhetoric. Lawyers for liberty have accused the P.M. of backpedaling on his election promises of repealing Malaysia’s notorious Internal Security Act which historically has been used to quell opposition groups and political opponents (Malaysia Insider). Human Rights Watch has not only documented the above but significant concerns around media freedom and in particular in its letter to the P.M. concerning



LGBT rights and the continuing suppression of gay activists which was epitomized by the banning of Seksualiti Merdeka sexual rights festival in 2011. Comments of Malaysian officials are instructive of the intolerant nature of the government. Nazri Abdul Aziz (P.M.'s Department) has stated that "if a certain act is within the rights of the constitution but is not consistent with Islam, the act is not applicable in Malaysia". Deputy P.M. Mashitah Ibrahim went further in stating that if "converting gays" via government trainers "there is the Federal Territory Sharia Criminal Offenses Act 1997" to coerce so called "deviants" that threaten the sanctity of Islam (Human Rights Watch 2013; 341-346, Forum Asia). More prescient and disturbing in regional terms is Malaysian AICHR representative Muhammad Shafee Abdullah was "strictly instructed by the government to ensure that rights of LGBT persons were not recognized in the AHRD" (Human Rights Watch 2012).

Singapore while being no champion of human rights warrants scrutiny in that it has ratified three treaties and its people enjoy a standard of living unparalleled in the region while being known for its 'soft authoritarianism'. Its CEDAW commitments while initially rebuffed by Foreign Affairs and Minister S. Jayakumar who stated that Singapore had "no intention to reform domestic law or its policies affecting women in the light of CEDAW" (Tay 2004: 233) eventual reforms were undertaken to end discrimination in public service pay and benefits as well as quotes restricting women from medical positions among others but as Ling et. al. has noted these reforms did not "reference CEDAW, which reveals the marginality of human rights discourse within Singapore" (Ling et. al. 2002: 1098). In terms of regional behavior which may be obvious given its low ratification rate "has at times held that human rights questions should not be subject to external criticism, especially by Western countries" (Tay and Lim 2005: 233). Non-interference as a basic principle is very much still alive in the policy area of human rights as it is worth quoting at length the views of Foreign Minister George Yeo concerning regional human rights and the Charter "among the Leaders and Ministers of ASEAN, that there is growing interest in this field—a growing acceptance that we are interdependent, we live together in one global community. Therefore there should be minimum human standards which govern our behaviour. But as to what specific steps we should take, these are issues that we have got to think over and compromise on. Should Singapore be telling what our neighbours should do? I don't think we should do that, because to begin with, why should they accept what we tell them? The best that we can do is to achieve high standards in Singapore, and then set an example which others would naturally want to study. And if we lead, let's lead by example" (quoted in Leong 2007:317). Perhaps H.E. failed to see the irony in his words that if setting high standards like Singapore and leading by example, Singapore's human rights treaty ratifications mirrors almost exactly former pariah state and ASEAN cohort, Myanmar.

Thailand's recent slide in corruption, rule of law (Transparency International 2012) and human rights credibility (Human Rights Watch 2010, 2012) should not mask the

underlying perceptions and rhetoric given to human rights by progressive Thai administrations. The Yingluck administration is quite eloquent in crafting its message of rights awareness and promotion and in fact it should be commended for honoring its pledge to the Human Rights Council in withdrawing reservations to CEDAW (even if this began under the previous administration) and signing the ICPAPED. The Thai government has espoused a strong line in bridging democracy with rights (Thailand Ministry of Foreign Affairs 2013) so that people may live with dignity (Policy Statement National Assembly 2011) domestically and regionally. A little closer attention however brings an intricate understanding of the dichotomy existing in rights language as human trafficking and immigration issues stand at the forefront of Thailand's recent Special Rapporteur visits thus surveillance should "resolve the problem of individuals without legal status by taking an approach that **balances** national security and basic human rights" (Policy Statement National Assembly 2011). This may be seen as innocuous until put into context with the former Foreign Minister's understanding that Thailand's social is one "which is a human rights-based and social-oriented system" thus bringing to the fore the core understanding of individual/community based orientations towards rights (Thailand Minister of Foreign Affairs 2011).

### **Rights, Entitlements & Cultural Language of Rights**

The more prescient question aside from politics and its concomitant influence on regional human rights standards lies in the cultural question of diversity, particularity and essentialism which is structured into ASEAN institutions, informed by Asian Values and imbued with legitimacy in regional human rights canon; why is universalism so contested in ASEAN and is there a succinct misconceptualization of rights and responsibilities between state and individual? I argue the conceptualization of rights in the ASEAN debate of universality and Asian Values stems from a fundamental misconceptualization of the idea of rights and duties of the individual vis-à-vis the state/community and the state's place/role in social organization in Southeast Asia using Donnelly's analysis of entitlements/rights and lack of cultural language repertoire. Firstly, it should be contextualized that the lack of cultural language repertoire alluded to is based on an elite understanding of rights and duties which was evidenced in the prior section. Civil society historically and contemporarily does indeed have different conceptualizations as to rights and balancing of individual to communitarian obligations as can be seen by the obverse of the 1993 (Government Bangkok Declaration) by offering their own interpretation via the Bangkok NGO Declaration. In contradistinction to the government declaration the NGO declaration rejected the balancing stance by restating universal claims of rights as follows "we affirm the basis of universality of human rights which accord protection to all of humanity.... While advocating cultural pluralism, those cultural practices which derogate from universally accepted human rights, including women's rights, must not be tolerated. As human rights are of universal concern and are universal in value, the advocacy of human rights cannot be considered to be an encroachment upon national sovereignty (cited in Muntarbhorn 2004: 347). This signals not only the distinct divide between government and civil society concerning rights and rights language but also the interpretation of official vs. unofficial doctrine concerning universality and its correlate of minimum standards observation and protection. As such the following critique should be

noted within the proper confines of elite discourse which is indicative of the Asian Values debate/discourse in general.

Donnelly (1980) contextualizes the dilemma of rights by intimating the fundamental problem facing ASEAN governments with relation to human rights; to restrain wrongness or nurture goodness? The problem in ASEAN and its balanced approach to human rights stems from a definitional misconstruction that lends itself political legitimacy and traction when supported by Asian Values and human rights declarations as analyzed above. Donnelly (1982a) argues that human rights are “rights, not benefits, duties, privileges, or some other perhaps related practice. Rights in turn are special entitlements of persons.” This said, Donnelly’s (1982a) underlying thesis critiques ‘non-western’ conceptions of rights as deflective of the essence of rights. The essence which is at the core of universal human rights is that rights are nearly absolute and inalienable to the individual. Its correlative given that humans live in societal relations with others who hold such rights as well is that those governing have duties to uphold individual rights and not the individual as duty bound to the state or governing body or for that matter duties that the ruler has to those which they govern.

The balancing arguments given by ASEAN elites are thinly veiled attempts by ASEAN governments to deflect notions of rights as embodied in persons that if fostered and supported thrive in a symbiotic relationship with the community to which is constantly referred to as needing support as well. This abstracts and detracts from the primary consideration that the community and its ‘best interests’ are represented by varying degrees of corporatist/communitarian authoritarian regimes which are quite hostile to reform and liberal notions of rights (Howard and Donnelly 1986: 812-14). The debate obscures the heart of the human rights differential in ASEAN which is what are rights, who possesses rights and most importantly where do duties lie? Furthermore, and more lucidly in the context of ASEAN balancing Donnelly (1982a) views the problem of social rights taking precedence over individual rights reducing rights to a mere formality. This in effect concedes that people enjoy rights at the behest and benevolence of the state (as it is individual duty to the social which is refereed by the state) but the state would not be in violation by discretionally negating such rights of individuals. This misunderstanding of duties means that individuals have by extension duties to the state not vice versa and as such human rights in ASEAN appear “more like being granted a benefit than having a right” (Donnelly 1980, 1982a, 1982b). Within this context it becomes evident that the central problem of human rights per say in ASEAN is centered on a cultural context whereby rights lack sufficient cultural ‘language’ articulated by ASEAN governments. The focal nexus of ASEAN human rights discourse attempts to balance individual to communal rights, duties and obligations but fails to distinguish both by ambiguous reference to abstract groups and societal rights which individuals are duty bound to oblige in the protection of their individual rights. This irreconcilable dichotomy is one of duplicity that obscures and undercuts the very idea of balance in that positive rights do

not take precedence but rather the positive duties of the state to regulate on behalf of the communal side of the balance while having negative duties to individuals.

Rights language in the region suffers from an inadequate translation and acceptance of a human rights based approach to rights, democracy and human rights. The stated examples are a side shot of recent actions and official rationales for giving human rights a Southeast Asian understanding. By no means should it be construed that they represent all people in government but rather provide a glimpse into the rhetoric behind the reality of regional leaders and regimes to hopefully provide some insight into why human rights standards and mechanisms are so difficult to establish in ASEAN while grounding criticism in an understandable and realistic manner. Culture, broadly defined and narrowly rationalized stands a serious problem for the realization of rights in the region while sovereignty provides the cover and mask for using the prior as a reason to water down rights and derogate from allowing people of the region to realizing true human dignity. This does not mean culture should be abandoned as it often provides the localized language and tools for understanding abstract human rights but rather that it should be abandoned as a tool for suppression of aspirations and blunting of reform.

### **Conclusion**

Human rights in ASEAN did not take a step forward with the AHRD but rather was part and parcel of a longer continuum of trying to stifle human rights in general and derogating effect of human rights discourse by create an alternative discourse bound in abstract notions and using international legal instruments to justify duplicit behavior. Without a proper articulation of what universality entails the language of rights gets lost in intractable and distracting conversations of exceptionalism and cultural essentialist arguments arising out of a politics of fear. Essentially the means obscures the ends to which human rights in the region are allegedly striving for. The current debate and legal instruments provide a means to arrive at an illiberal end that justifies state dominance and duties of the individual to the state rather than empowering individuals to ensure states uphold obligations to its people as a group and individually. This can only be overcome by recourse to redefining what is the relationship hence derivatively obligations, duties and rights of the state to its people on an atomistic balance that will underpin a liberal order of communal good by supporting rights of individuals and prescribing behavior of the state in relation to those with which it is duty bound to protect and support. This essay has attempted to demonstrate that the language repertoire of ASEAN elites concerning rights demonstrates a lack of articulation of universality. Rhetorical statements of ASEAN leaders that rights are now indivisible, interrelated and of equal standing is purely that, rhetorical. The subversion of rights to elite needs on a continual basis throughout the region and polemic language of balancing communalism and individualism has over time and practice, generally and consistently demonstrated that communalism in favor of the state acting as arbiter considerably and consistently undermines universality. Within this contextual frame perhaps mimetic behavior in terms

of using human rights language for external signaling while providing little of independent substance provides better clues as to Asian Values syncretic ability.

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