



CURZON

BUDDHISM  
AND  
HUMAN  
RIGHTS

*Edited by*

Damien V. Keown  
Charles S. Prebish  
Wayne R. Husted

# **Buddhism and Human Rights**

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# Buddhism and Human Rights

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## INTRODUCTION

The papers in this collection were presented at the first online conference sponsored by the *Journal of Buddhist Ethics* from 1-13 October 1995. The aim of the *JBE* online conferences is to discuss topics of contemporary ethical relevance, and the theme chosen by the editors for 1995 was "Buddhism and Human Rights." It is difficult to think of a more urgent question for Buddhism in the late twentieth century than human rights. Human rights issues in which Buddhism has a direct involvement — notably in the case of Tibet — feature regularly in the global media. His Holiness the Dalai Lama was awarded the Nobel Peace Prize in 1989 in recognition of his efforts in pursuit of global peace, notably through his policy of non-violent resistance to Chinese aggression and in the face of grave and continuing human rights violations in occupied Tibet.

The political, ethical and philosophical questions surrounding human rights are debated vigorously in political and intellectual circles throughout the world. Yet despite its contemporary significance, the subject has merited little attention in mainstream academic research and publication in the field of Buddhist Studies. Why is this? One reason would seem to be the lack of a precedent within Buddhism itself for discussing issues of this kind. Buddhism lacks a developed tradition of social and political philosophy and many of those who study it from a philosophical perspective continue to follow the tradition's own agenda, an agenda which appears to some increasingly medieval in the shadow of the twenty-first century. If Buddhism wishes to address the issues which are of concern to today's global community, it must begin to ask itself new questions alongside the old ones. The aim of the *JBE* online conferences is to facilitate this process and to unite scholars, practitioners, and other interested parties in the quest for Buddhist solutions to contemporary problems.

In the context of human rights, which was the theme of this conference, an important preliminary question would seem to be whether traditional Buddhism has any understanding of what is meant by "human rights" at all. Indeed, it may be thought that since the concept of "rights" is the product of an alien cultural tradition it would be inappropriate to speak of rights of any kind — "human" or otherwise — in a Buddhist context. Even if it was felt that these objections were overstated, and that the issue of human rights does have a legitimate place on the Buddhist agenda, there would still remain the separate and no less difficult question of how human rights were to be grounded in Buddhist doctrine, particularly in the light of the fact that the tradition itself provides little precedent or guidance in this area.

Questions of the above kind are discussed from a variety of perspectives in the papers which follow. The papers are reproduced here just



as they appeared in the conference, except that diacritics have been inserted, something it was not possible to do in the online versions. The papers use different formats for providing references, and rather than introduce major discrepancies between the online and printed versions the editors have decided to present the papers as close possible to the way they appeared in the original. The only differences between the two versions are very minor editing changes and the pagination of the papers.

In terms of substantive content, it would be asking too much to expect a consensus among the authors at this stage. The function of the conference was simply to embark on a preliminary exploration of the issues and determine the main questions which need to be raised. Much further reflection is needed on the many complex aspects of this topic before a consistent "Buddhist" perspective on human rights can be evolved. Nevertheless, it does appear that there is a consensus that Buddhist teachings are compatible with the aims of contemporary human rights movements. Disagreements arise mainly over how the Western concept of human rights, and human rights language, is to be expressed in an authentically Buddhist form, and which Buddhist philosophical concepts should provide the foundation for human rights.

On a practical note, the organization of the conference — the first "virtual" conference ever to be held in Religious Studies — was unusual in a number of respects. First of all it had no spatial location: this meant there was no need for anyone to travel anywhere to attend the proceedings. The papers and other documents which formed the substance of the conference were made available over the Internet in advance of the start of the conference. Anyone wishing to read the papers could do so either online using the World Wide Web, or by downloading a text file and printing out a copy. There was thus ample time for reading and reflection before the discussion commenced. Each of the online articles was accessed many times, suggesting to the editors that there is healthy and vigorous support for electronic conferences of this type. During the two weeks of the conference, the journal's "home page" at its United States site was accessed 1,350 times, while the "conference page" was accessed 249 times. If accesses from the journal's other sites were included, the total accesses would be substantially higher. Participation in the conference was free, as is subscription to the *Journal of Buddhist Ethics*, and the editors are delighted to be able to continue to offer this service free of charge to all Internet users.

The discussion itself took place through the medium of e-mail. Over 400 messages were received during the two weeks of the conference and every message was forwarded to each of the 800 or so subscribers to the journal (at the time of writing this has increased to over 1200). These discussions are not reproduced here since they would expand this volume

immensely. However, like all materials published in the *JBE*, the original contributions have been both carefully organized and electronically archived, and they remain available online at the site locations given below.

There are many advantages to e-mail as a conference medium. Unlike a traditional auditorium, everyone can "hear" what is being said and the scope for misunderstanding is minimized. There is also time to reflect on the contributions made and respond at one's convenience, rather than trying to "think on one's feet" and then attract the attention of a convener who may decide that only a limited number of questions can be taken. With the conference open for two weeks there was ample time for all who wished to contribute to do so. It was also possible to pursue a variety of themes at much greater length than is possible in the conventional conference auditorium.

Because of the importance of this year's topic, it seemed appropriate to produce a "Declaration on Buddhism and Human Rights," developed from the formal papers, panelists' position statements, and subscribers' comments. In the preparation of the formal Declaration of the conference, the editorial staff consulted with Dr. Peter Harvey, who perhaps more than any of the conference participants, made an enormous contribution of time and energy to ensure the success of the conference. His work was instrumental in creating the statement that follows, and we are deeply grateful to him for his guidance and leadership. We are also indebted to Mr. Ron Moss for the title "Declaration of Interdependence."

#### *Site Locations*

The papers and proceedings of the conference, as well as an online bibliography on Buddhism and Human Rights (reproduced at the end of this volume), can be found on the World Wide Web at the following Internet sites.

Pennsylvania State University  
<http://www.psu.edu/jbe/jbe.html>

Goldsmiths College, University of London  
<http://www.gold.ac.uk/jbe/jbe/html>

To subscribe to the *Journal of Buddhist Ethics* access either of the above sites or write to the editors at [jbe-ed@psu.edu](mailto:jbe-ed@psu.edu).



# UNIVERSAL DECLARATION OF HUMAN RIGHTS

The Universal Declaration of Human Rights was adopted by the United Nations General Assembly on 10 December 1948. This version was prepared by Damien Keown for the *Journal of Buddhist Ethics* Online Conference on "Buddhism and Human Rights."

## *PREAMBLE*

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

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom, Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, Therefore,

## *THE GENERAL ASSEMBLY*

### *Proclaims*

THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and

international to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

*Article 1*

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

*Article 2*

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or intentional status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

*Article 3*

Everyone has the right to life, liberty and security of person.

*Article 4*

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

*Article 5*

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

*Article 6*

Everyone has the right to recognition everywhere as person before the law.

*Article 7*

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are titled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

*Article 8*

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

*Article 9*

No one shall be subjected to arbitrary arrest, detention or exile.

*Article 10*

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

*Article 11*

1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

*Article 12*

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks on his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks.

*Article 13*

1. Everyone has the right to freedom of movement and residence within the borders of each State.

2. Everyone has the right to leave any country, including his own, and to return to his country.

*Article 14*

1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.

2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

*Article 15*

1. Everyone has the right to a nationality.

2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

*Article 16*

1. Men and women of full age, without any limitation to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage, and at its dissolution.

2. Marriage shall be entered into only with the free and full consent of the intending spouses.

3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

*Article 17*

1. Everyone has the right to own property alone as well as in association with others.

2. No one shall be arbitrarily deprived of his property.

*Article 18*

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and

freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

*Article 19*

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any medium and regardless of frontiers.

*Article 20*

1. Everyone has the right to freedom of peaceful assembly and association.

2. No one may be compelled to belong to an association.

*Article 21*

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

2. Everyone has the right of equal access to public service in his country.

3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

*Article 22*

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

*Article 23*

1. Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.



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2. Everyone, without any discrimination, has the right to equal pay for equal work.

3. Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

4. Everyone has the right to form and to join trade unions for the protection of his interests.

*Article 24*

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

*Article 25*

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

*Article 26*

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

3. Parents have a prior right to choose the kind of education that shall be given to their children.

*Article 27*

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

*Article 28*

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

*Article 29*

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.

2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

*Article 30*

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.



# HUMAN RIGHTS AND UNIVERSAL RESPONSIBILITY

HIS HOLINESS:  
THE XIV DALAI LAMA OF TIBET

NON-GOVERNMENTAL ORGANIZATIONS  
UNITED NATIONS WORLD CONFERENCE  
ON HUMAN RIGHTS

15 JUNE, 1993  
VIENNA, AUSTRIA

Our world is becoming smaller and ever more interdependent with the rapid growth in population and increasing contact between people and governments. In this light, it is important to reassess the rights and responsibilities of individuals, peoples and nations in relation to each other and to the planet as a whole. This World Conference of organizations and governments concerned about the rights and freedoms of people throughout the world reflects the appreciation of our interdependence.

No matter what country or continent we come from we are all basically the same human beings. We have the common human needs and concerns. We all seek happiness and try to avoid suffering regardless of our race, religion, sex or political status. Human beings, indeed all sentient beings, have the right to pursue happiness and live in peace and in freedom. As free human beings we can use our unique intelligence to try to understand ourselves and our world. But if we are prevented from using our creative potential, we are deprived of one of the basic characteristics of a human being. It is very often the most gifted, dedicated and creative members of our society who become victims of human rights abuses. Thus the political, social, cultural and economic developments of a society are obstructed by the violations of human rights. Therefore, the protection of these rights and freedoms are of immense importance both for the individuals affected and for the development of the society as a whole.

It is my belief that the lack of understanding of the true cause of happiness is the principal reason why people inflict suffering on others. Some people think that causing pain to others may lead to their own happiness or that their own happiness is of such importance that the pain of others is of no significance. But this is clearly shortsighted. No one truly benefits from

causing harm to another being. Whatever immediate advantage is gained at the expense of someone else is short-lived. In the long run causing others misery and infringing upon their peace and happiness creates anxiety, fear and suspicion for oneself.

The key to creating a better and more peaceful world is the development of love and compassion for others. This naturally means we must develop concern for our brothers and sisters who are less fortunate than we are. In this respect, the non-governmental organizations have a key role to play. You not only create awareness for the need to respect the rights of all human beings, but also give the victims of human rights violations hope for a better future.

When I travelled to Europe for the first time in 1973, I talked about the increasing interdependence of the world and the need to develop a sense of universal responsibility. We need to think in global terms because the effects of one nation's actions are felt far beyond its borders. The acceptance of universally binding standards of Human Rights as laid down in the Universal Declaration of Human Rights and in the International Covenants of Human Rights is essential in today's shrinking world. Respect for fundamental human rights should not remain an ideal to be achieved but a requisite foundation for every human society.

When we demand the rights and freedoms we so cherish we should also be aware of our responsibilities. If we accept that others have an equal right to peace and happiness as ourselves do we not have a responsibility to help those in need? Respect for fundamental human rights is as important to the people of Africa and Asia as it is to those in Europe or the Americas. All human beings, whatever their cultural or historical background, suffer when they are intimidated, imprisoned or tortured. The question of human rights is so fundamentally important that there should be no difference of views on this. We must therefore insist on a global consensus not only on the need to respect human rights world wide but more importantly on the definition of these rights.

Recently some Asian governments have contended that the standards of human rights laid down in the Universal Declaration of Human Rights are those advocated by the West and cannot be applied to Asia and others parts of the Third World because of differences in culture and differences in social and economic development. I do not share this view and I am convinced that the majority of Asian people do not support this view either, for it is the inherent nature of all human beings to yearn for freedom, equality and dignity, and they have an equal to achieve that. I do not see any contradiction between the need for economic development and the need for respect of human rights. The rich diversity of cultures and religions should help to strengthen the fundamental human rights in all communities. Because

underlying this diversity are fundamental principles that bind us all as members of the same human family. Diversity and traditions can never justify the violations of human rights. Thus discrimination of persons from a different race, of women, and of weaker sections of society may be traditional in some regions, but if they are inconsistent with universally recognized human rights, these forms of behavior must change. The universal principles of equality of all human beings must take precedence.

It is mainly the authoritarian and totalitarian regimes who are opposed to the universality of human rights. It would be absolutely wrong to concede to this view. On the contrary, such regimes must be made to respect and conform to the universally accepted principles in the larger and long term interests of their own peoples. The dramatic changes in the past few years clearly indicate that the triumph of human rights is inevitable.

There is a growing awareness of peoples' responsibilities to each other and to the planet we share. This is encouraging even though so much suffering continues to be inflicted based on chauvinism, race, religion, ideology and history. A new hope is emerging for the downtrodden, and people everywhere are displaying a willingness to champion and defend the rights and freedoms of their fellow human beings.

Brute force, no matter how strongly applied, can never subdue the basic human desire for freedom and dignity. It is not enough, as communist systems have assumed, merely to provide people with food, shelter and clothing. The deeper human nature needs to breathe the precious air of liberty. However, some governments still consider the fundamental human rights of its citizens an internal matter of the state. They do not accept that the fate of a people in any country is the legitimate concern of the entire human family and that claims to sovereignty are not a license to mistreat one's citizens. It is not only our right as members of the global human family to protest when our brothers and sisters are being treated brutally, but it is also our duty to do whatever we can to help them.

Artificial barriers that have divided nations and peoples have fallen in recent times. With the dismantling of Berlin wall the East - West division which has polarized the whole world for decades has now come to an end. We are experiencing a time filled with hope and expectations. Yet there still remains a major gulf at the heart of the human family. By this I am referring to the North-South divide. If we are serious in our commitment to the fundamental principles of equality, principles which, I believe, lie at the heart of the concept of human rights, today's economic disparity can no longer be ignored. It is not enough to merely state that all human beings must enjoy equal dignity. This must be translated into action. We have a responsibility to find ways to achieve a more equitable distribution of world's resources.

We are witnessing a tremendous popular movement for the advancement of human rights and democratic freedom in the world. This movement must become an even more powerful moral force, so that even the most obstructive governments and armies are incapable of suppressing it. This conference is an occasion for all of us to reaffirm our commitment to this goal. It is natural and just for nations, peoples and individuals to demand respect for their rights and freedoms and to struggle to end repression, racism, economic exploitation, military occupation, and various forms of colonialism and alien domination. Governments should actively support such demands instead of only paying lip service to them.

As we approach the end of the Twentieth Century, we find that the world is becoming one community. We are being drawn together by the grave problems of over population, dwindling natural resources, and an environmental crisis that threaten the very foundation of our existence on this planet. Human rights, environmental protection and great social and economic equality, are all interrelated. I believe that to meet the challenges of our times, human beings will have to develop a greater sense of universal responsibility. Each of us must learn to work not just for one self, one's own family or one's nation, but for the benefit of all humankind. Universal responsibility is the key to human survival. It is the best foundation for world peace.

This need for co-operation can only strengthen humankind, because it helps us to recognize that the most secure foundation for a new world order is not simply broader political and economic alliances, but each individual's genuine practice of love and compassion. These qualities are the ultimate source of human happiness, and our need for them lies at the very core of our being. The practice of compassion is not idealistic, but the most effective way to pursue the best interests of others as well as our own. The more we become interdependent the more it is in our own interest to ensure the well-being of others.

I believe that one of the principal factors that hinder us from fully appreciating our interdependence is our undue emphasis on material development. We have become so engrossed in its pursuit that, unknowingly, we have neglected the most basic qualities of compassion, caring and cooperation. When we do not know someone or do not feel connected to an individual or group, we tend to overlook their needs. Yet, the development of human society requires that people help each other.

I, for one, strongly believe that individuals can make a difference in society. Every individual has a responsibility to help more our global family in the right direction and we must each assume that responsibility. As a Buddhist monk, I try to develop compassion within myself, not simply as a religious practice, but on a human level as well. To encourage myself in this

altruistic attitude, I sometimes find it helpful to imagine myself standing as a single individual on one side, facing a huge gathering of all other human beings on the other side. Then I ask myself, 'Whose interests are more important?' To me it is quite clear that however important I may feel I am, I am just one individual while others are infinite in number and importance. ]

Thank you

Released by the Tibetan Delegation to the United Nations World Conference on Human Rights, Vienna, Austria.



## A BUDDHIST RESPONSE TO: THE NATURE OF HUMAN RIGHTS<sup>1</sup>

Kenneth Inada

It is incorrect to assume that the concept of human rights is readily identifiable in all societies of the world. The concept may perhaps be clear and distinct in legal quarters, but in actual practice it suffers greatly from lack of clarity and gray areas due to impositions by different cultures. This is especially true in Asia, where the two great civilizations of India and China have spawned such outstanding systems as Hinduism, Buddhism, Jainism, Yoga, Confucianism, Taoism and Chinese Buddhism. These systems, together with other indigenous folk beliefs, attest to the cultural diversity at play that characterizes Asia proper. In focusing on the concept of human rights, however, we shall concentrate on Buddhism to bring out the common grounds of discourse.

Alone among the great systems of Asia, Buddhism has successfully crossed geographical and ideological borders and spread in time through out the whole length and breadth of known Asia. Its doctrines are so universal and profound that they captured the imagination of all the peoples they touched and thereby established a subtle bond with all. What then is this bond? It must be something common to all systems of thought which opens up and allows spiritual discourse among them.

In examining the metaphysical ground of all systems, one finds that there is a basic feeling for a larger reality in one's own experience, a kind of reaching out for a greater cosmic dimension of being, as it were. It is a deep sense for the total nature of things. All this may seem so simple and hardly merits elaborating, but it is a genuine feeling common among Asians in their quest for ultimate knowledge based on the proper relationship of one's self in the world. It is an affirmation of a reality that includes but at once goes beyond the confines of sense faculties.

A good illustration of this metaphysical grounding is seen in the Brahmanic world of Hinduism. In it, the occluded nature of the self (*atman*) constantly works to cleanse itself of defilements by yogic discipline in the hope of ultimately identifying with the larger reality which is Brahman. In the process, the grounding in the larger reality is always kept intact, regardless of whether the self is impure or not. In other words, in the quest for the purity of things a larger framework of experience is involved from the beginning such that the ordinary self (*atman*) transforms into the larger Self (*Atman*) and finally merges into the ultimate ontological Brahman.

A similar metaphysical grounding is found in Chinese thought. Confucianism, for example, with its great doctrine of humanity (*jen*), involves the ever-widening and ever-deepening human relationship that issues forth in the famous statement, "All men are brothers." In this sense, humanity is not a mere abstract concept but one that extends concretely throughout the whole of sentient existence. Confucius once said that when he searched for *jen*, it is always close at hand.<sup>2</sup> It means that humanity is not something external to a person but that it is constitutive of the person's experience, regardless of whether there is consciousness of it or not. It means moreover that in the relational nature of society, individual existence is always more than that which one assumes it to be. In this vein, all experiences must fit into the larger cosmological scheme normally spoken of in terms of heaven, earth and mankind.) This triadic relationship is ever-present and ever-in-force, despite one's ignorance, negligence or outright intention to deny it. The concept that permeates and enlivens the triadic relationship is the *Tao*. The *Tao* is a seemingly catchall term, perhaps best translated as the natural way of life and the world. In its naturalness, it manifests all of existence; indeed, it is here, there and everywhere since it remains aloof from human contrivance and manipulation. In a paradoxical sense, it depicts action based on non action (*wu-wei*), the deepest state of being achievable. The following story illustrates this point.

A cook named Ting is alleged to have used the same carving knife for some 19 years without sharpening it at all. When asked how that is possible, he simply replied:

What I care about is the way (*Tao*), which goes beyond skill. When I first began cutting up oxen, all I could see was the ox itself. After three years I no longer saw the whole ox. And now--now I go at it by spirit and don't look with my eyes. Perception and understanding have come to a stop and spirit moves where it wants. I go along with the natural makeup, strike in the big hollows, guide the knife through the big openings, and follow things as they are, so I never touch the smallest ligament or tendon, much less a main joint. . . I've had this knife of mine for nineteen years and I've cut up thousands of oxen with it, and yet the blade is as good as though it had just come from the grindstone.<sup>3</sup>

Such then is the master craftsman at work, a master in harmonious triadic relationship based on the capture of the spirit of *Tao* where the function is not limited to a person and his or her use of a tool. And it is clear

that such a spirit of *Tao* in craftsmanship is germane to all disciplined experiences we are capable of achieving in our daily activities.

Buddhism, too, has always directed our attention to the larger reality of existence. The original enlightenment of the historical Buddha told of a pure unencumbered experience which opened up all experiential doors in such a way that they touched everything sentient as well as insentient. A Zen story graphically illustrates this point.

Once a master and a disciple were walking through a dense forest. Suddenly, they heard the clean chopping strokes of the woodcutter's axe. The disciple was elated and remarked, "What beautiful sounds in the quiet of the forest!" To which the master immediately responded, "you have got it all upside down. The sounds only make obvious the deep silence of the forest!" The response by the Zen master sets in bold relief the Buddhist perception of reality. Although existential reality refers to the perception of the world as a singular unified whole, we ordinarily perceive it in fragmented ways because of our heavy reliance on the perceptual apparatus and its consequent understanding. That is to say, we perceive by a divisive and selective method which however glosses over much of reality and indeed misses its holistic nature. Certainly, the hewing sounds of the woodcutter's axe are clearly audible and delightful to the ears, but they are so at the expense of the basic silence of the forest (i.e., total reality). Or, the forest in its silence constitutes the necessary background, indeed the basic source, from which all sounds (and all activities for that matter) originate. Put another way, sounds arising from the silence of the forest should in no way deprive nor intrude upon the very source of their own being. Only human beings make such intrusions by their crude discriminate habits of perception and, consequently, suffer a truncated form of existence, unknowingly for the most part.

Now that we have seen Asian lives in general grounded in a holistic cosmological framework, we would have to raise the following question: How does this framework appear in the presence of human rights? Or, contrarily, how does human rights function within this framework?

Admittedly, the concept of human rights is relatively new to Asians. From the very beginning, it did not sit well with their basic cosmological outlook. Indeed, the existence of such an outlook has prevented in profound ways a ready acceptance of foreign elements and has created tension and struggle between tradition and modernity. Yet, the key concept in the tension is that of human relationship. This is especially true in Buddhism, where the emphasis is not so much on the performative acts and individual rights as it is on the manner of manifestation of human nature itself. The Buddhist always takes human nature as the basic context in which all ancillary concepts, such as human rights, are understood and take on any value. Moreover, the concept itself is in harmony with the extended experiential

nature of things. And thus, where the Westerner is much more at home in treating legal matters detached from human nature as such and quite confident in forging ahead to establish human rights with a distinct emphasis on certain "rights," the Buddhist is much more reserved but open and seeks to understand the implications of human behavior, based on the fundamental nature of human beings, before turning his or her attention to the so called "rights" of individuals.

An apparent sharp rift seems to exist between the Western and Buddhist views, but this is not really so. Actually, it is a matter of perspectives and calls for a more comprehensive understanding of what takes place in ordinary human relationships. For the basic premise is still one that is focused on human beings intimately living together in the selfsame world. A difference in perspectives does not mean non-communication or a simple rejection of another's view, as there is still much more substance in the nature of conciliation, accommodation and absorption than what is initially thought of. Here we propose two contrasting but interlocking and complementary terms, namely, "hard relationship" and "soft relationship."

The Western view on human rights is generally based on a hard relationship. Persons are treated as separate and independent entities or even bodies, each having its own assumed identity or self-identity. It is a sheer "elemental" way of perceiving things due mainly to the strong influence by science and its methodology. As scientific methodology thrives on the dissective and analytic incursion into reality as such, this in turn has resulted in our perceiving and understanding things in terms of disparate realities. Although it makes way for easy understanding, the question still remains: Do we really understand what these realities are in their own respective fullness of existence? Apparently not. And to make matters worse, the methodology unfortunately has been uncritically extended over to the human realm, into human nature and human relations. Witness its ready acceptance by the various descriptive and behavioral sciences, such as sociology, psychology and anthropology. On this matter, Cartesian dualism of mind and body has undoubtedly influenced our ordinary ways of thinking in such a manner that in our casual perception of things we habitually subscribe to the clearcut subject-object dichotomy. This dualistic perspective has naturally filtered down into human relationships and has eventually crystallized into what we refer to as the nature of a hard relationship. Thus, a hard relationship is a mechanistic treatment of human beings where the emphasis is on beings as such regardless of their inner nature and function in the fullest sense; it is an atomistic analysis of beings where the premium is placed on what is relatable and manipulable without regard for their true potential for becoming. In a way it is externalization in the extreme, since the emphasis is heavily weighted on seizing the external character of beings themselves. Very little

attention, if any, is given to the total ambience, inclusive of inner contents and values, in which the beings are at full play. In this regard, it can be said that postmodern thought is now attempting to correct this seemingly lopsided dichotomous view created by our inattention to the total experiential nature of things. We believe this is a great step in the right direction. Meanwhile, we trudge along with a heavy burden on our backs, though unaware of it for the most part, by associating with people on the basis of hard relationships.

To amplify on the nature of hard relationships, let us turn to a few modern examples. First, Thomas Hobbes, in his great work, *Leviathan*,<sup>4</sup> showed remarkable grasp of human psychology when he asserted that people are constantly at war with each other. Left in this "state of nature," people will never be able to live in peace and security. The only way out of this conundrum is for all to establish a reciprocal relationship or mutual trust that would work, i.e., to strike up a covenant by selfish beings that guarantees mutual benefits and gains, one in which each relinquishes certain rights in order to gain or realize a personal as well as an overall state of peace and security. This was undoubtedly a brilliant scheme. But the scheme is weak in that it treats human beings by and large mechanically, albeit psychologically too, as entities in a give-and-take affair, and thus perpetuates the condition of hard relationships.

Another example can be offered by way of the British utilitarian movement which later was consummated in American pragmatism. Jeremy Bentham's hedonic calculus<sup>5</sup> (e.g., intensity of pleasure or pain, duration of pleasure or pain, certain or uncertainty of pleasure or pain, purity or impurity of pleasure or pain, etc.) is a classic example of quantification of human experience. Although this is a most expedient or utilitarian way to treat and legislate behavior, we must remind ourselves that we are by no means mere quantifiable entities. John Stuart Mill introduced the element of quality in order to curb and tone down the excesses of the quantification process,<sup>6</sup> but, in the final analysis, human nature and relationships are still set in hard relations. American pragmatism fares no better since actions by and large take place in a pluralistic world of realities and are framed within the scientific mode and therefore it is unable to relinquish the nature of hard relationships.

In contemporary times, the great work of John Rawls, *A Theory of Justice*,<sup>7</sup> has given us yet another twist in pragmatic and social contract theories. His basic concept of justice as fairness is an example of the reciprocal principle in action, i.e., in terms of realizing mutual advantage and benefit for the strongest to the weakest or the most favored to the least favored in a society. Each person exercises basic liberty with offices for its implementation always open and excess available. It is moreover a highly intellectual or rational theory. It thus works extremely well on the theoretical level but, in

actual situations, it is not as practical and applicable as it seems since it still retains hard relationships on mutual bases. Such being the case, feelings and consciousness relative to injustice and inequality are not so readily spotted and corrected. That is to say, lacunae exist as a result of hard relationships and they keep on appearing until they are detected and finally remedied, but then the corrective process is painfully slow. Thus the theory's strongest point is its perpetually self-corrective nature which is so vital to the democratic process. Despite its shortcomings, however, Rawls' theory of justice is a singular contribution to contemporary legal and ethical thought.

By contrast, the Buddhist view of human rights is based on the assumption that human beings are primarily oriented in soft relationships; this relationship governs the understanding of the nature of human rights. Problems arise, on the other hand, when a hard relationship becomes the basis for treating human nature because it cannot delve deeply into that nature itself and functions purely on the peripheral aspects of things. It is another way of saying that a hard relationship causes rigid and stifling empirical conditions to arise and to which we become invariably attached.

A soft relationship has many facets. It is the Buddhist way to disclose a new dimension to human nature and behavior. It actually amounts to a novel perception or vision of reality. Though contrasted with a hard relationship, it is not in contention with it. If anything, it has an inclusive nature that "softens," if you will, all contacts and allows for the blending of any element that comes along, even incorporating the entities of hard relationships. This is not to say, however, that soft and hard relationships are equal or ultimately identical. For although the former could easily accommodate and absorb the latter, the reverse is not the case. Still, it must be noted that both belong to the same realm of experiential reality and in consequence ought to be conversive with each other. The non-conversive aspect arises on the part of the "hard" side and is attributable to the locked-in character of empirical elements which are considered to be hard stubborn facts worth perpetuating. But at some point, there must be a break in the lock, as it were, and this is made possible by knowledge of and intimacy with the "soft" side of human endeavors. For the "soft" side has a passive nature characterized by openness, extensiveness, depth, flexibility, absorptiveness, freshness and creativity simply because it remains unencumbered by "hardened" empirical conditions.

What has been discussed so far can be seen in modern Thailand where tradition and change are in dynamic tension. Due to the onslaught of elements of modernity, Buddhism is being questioned and challenged. Buddhist Thailand, however, has taken up the challenge in the person of a leading monk named Buddhadasa who has led the country to keep a steady course on traditional values.

The heart of Buddhadasa's teaching is that the Dhamma (Sanskrit, Dharma) or the truth of Buddhism is a universal truth. Dhamma is equated by Buddhadasa to the true nature of things. It is everything and everywhere. The most appropriate term to denote the nature of Dhamma is *sunyata* (Sanskrit, *sunyata*) or the void. The ordinary man considers the void to mean nothing when, in reality, it means everything — everything, that is, without reference to the self.<sup>8</sup>

We will return to the discussion of the nature of the void or *sunyata* later, but suffice it to say here that what constitutes the heart of Buddhist truth of existence is based on soft relationships where all forms and symbols are accommodated and allows for their universal usage.

Robert N. Bellah has defined religion as a set of normative symbols institutionalized in a society or internalized in a personality.<sup>9</sup> It is a rather good definition but does not go far enough when it comes to describing Buddhism, or Asian religions in general for that matter. To speak of symbols being institutionalized or internalized without the proper existential or ontological context seems to be a bit artificial and has strains of meanings oriented toward hard relationships. Bellah, being a social scientist, probably could not go beyond the strains of a hard relationship, for, otherwise, he would have ended in a non-descriptive realm. The only way out is to give more substance to the nature of religious doctrines themselves, as is the case in Buddhism. The Buddhist Dharma is one such doctrine which, if symbolized, must take on a wider and deeper meaning that strikes at the very heart of existence of the individual. In this respect, Donald Swearer is on the right track when he says:

the adaptation of symbols of Theravada Buddhism presupposes an underlying ontological structure. The symbol system of Buddhism then, is not to be seen only in relationship to its wider empirical context, but also in relationship to its ontological structure. This structure is denoted by such terms as Dhamma or absolute Truth, emptiness and non-attachment. These terms are denotative of what Dhiravamsa calls "dynamic being." They are symbolic, but in a universalistic rather than a particularistic sense.<sup>10</sup>

Swearer's reference to an underlying ontological structure is in complete harmony with our use of the term soft relationship. And only when

this ontological structure or soft relationship is brought into the dynamic tension between tradition and modernity can we give full accounting to the nature of human experience and the attendant creativity and change within a society.

Let us return to a fuller treatment of soft relationships. In human experience, they manifest themselves in terms of the intangible human traits that we live by, such as patience, humility, tolerance, deference, non-action, humaneness, concern, pity, sympathy, altruism, sincerity, honesty, faith, responsibility, trust, respectfulness, reverence, love and compassion. Though potentially and pervasively present in any human relationship, they remain for the most part as silent but vibrant components in all experiences. Without them, human intercourse would be sapped of the human element and reduced to perfunctory activities. Indeed, this fact seems to constitute much of the order of the day where our passions are mainly directed to physical and materialistic matters.

The actualization and sustenance of these intangible human traits are basic to the Buddhist quest for an understanding of human nature and, by extension, the so-called rights of human beings. In order to derive a closer look at the nature of soft relationships, we shall focus on three characteristics, namely, mutuality, holism, and emptiness or void.

### *Mutuality*

Our understanding of mutuality is generally limited to its abstract or theoretical nature. For example, it is defined in terms of a two-way action between two parts and where the action is invariably described with reference to elements of hard relationships. Except secondarily or deviously, nothing positive is mentioned about the substance of mutuality, such as the feelings of humility, trust and tolerance that transpire between the parties concerned. Although these feelings are present, unfortunately, they hardly ever surface in the relationship and almost always are overwhelmed by the physical aspect of things.

What is to be done? One must simply break away from the merely conceptual or theoretical understanding and fully engage oneself in the discipline that will bring the feelings of both parties to become vital components in the relationship. That is, both parties must equally sense the presence and value of these feelings and thus give substance and teeth to their actions.

Pursuing the notion of mutuality further, the Buddhist understands human experience as a totally open phenomenon, that persons should always be wide open in the living process. The phrase, "an open ontology," is used to describe the unclouded state of existence. An illustration of this is the



newborn child The child is completely an open organism at birth The senses are wide open and will absorb practically anything without prejudice At this stage, also, the child will begin to imitate because its absorptive power is at the highest level. This open textured nature should continue on and on. In other words, if we are free and open, there should be no persistence in attaching ourselves to hard elements within the underlying context of a dynamic world of experience. The unfortunate thing, however, is that the open texture of our existence begins to blemish and fade away in time, being obstructed and overwhelmed by self-imposed fragmentation, narrowness and restriction, which gradually develop into a closed nature of existence. In this way, the hard relationship rules. But the nature of an open ontology leads us on to the next characteristic.

### *Holism*

Holism of course refers to the whole, the total nature of individual existence and thus describes the unrestrictive nature of one's experience. Yet, the dualistic relationship we maintain by our crude habits of perception remains a stumbling block. This stunted form of perception is not conducive to holistic understanding and instead fosters nothing but fractured types of ontological knowledge-taking. Unconscious for the most part, an individual narrows his or her vision by indulging in dualism of all kinds, both mental and physical, and in so doing isolates the objects of perception from the total process to which they belong. In consequence, the singular unified reality of each perceptual moment is fragmented and, what is more, fragmentation once settled breeds further fragmentation.

The Buddhist will appeal to the fact that one's experience must always be open to the total ambience of any momentary situation But here we must be exposed to a unique, if not paradoxical, insight of the Buddhist. It is that the nature of totality is not a clearly defined phenomenon. In a cryptic sense, however, it means that the totality of experience has no borders to speak of. It is an open border totality, which is the very nature of the earlier mentioned "open ontology." It is a non-circumscribable totality, like a circle sensed which does not have a rounded line, a seamless circle, if you will. A strange phenomenon, indeed, but that is how the Buddhist sees the nature of individual existence as such. For the mystery of existence that haunts us is really the nature of one's own fullest momentary existence. Nothing else compares in profundity to this nature, so the Buddhist believes.

Now, the open framework in which experience takes place reveals that there is depth and substance in experience. But so long as one is caught up with the peripheral elements, so-called, of hard relationships one will be ensnared by them and will generate limitations on one's understanding

accordingly. On the other hand, if openness is acknowledged as a fact of existence, then the way out of one's limitations will present itself. All sufferings (*duhkha*), from the Buddhist standpoint, are cases of limited ontological vision (*avidya*, ignorance) hindered by the attachment to all sorts of elements that obsess a person.

Holism is conversant with openness since an open experience means that all elements are fully and extensively involved. In many respects, holistic existence exhibits the fact that mutuality thrives only in unhindered openness. But there is still another vital characteristic to round out or complete momentary experience. For this we turn to the last characteristic.

### *Emptiness*

Emptiness in Sanskrit is *sunyata*.<sup>11</sup> Strictly speaking, the Sanskrit term, depicting zero or nothing, had been around prior to Buddhism, but it took the historical Buddha's supreme enlightenment (*nirvana*) to reveal an incomparable qualitative nature inherent to experience. Thus emptiness is not sheer voidness or nothingness in the nihilistic sense.

We ordinarily find it difficult to comprehend emptiness, much less to live a life grounded in it. Why? Again, we return to the nature of our crude habits of perception, which is laden with unwarranted forms. That is, our whole perceptual process is caught up in attachment to certain forms or elements which foster and turn into so-called empirical and cognitive biases. All of this is taking place in such minute and unknowing ways that we hardly, if ever, take notice of it until a crisis situation arises, such as the presence of certain obviously damaging prejudice or discrimination. Then and only then do we seriously wonder and search for the forms or elements that initially gave rise to those prejudicial or discriminatory forces.

Emptiness has two aspects. The first aspect alerts our perceptions to be always open and fluid, and to desist from attaching to any form or element. In this respect, emptiness technically functions as a force of "epistemic nullity,"<sup>12</sup> in the sense that it nullifies any reference to a form or element as preexisting perception or even post-existing for that matter. Second and more importantly, emptiness points at a positive content of our experience. It underscores the possibility of total experience in any given moment because there is now nothing attached to or persisted in. This latter point brings us right back to the other characteristics of holism and mutuality. Now, we must note that emptiness is that dimension of experience which makes it possible for the function of mutuality and holism in each experience, since there is absolutely nothing that binds, hinders or wants in our experience. Everything is as it is (*tathata*), under the aegis of emptiness; emptiness enables one to spread out one's experience at will in all directions,

so to speak, in terms of "vertical" and "horizontal" dimensions of being. As it is the key principle of enlightened existence, it makes everything both possible and impossible. Possible in the sense that all experiences function within the total empty nature, just as all writings are possible on a clean slate or, back to the zen story, where the sounds are possible in the silence (emptiness) of the forest. At the same time, impossible in the sense that all attachments to forms and elements are categorically denied in the ultimate fullness of experience. In this way, emptiness completes our experience of reality and, at the same time, provides the grounds for the function of all human traits to become manifest in soft relationships.

It can now be seen that all three characteristics involve each other in the selfsame momentary existence. Granted this, it should not be too difficult to accept the fact that the leading moral concept in Buddhism is compassion (karuna). Compassion literally means "passion for all" in an ontologically extensive sense. It covers the realm of all sentient beings, inclusive of non-sentients, for the doors of perception to total reality are always open. From the Buddhist viewpoint, then, all human beings are open entities with open feelings expressive of the highest form of humanity. This is well expressed in the famous concept of *bodhisattva* (enlightened being) in Mahayana Buddhism who has deepest concern for all beings and sympathetically delays his entrance to nirvana as long as there is suffering (ignorant existence) among sentient creatures. It depicts the coterminous nature of all creatures and may be taken as a philosophic myth in that it underscores the ideality of existence which promotes the greatest unified form of humankind based on compassion. This ideal form of existence, needless to say, is the aim and goal of all Buddhists.

As human beings we need to keep the channels of existential dialogue open at all times. When an act of violence is in progress, for example, we need to constantly nourish the silent and passive nature of nonviolence inherent in all human relations. Though nonviolence cannot counter violence on the latter's terms, still, its nourished presence serves as a reminder of the brighter side of existence and may even open the violator's mind to common or normal human traits such as tolerance, kindness and non-injury (*ahimsa*). Paradoxically and most unfortunately, acts of violence only emphasize the fact that peace and tranquillity are the normal course of human existence.

It can now be seen that the Buddhist view on human rights is dedicated to the understanding of persons in a parameter-free ambience, so to speak, where feelings that are extremely soft and tender, but nevertheless present and translated into human traits or virtues that we uphold, make up the very fiber of human relations. These relations, though their contents are

largely intangible, precede any legal rights or justification accorded to human beings. In brief, human rights for the Buddhist are not only matters for legal deliberation and understanding, but they must be complemented by and based on something deeper and written in the very feelings of all sentient. The unique coexistent nature of rights and feelings constitutes the saving truth of humanistic existence.

## NOTES

1. This article was first published in Claude E. Welch, Jr., and Virginia A. Leary (eds.), *Asian Perspectives on Human Rights* (Boulder, CO: Westview Press, 1990), pp.91-103. The editors are grateful to Claude E. Welch, Jr. and Kenneth Inada for permission to republish it. The orthography of the original version has been retained.
2. Lu Yu (*The Analects of Confucius*): VII, 29.
3. *The Complete Works of Chuang Tzu*, translated by Burton Watson (New York: Columbia University Press, 1960), pp. 50-1.
4. Thomas Hobbes, *Leviathan* (New York: Hafner, 1926).
5. Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* (New York: Hafner, 1948).
6. John Stuart Mill observed, "It is better to be a human being dissatisfied than a pig satisfied; better to be a Socrates dissatisfied than a fool satisfied." *Utilitarianism*, cited in Louis P. Pojman, *Philosophy: The Quest for Truth* (Belmont, CA: Wadsworth, 1989), p. 357.
7. John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971). Rawls also has a chapter on civil disobedience but it too is treated under the same concept of justice as fairness and suffers accordingly from the elements of hard relationships.
8. Donald K. Swearer, "Thai Buddhism: Two Responses to Modernity," in Bardwell L. Smith (ed.), *Contributions to Asian Studies*, Volume 4: *Tradition and Change In Theravada Buddhism* (Leiden: E.J. Brill, 1973), p. 80. "Without reference to the self" means to uphold the Buddhist doctrine of non self (sanskrit, *anatman*) which underlies all momentary existence and avoids any dependence on a dichotomous self-oriented subject-object relationship. For an updated and comprehensive view of Buddhadasa's reformist's philosophy, see Donald K. Swearer (ed.), *Me and Mine: Selected Essays on Bhikkhu Buddhadasa* (Albany: State University of New York Press, 1989).
9. Robert N. Bellah, "Epilogue" in Bellah (ed.), *Religion and Progress in Modern Asia* (New York: Free Press, 1965), p. 173.
10. Swearer, "Thai Buddhism," p. 92.

11. Etymologically *sunyata* (In Pali, *sunnata*) means the state of being swollen, as in pregnancy, or the state of fullness of being. Thus, from the outset, the term depicted the pure, open and full textured nature of experiential reality.

12. Kenneth Inada, "Nagarjuna and Beyond," *Journal of Buddhist Philosophy* 2 (1984), pp. 65-76, for development of this concept.

## ARE THERE HUMAN RIGHTS IN BUDDHISM?

Damien Keown

In the autumn of 1993 the Parliament of the World's Religions met in Chicago to determine whether a consensus on basic moral teachings could be found among the religions of the world. The meeting was attended by representatives of the major world religions as well as ethnic and other minority groups. Representatives of many Buddhist schools, including Theravada, Mahayana, Vajrayana, and Zen were present and the main closing address was given by the Dalai Lama in Grant Park on September 4th.

One of the major fruits of this interfaith convention was a document known as the *Declaration towards a Global Ethic*.<sup>1</sup> The *Global Ethic* sets out the fundamental moral principles to which it is thought all religions subscribe. Many of these principles concern human rights, and the *Global Ethic* sees the universal recognition of human rights and dignity by the religions of the world as the cornerstone of a "new global order."

A related aim of the *Global Ethic* was to provide "the basis for an extensive process of discussion and acceptance which we hope will be sparked off in all religions."<sup>2</sup> The present paper is a contribution to this process from a Buddhist perspective. Its aims are limited to an exploration of some of the basic issues which must be addressed if a Buddhist philosophy of human rights is to develop. I say "develop" because Buddhism seems to lack such a philosophy at present. Buddhism is a latecomer to the cause of human rights and for most of its history has been preoccupied with other concerns. It might be suggested, in defense of Buddhism, that concern for human rights is a postreligious phenomenon which has more to do with secular ideologies and power-politics than religion, and it is therefore unreasonable to accuse Buddhism of neglect in this area.<sup>3</sup> I will suggest below that such an understanding of human rights is mistaken, but leaving the specific issue of human rights to one side there is no doubt that Buddhism lags far behind religions such as Christianity and Islam in developing the framework for a social gospel within which questions of this kind can be addressed. For such an intellectually dynamic tradition Buddhism is a lightweight in moral and political philosophy. A fig-leaf of a kind may be found in the suggestion that since much Buddhist literature remains untranslated there may be hidden treasures in these areas awaiting discovery. Such appeals to the unknown, however, lack credibility. For one thing, it would be curious if only texts on these subjects had been lost to history while

literature on all manner of other topics abounds. Nor can it be a coincidence that these subjects are absent from the traditional monastic curricula. The absence of a discipline of philosophical ethics in Indian culture as a whole makes it much more likely that Buddhism simply invested little time in questions of these kinds.<sup>4</sup>

Political events in the course of this century, however, have forced the issue of human rights to the top of the agenda.<sup>5</sup> The Chinese invasion of Tibet, the bitter ethnic conflict in Sri Lanka, and the experience of military dictatorship in countries such as Burma have all provided contemporary Buddhism with first-hand experience of the issues at stake. Another development which has done much to focus attention on social and political themes is the emergence of "socially engaged Buddhism," a movement whose very name implies a critique of the more traditional (presumably "disengaged") forms of Buddhism. Leading Asian and Western Buddhists now routinely express their concern about social injustice in the Western vocabulary of human rights. What I wish to consider here is how appropriate this language is for Buddhism, and what grounds there are for supposing that Buddhism is committed to the cause of "human rights" or has any clear understanding of what the concept means. Given the lack of intellectual effort down the centuries in articulating, promoting and defending rights of the kind which the world (and especially the West) is now called upon to secure for oppressed groups like the Tibetans, the more cynical might suggest that this late conversion to the cause is born more of self-interest than a deep and long-standing commitment to social justice. In calling for respect for human rights today, then, is Buddhism simply riding on the coat-tails of the West or is there, after all, a commitment to human rights in Buddhist teachings?

My theme in this paper may be summed up as the conceptual and doctrinal basis for human rights in Buddhism. I am concerned with the intellectual bridgework which must be put in place if expressions of concern about human rights are to be linked to Buddhist doctrine. There are many aspects to this problem, but three related issues will be considered here: the concept of rights, the concept of human rights, and the question of how human rights are to be grounded in Buddhist doctrine. I ask first if the concept of "rights" is intelligible in Buddhism. To answer this question it will be necessary to gain some understanding of the origin of the notion in the West. Next I ask whether the Buddhist concept of *human rights* (if such a thing exists) is the same as the Western understanding. Finally I consider in what specific area of Buddhist teachings a doctrine of human rights might be grounded.<sup>6</sup> Since the discussion is essentially theoretical, detailed reference will not be made to particular Buddhist cultures or schools, to specific human rights "abuses," or to the human rights "record" of particular regimes.<sup>7</sup>

Before turning to these issues a preliminary point must be made about Buddhism itself. In speaking of "Buddhism" I should make clear that I am writing with reference to an abstraction which might be termed "classical" Buddhism. This abstraction is neither the same as nor different from Buddhism in any historical or cultural context. It is not meant to represent the views of any sect and is broad enough to include both Theravāda and Mahāyāna schools. The justification for this fiction lies in the belief that whatever concept of human rights we regard Buddhism as holding must be one which is universal in form. The essence of any doctrine of human rights is its unrestricted scope, and it would be as strange to have distinct "Theravada," "Tibetan" and "Zen" doctrines of human rights as it would be to have "Catholic," "Protestant" and "Eastern Orthodox" ones. To insist on the priority of cultural and historical circumstances would be tantamount to denying the validity of human rights as a concept.

### *Rights*

The concept of a "right" has a long intellectual history in the West, and the contemporary notion of a right as an exercisable power vested in or held by an individual has its antecedents in a more impersonal understanding of what is objectively true or right. Etymologically, the English word "right" is derived from the Latin *rectus* meaning straight (*Rectus*), in turn, can be traced to the Greek (*orektos*) which means stretched out or upright. As Richard Dagger notes, "The pattern. . . is for the notion of straightness to be extended from the physical realm to the moral - from *rectus* to rectitude, as it were."<sup>8</sup> In other words, the property of a physical object, namely that of being right, straight or upright, is applied metaphorically in a moral context. Dagger suggests:

By analogy with the physical sense, the primary moral sense of "right" was a standard or measure for conduct. Something was right — morally straight or true — if it met the standard of rectitude, or rightness. . .

Once the idea of "rightness" had been transferred to the moral domain, the next development was to view it as denoting a personal entitlement of some kind. Dagger continues:

From here the next step was to recognize that actions taken "with right" or "by right" are taken *as a matter of right*. The transition is from the belief that I may do something because it is right, in other words, to the belief that I may do



something because I *have a right* to do it. . . Thus the concept of *rights* joins the concept of *the right*.<sup>9</sup>

The metaphorical moral usage of terms such as "right," "straight" and "upright" (in opposition to "crooked," "twisted" and "bent") readily suggests itself to the mind. The rationale for the transition from the moral use of "right" to the notion of a right as a personal entitlement, however, is less obvious. Indeed, this development which took place in the West during the late Middle Ages, and which has been described as the "watershed"<sup>10</sup> in the history of "right," may be a phenomenon which is culturally unique. The evolution of the concept in this direction occurs sometime between Aquinas in the thirteenth century and the jurists Suarez and Grotius in the seventeenth. The modern usage appears clearly in Hobbes, writing in the middle of the seventeenth century, and the idea of a right as a personal power occupies center stage in political theory from this time on.

As part of this evolution in the concept of a right the notion of *natural rights* comes to prominence towards the end of the seventeenth century, notably in the writings of John Locke. The belief that there are natural rights flows from the recognition of human equality, one of the great ideals of the Age of Revolution. Natural rights are inalienable: they are not conferred by any judicial or political process nor can they be removed by these or other means. These natural rights of the seventeenth and eighteenth centuries are the forerunner of the contemporary notion of human rights.

Two questions might be asked concerning the evolution of the doctrine of natural rights in the West. First, why did it take so long for the concept of natural rights to appear? The answer seems to lie in the fact that for much of Western history "rights" were closely tied to social status, and were essentially a function of position or role in society. A hierarchical social structure, such as was predominant in Roman and medieval society, is antithetical to the notion of natural rights. In these circumstances a person's duties and responsibilities are determined fundamentally by the office they hold (lord, citizen, slave), offices which are to a large extent hereditary. It was only when the hierarchical model was challenged and replaced by an egalitarian one that the idea of natural rights began to gain ground.

The second and more important question for our present purposes is: Does the part played by the unique cultural matrix of social political and intellectual developments in the Enlightenment mean that human rights are essentially a function of the historical process? This conclusion need not follow, for while it may be said that in the seventeenth and eighteenth centuries the notion of natural rights was "an idea whose time had come," the idea itself was not entirely new. The influence of Christian doctrine can be seen in several respects,<sup>11</sup> such as the belief (ultimately derived from Judaism)

of a "universal moral law rooted in the righteousness of God."<sup>12</sup> Since human beings are created in the image of God and loved by him as individuals each is worthy of dignity and respect. Furthermore, since each is a member of the human community under God, all other memberships (tribe, state, nation) are secondary.<sup>13</sup> Apart from Christianity, ideas about the just treatment of individuals on the basis of their common humanity are found in a secular context in Stoicism and the writings of Cicero and Seneca.<sup>14</sup> The philosophical justification for a doctrine of human rights has thus always been available, although the ground in which this seed might flourish - a particular combination of social, political and intellectual developments - has not.

So much for historical background. What of contemporary theories of rights? The concept of a right has been analyzed in a number of ways, as evidenced by the extensive interdisciplinary literature on the subject spanning diverse fields such as politics, law, philosophy and history. Within this discourse of rights there is no single definition of a right which commands universal assent. For our present purposes, however, a basic understanding of the concept will suffice. We noted above that a right is something personal to an individual: it may be thought of as something an individual has.<sup>15</sup> What the holder of a right has is a benefit or entitlement of some kind, and at the most general level this is an entitlement to justice. This entitlement may be analyzed into two main forms for which there are corresponding rights: rights which take the form of a claim (claim-rights), and rights which take the form of a liberty (liberty-rights).<sup>16</sup> A claim-right is the benefit which A enjoys to impose upon B a positive or negative requirement. A liberty-right is the benefit which A enjoys of being immune from any such requirement being imposed by B.<sup>17</sup> This basic understanding of a right may be summed up in the following working definition: *a right is a benefit which confers upon its holder either a claim or a liberty.* One important feature of any right is that it provides a particular perspective on justice, in that the right-holder always stands in the position of beneficiary. This subjective aspect of the entitlement, which, as we have seen, appeared early in the history of the concept, remains crucial to the modern understanding of a right. This is brought out in the following definition by Finnis:

In short, the modern vocabulary and grammar of rights is a many-faceted instrument for reporting and asserting the requirements or other implications of a relationship of justice from the point of view of the person(s) who benefit(s) from that relationship. It provides a way of talking about "what is just" from a special angle: the viewpoint of the "other(s)" to whom something (including, *inter alia*, freedom of choice) is owed

or due, and who would be wronged if denied that something.<sup>18</sup>

The above brief review of the Western concept of a right was required as a preliminary to an assessment of its relevance to Buddhism. We are now in a position to ask whether the concept of a right is found in Buddhism. If it is, then talk of *human rights* in Buddhism seems legitimate.<sup>19</sup> If it is not, there is a danger of anachronistically foisting onto the tradition a concept which is the product of an alien culture.<sup>20</sup>

### *Buddhism and Rights*

We took our cue for the discussion of rights in the West from etymology, and perhaps we can glean something further from this source. Above it was noted that the English word "right" is derived from the Latin *rectus* meaning straight. Both "right" and *rectus* themselves, however, have a more remote ancestor in the Sanskrit *rju* (straight or upright). The equivalent form in Pali is *uju* (or *ujju*) meaning "straight, direct; straightforward, honest, upright."<sup>21</sup> It would therefore appear that both the objective sense ("straight") and the metaphorical moral sense ("rectitude") of the word "right" referred to earlier occur in Buddhist as well as Western languages. Despite a common Indo-European etymology, however, there is no word in Sanskrit or Pali which conveys the idea of a "right" or "rights," understood as a subjective entitlement.<sup>22</sup>

Does this mean that the concept of rights is alien to Buddhist thought? Not necessarily. Alan Gewirth has pointed out that cultures may possess the concept of rights without having a vocabulary which expresses it. He suggests that it is "important to distinguish between having or using a concept and the clear or explicit recognition and elucidation of it. . . Thus persons might have and use the concept of a right without explicitly having a single word for it."<sup>23</sup> Gewirth claims that the concept of rights can be found in feudal thought, Roman law, Greek philosophy, the Old Testament, and in primitive societies. In connection with the last Finnis points out that anthropological studies of African tribal regimes of law have shown that "the English terms a 'right' and 'duty' are usually covered by a single word derived from the form normally translated as 'ought.'" He suggests that the best English translation in these cases is "due" because "due" looks both ways along a juridical relationship, both to what one is due to do, and to what is due to one."<sup>24</sup>

It seems, then, that the concept of a right may exist where a word for it does not. Could this be the case in Buddhism? In Buddhism what is due in any situation is determined by reference to Dharma. Dharma determines

what is right and just in all contexts and from all perspectives. With respect to social justice the Rev. Vajiragnana explains:

Each one of us has a role to play in sustaining and promoting social justice and orderliness. The Buddha explained very clearly these roles as reciprocal duties existing between parents and children; teachers and pupils; husband and wife; friends, relatives and neighbors; employer and employee; clergy and laity. . . No one has been left out. The duties explained here are reciprocal and are considered as **sacred duties**, for — if observed — they can create a just, peaceful and harmonious society.<sup>25</sup>

✓ From this it would seem that Dharma determines not just "what one is due to do" but also "what is due to one." Thus through A's performance of his Dharmic duty B receives that which is his "due" or, we might say, that to which he is "entitled" in (under, through) Dharma. Since Dharma determines the duties of husbands and the duties of wives,<sup>26</sup> it follows that the duties of one correspond to the entitlements or "rights" of the other. If the husband has a duty to support his wife, the wife has a "right" to support from her husband. If the wife has a duty to look after her husband's property, the husband has a "right" to the safe-keeping of his property by his wife. If under Dharma it is the duty of a king (or political authority) to dispense justice impartially, then subjects (citizens) may be said to have a "right" to just and impartial treatment before the law. ✓ ✓

Should it be concluded, then, that the notion of a right is present in classical Buddhism? The answer depends on the criteria adopted for "having" a concept. Dagger sets out the options:

If one is willing to look primarily for the idea or the notion, however it may be expressed, then one can confidently say that the concept of rights is virtually as old as civilization itself.

On the other hand:

If one insists that the form of expression is crucial. . . so that a concept cannot be said to exist unless there is a word or phrase that distinguishes it from other concepts, then one would have to say that the concept of rights has its origin in the middle ages.<sup>27</sup>

I think our conclusion should be that the concept of rights is implicit in classical Buddhism in the normative understanding of what is "due" among and between individuals. Under Dharma, husbands and wives, kings and subjects, teachers and students, all have reciprocal obligations which can be analyzed into rights and duties. We must qualify this conclusion, however, by noting that the requirements of Dharma are expressed in the form of duties rather than rights. In other words, Dharma states what is due in the form "A husband should support his wife" as opposed to "Wives have a right to be maintained by their husbands." Until rights as personal entitlements are recognized as a discrete but integral part of what is due under Dharma, the modern concept of rights cannot be said to be present. In this respect, however, Buddhism is far from unique, and a similar comment could be made about many other cultures and civilizations. Finnis points out with respect to Roman law:

[I]t is salutary to bear in mind that the modern emphasis on the powers of the right-holder, and the consequent systematic bifurcation between "right". . .and "duty", is something that sophisticated lawyers were able to do without for the whole life of classical Roman law.<sup>28</sup>

He also suggests, rightly I think, that "there is no cause to take sides as between the older and the newer usages, as ways of expressing the implications of justice in a given context."<sup>29</sup> A right is a useful concept which provides a particular perspective on justice. Its correlative, duty, provides another. These may be thought of as separate windows onto the common good which is justice or, in the context of Buddhism, Dharma. It would therefore be going too far to claim that the notion of rights is "alien" to Buddhism or that Buddhism denies that individuals have "rights."

In sum it might be said that in classical Buddhism the notion of rights is present in embryonic form although not yet born into history. Whether anything like the Western concept of rights has, or would, appear in the course of the historical evolution of Buddhism is a question for specialists in the various Buddhist cultures to ponder. In many respects the omens for this development were never good. Buddhism originated in a caste society, and the Asian societies where it has flourished have for the most part been hierarchically structured. MacIntyre, citing Gewirth, mentions that the concept of a right lacks any means of expression in Japanese "even as late as the mid-nineteenth century."<sup>30</sup> The preconditions for the emergence of the concept of rights would seem to be egalitarianism and democracy, neither of which have been notable features of Asian polity before the modern era. On the other hand, a justification for the rejection of hierarchical social structures

is not hard to find in Buddhism — one need look only at the Buddha's critique of caste.<sup>31</sup> Buddhism also holds, in the doctrine of no-self, that all individuals are equal in the most profound sense.<sup>32</sup> Like the Christian doctrine that all men are created equal before God this would appear to be fertile ground for a doctrine of natural rights. What seems to have been lacking in both faiths, but perhaps more so in Buddhism, was the will to incarnate this theoretical vision of man in the flesh of historical institutions.

### *Human Rights*

In the preceding section attention was focused on the concept of a right. Here we consider what it means to characterize certain rights as *human rights*,<sup>33</sup> and pursue further the discussion initiated in the preceding section as to whether Western notions of human rights are compatible with Buddhism.<sup>34</sup>

The point has already been made that what are today called human rights were originally spoken of as "natural" rights, in other words, rights which flow from human *nature*. In the seventeenth century philosophers and statesmen began to define these rights and enshrine them in early constitutions such as the "Fundamental Orders of Connecticut" as early as 1639. Documents of this kind inspired the publication of other declarations, charters and manifestos in a tradition which has continued into modern times. As an example of a modern charter of human rights we may take The Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations in December 1948. Since its promulgation this thirty-article code has been used as a model for many subsequent human rights charters.

What is the Buddhist position with respect to declarations of this kind? It may be useful to begin by asking whether Buddhism would endorse the Universal Declaration of Human Rights. The repeated calls by the Dalai Lama for respect for human rights give some reason to think that it would. The signing of the Global Ethic by many Buddhists also suggests that Buddhism has no reservations about subscribing to charters or manifestos which seek to secure universal human rights. Moreover, there seems to be nothing in any of the thirty articles to which Buddhism would take exception. Perera's commentary on each of the thirty articles of the Universal Declaration shows them to be in harmony with early Buddhist teachings both in letter and in spirit. In his Foreword to the commentary Ananda Guruge writes:

Professor Perera demonstrates that every single Article of the Universal Declaration of Human Rights — even the labour

rights to fair wages, leisure and welfare — has been adumbrated, cogently upheld and meaningfully incorporated in an overall view of life and society by the Buddha.<sup>35</sup>

But how are these rights to be justified with reference to Buddhist teachings? In asking this question I am not seeking justification by reference to textual passages which seem to support the rights claimed. There are many passages in the Pali Canon, as Perera has ably demonstrated, which support the view that early Buddhist teachings were in harmony with the spirit of the Declaration. The justification required at this point has more to do with the philosophical presuppositions underlying these passages and the overall Buddhist vision of individual and social good.

The various declarations on human rights themselves rarely offer a justification for the rights they proclaim. MacIntyre observes dryly how "In the United Nations declaration on human rights of 1949 [sic] what has since become the normal UN practice of not giving good reasons for any assertion whatsoever is followed with great rigor."<sup>36</sup> A gesture towards justification is sometimes made in recital clauses by reference to the "inherent dignity. . . of all members of the human family" or some similar form of words. The *Global Ethic*, which provides a fuller statement than most, echoes the Universal Declaration in its call for "the full realization of the intrinsic dignity of the human person."<sup>37</sup> It states: "We make a commitment to respect life and dignity, individuality and diversity, so that every person is treated humanely." This is amplified as follows:

This means that every human being without distinction of age, sex, race, skin, color, physical or mental ability, language, religion, political view, or national or social origin possesses an inalienable and *untouchable dignity*. And everyone, the individual as well as the state, is therefore obliged to honor this dignity and protect it.<sup>38</sup>

Elsewhere, as part of his dialogue with world religions, Küng makes a constructive suggestion on this point that students of Buddhism might do well to pay heed to:

Should not Buddhist thinkers, as they critically assess their own and alien traditions, make a more direct effort to establish an anthropology centered around *human dignity* (which the Buddha himself deeply respected)? Buddhists are fully aware that man can be adequately understood only as conditioned in every way, as a relational being within the

totality of life and the cosmos. But should they not reflect more earnestly, especially in an ethical vein, on the problems of the unique, inviolable, noninterchangeable human self, with its roots in the past and its future destiny?<sup>39</sup>

It is by no means apparent, however, how human dignity is to be grounded in Buddhist doctrine. The very words "human dignity" sound as alien in a Buddhist context as talk of rights. One looks in vain to the Four Noble Truths for any explicit reference to human dignity, and doctrines such as no-self and impermanence may even be thought to undermine it. If human dignity is the basis of human rights Buddhism would seem to be in some difficulty when it comes to providing a justification for them. The theistic religions, on the other hand, seem much better equipped to provide an account of human dignity. Christians, Muslims and Jews typically refer to the ultimate source of human dignity as divine. Article one (paragraph 1700) of the most recent *Catechism of the Catholic Church*, for instance, states: "The dignity of the human person is rooted in his creation in the image and likeness of God." Buddhism, clearly, would not wish to make such a claim. Küng notes how leading Buddhists at the Parliament of the World's Religions felt called upon to protest at calls for "a unity of religions under God," and at references to "God the Almighty" and "God the Creator" in invocations during the proceedings. He suggests, however, that these differences are reconcilable since the Buddhist concepts of "Nirvana, Shunyata and Dharmakaya. . . fulfil analogous functions to the concept of God" and can be regarded by Christians as "parallel terms for the Absolute."<sup>40</sup>

It may or may not be the case that Mahāyāna schools recognize a transcendent reality which resembles the Christian concept of God as the Absolute, and there are those better qualified than myself to address such a question. Here I will make only three brief points regarding the problems which arise in regarding these things as the source of human dignity. The first is that since these concepts are understood differently by the main Mahāyana schools they are unlikely to provide the common ground which is required as a foundation for human rights. The second is that it is difficult to see how any of these things can be the source of human dignity in the way that God can, since no school of Buddhism believes that human beings are created by them. The third point is that even if some metaphysical ground of the above kind can be identified in Mahāyāna Buddhism it still leaves the problem of how human dignity is to be grounded where Theravāda Buddhism is concerned. For the Theravāda, *Nirvāṇa* is not a transcendent Absolute, nor do the concepts of *Śūnyatā* and *Dharmakāya* have anything like the meaning or significance they attain later. No grounding for human rights can be truly satisfactory, I would suggest, unless it



unambiguously forms part of the core teachings of classical Buddhism as a whole.

One suggestion as to how human rights can be grounded in Buddhist doctrine has been made by Kenneth Inada. In a discussion of "The Buddhist Perspective on Human Rights," Inada suggests "there is an intimate and vital relationship of the Buddhist norm or Dhamma with that of human rights."<sup>41</sup> He explains the relationship as follows:

Human rights is indeed an important issue, but the Buddhist position is that it is ancillary to the larger or more basic issue of human nature. It can be asserted that the Buddhist sees the concept of human rights as a legal extension of human nature. It is a crystallization, indeed a formalization, of the mutual respect and concern of all persons, stemming from human nature. Thus, human nature is the ultimate source, the basis from which all other attributes or characteristics are to be delineated. They all have their respective *raison d'être* in it. They are reflections and even byproducts of it. The reason for assigning human nature the basic position is very simple. It is to give human relations a firm grounding in the truly existential nature of things: that is, the concrete and dynamic relational nature of persons in contact with each other, that which [*sic*] avoids being caught up in rhetorical or legalistic tangles.<sup>42</sup>

Few would disagree with the proposition that human rights are grounded in human nature. Towards the end of the extract, however, Inada seems to move away from his initial suggestion that *human nature* is the "ultimate source" of human rights towards the view that the ultimate ground is the "dynamic relational nature of persons in contact with each other." In other words, it is in the *interrelatedness* of persons rather than in the persons themselves that the justification for human rights is to be found. This is confirmed a little later:

Consequently, the Buddhist concern is focused on the experiential process of each individual, a process technically known as relational origination (*paṭicca-samuppāda*). It is the great doctrine of Buddhism, perhaps the greatest doctrine expounded by the historical Buddha. It means that, in any life-process, the arising of an experiential event is a total, relational affair.<sup>43</sup>

How is the link between dependent-origination and human rights to be forged? The argument reaches its conclusion in the following passage:

Like a storm which consumes everything in its wake, an experience in terms of relational origination involves everything within its purview. Hence, the involvement of elements and, in our case, human beings as entities should not be in terms of mere relationship but rather a creative relationship which originates from the individual locus of existence. In other words, each individual is responsible for the actualization of an "extensive concern" for everything that lies in his or her path of experience. So, we may say that the sum total of the "extensive concerns" can be referred to as a mutually constituted existential realm, and it thereby becomes a fact that there will be mutual respect of fellow beings. It is on this basis that we can speak of the rights of individuals. These rights are actually extensions of human qualities such as security, liberty, and life.<sup>44</sup>

In simple language, the argument seems to be as follows. Human beings, like everything else, are part of the relational process described in the doctrine of dependent-origination; since no-one exists independently we should look out for one another; looking out for one another means respecting each other's rights; examples of the rights we should respect are security, liberty and life.<sup>45</sup>

Although I have described this as an "argument" it is little more than a series of assertions. Working backwards, it is difficult to know what sense to give the concluding sentence: "These rights are actually extensions of human qualities such as security, liberty and life." It is unclear what is meant by "human qualities" here. In what sense is security a "human quality" (perhaps a "need")? Why is life described as a "quality" of a human being? Even granted that these things are "human qualities," what does it mean to say that rights are extensions of "human qualities?" In the first extract quoted above, Inada suggests that "the Buddhist sees the concept of human rights as a legal extension of human nature." What is left unexplained, however, is how human nature (or "human qualities") become legal rights. Do all "human qualities" extend into rights or only some? If so, which and why? Finally, if "human qualities" are what give rise to rights, why invoke the doctrine of dependent-origination?

The derivation of human rights from the doctrine of dependent-origination is a conjuring trick. From the premise that we live in "a mutually constituted existential realm" (we all live together) it has "thereby

become a fact" that there will be "mutual respect of fellow beings." In the twinkling of an eye, values have appeared from facts like a rabbit out of a hat. However, the fact that human beings live in relationship with one another is not a moral argument about *how they ought to behave*. By itself it offers no reason why a person should not routinely abuse the rights of others. Inada's suggestion that human rights can be grounded in the doctrine of dependent-origination turns out to be little more than a recommendation that people should be nice to one another on the ground that we are "all in this together."<sup>46</sup>

The approach adopted by Perera is rather different. Perera's main concern is to demonstrate that the articles of the Universal Declaration are adumbrated in early Buddhist teachings, rather than explore their philosophical foundations. He acknowledges that "Buddhism credits the human personality with a dignity and moral responsibility"<sup>47</sup> but does not explain fully whence this arises or how it provides a foundation for human rights. In a number of places he suggests certain possibilities regarding the source of human dignity, not all of which seem to be compatible. At one point he defines "the ethical assumption on which the Buddhist concept of human rights is founded" as the "fundamental consideration that all life has a desire to safeguard itself and to make itself comfortable and happy."<sup>48</sup> Basing rights on desires, however, is problematic. One reason is that certain people, for example those who seek to end their lives through suicide, seem to lack the desire in question. Nor is difficult to conceive of a justification for human rights abuses along the lines that the victims "no longer cared what happened to them." If they themselves had no interest in their future, whose rights would have been violated? A deeper problem is that the mere existence of desires establishes nothing from a *moral* point of view. Desires are many and varied and can be met in manifold ways. Moral questions arise both at the level of *whether* a desire should be met and how it should be met. The identification of a desire may be a starting point for moral reflection, but it is certainly not its end.<sup>49</sup>

On the preceding page Perera suggests an alternative foundation for human rights, one which links it to human dignity. He writes: "Buddhism posits, as Jean Jaques Rousseau did much later, that the essence of human dignity lies in the assumption of man's responsibility for his own governance."<sup>50</sup> No Buddhist sources are cited in support of this claim, and I believe it is unlikely that Buddhism would wish to link human dignity quite so closely to politics. Perhaps if this suggestion were developed a little further it would make reference to underlying human capacities such as reason and autonomy which enable men to constitute themselves into orderly societies, and then point to these as the underlying source of human dignity. While political institutions may be produced through the exercise of

distinctively human capacities, however, it is unlikely that Buddhism would locate "the essence of human dignity" in their creation. According to the *Aggaññasutta*, the evolution of political societies is the consequence of depravity and decline, which makes them a dubious testament to human dignity.

Where then, should the foundations for a Buddhist doctrine of human rights be sought? The proper ground for a doctrine of human rights, I suggest, lies elsewhere than in the doctrine of dependent-origination, as suggested by Inada, or in either the desire for self-preservation or the acceptance of responsibility for self-government, as proposed by Perera. Perera, in fact, comes closest to what in my view is the true source of human rights in Buddhism in his commentary on Article 1.51 In discussing the first sentence of the Article ("All human beings are born free and equal in dignity and rights") he comments that "Buddhahood itself is within the reach of all human beings. . . and if all could attain Buddhahood what greater equality in dignity and rights can there be?" To focus attention upon the goal, I believe, is more promising than any of the other approaches considered thus far. Perera seems to grasp its significance in a remark towards the end of his commentary on Article 1. He writes:

It is from the point of view of its goal that Buddhism evaluates all action. Hence Buddhist thought is in accord with this and other Articles in the Universal Declaration of Human Rights to the extent to which they facilitate the advancement of human beings towards the Buddhist goal.<sup>52</sup>

I believe the above statement provides the key to understanding human rights from a Buddhist perspective. What is missing in Perera's commentary, however, is the explicit linkage between the goal and human dignity, and it is this which I will now try to establish. What I will suggest in general is that the source of human dignity should be sought not in the analysis of the human condition provided by the first and second noble truths (the area where Buddhist scholarship has myopically focused its attention) but in the evaluation of human good provided by the third and fourth. Human rights cannot be derived from any factual non-evaluative analysis of human nature, whether in terms of its psycho-physical constitution (the five "aggregates" which lack a self), its biological nature (needs, urges, drives), or the deep structure of interdependency (*paṭicca-samuppāda*). Instead, the most promising approach will be one which locates human rights and dignity within a comprehensive account of human goodness, and which sees basic rights and freedoms as integrally related to human flourishing and self-realization.<sup>53</sup> This is because the source of human

dignity in Buddhism lies nowhere else than in the literally infinite capacity of human nature for participation in goodness.<sup>54</sup>

The connection between human rights and human good can be illustrated by asking what the various declarations on human rights seek to secure. Documents which speak of human rights commonly announce a list of specific rights and freedoms and proclaim them to be inviolable. The rights proclaimed by the Universal Declaration include the right to life, liberty, security of person, equality before the law, privacy, marriage and protection of family life, social security, participation in government, work, protection against unemployment, rest and leisure, a minimum standard of living, and enjoyment of the arts. The exercise of these rights is subject only to such general limitations as are necessary to secure due recognition and respect for the rights and freedoms of others and the requirements of morality, public order and general welfare (Article 29.2). Otherwise, the rights are expressed in categorical forms such as "Everyone has. . ." and "No-one shall. . ." For example, Article 3: "Everyone has the right to life, liberty and security of person." And Article 4: "No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms." The document thus understands the rights it proclaims as both "universal" and exceptionless. Using the terminology introduced earlier it can be seen that some of these rights are claim rights while others are liberty rights. Article 2 confirms this when it speaks of an entitlement to both the "rights and freedoms set forth in this Declaration."<sup>55</sup>

What do these rights and freedoms amount to? It might be said that they map the parameters of human "good-in-community." In other words, these rights and freedoms are what is required if human beings are to lead fulfilled lives in society. Article 29.1 recognizes this when it observes "Everyone has duties to the community in which alone the free and full development of his personality is possible."<sup>56</sup> In the absence of human rights the scope for human development and fulfillment through social interaction is drastically reduced. The rights specified define and facilitate aspects of human fulfillment. The right to life is clearly fundamental since it is the condition for the enjoyment of all other rights and freedoms. The right to "liberty and security of person" (Article 3) is also basic to any understanding of human good. Without these minimum conditions the scope and opportunity for human fulfillment would be intolerably restricted. The same would apply in the case of slavery (Article 4), torture (Article 5), and the denial of rights before the law (Article 6). It can also be seen that many of the detailed rights identified 'are actually derived from more fundamental ones. Article 3, for example, "No one shall be held in slavery," is clearly implied in Article 2, "Everyone has the right to. . .liberty." It might thus be said that many of the

thirty articles articulate the practical implications of a relatively small number of fundamental rights and freedoms which are the basis of the common good.

It may be noted that the Universal Declaration itself and modern charters like it do not offer a *comprehensive* vision of human good. This is not intended as a criticism, for the purpose of such charters is to secure only what might be termed the "minimum conditions" for human flourishing in a pluralistic milieu. The task of articulating a comprehensive vision of what is ultimately valuable in human life and how it is to be attained falls to the competing theories of human good found in religions, philosophies and ideologies. Buddhism provides one view of human nature and its fulfillment, Christianity another, secular philosophies a third. To pursue any of these different paths, however, requires the substructure known as "human rights," a complex of fundamental rights and liberties which are the preconditions for the realization of the particular opportunities made available by the competing ideologies.

If the aim of human rights declarations is understood in the way outlined above then human rights is fundamentally a moral issue. Where there is no right to life, liberty and security of person, and where torture is routine, the opportunities for the realization of human good are greatly reduced. Freedom of religion (Article 18), for example, is vital to the Buddhist vision of individual and social good, and the consequences of the loss of these rights are all too obvious in Tibet. Human rights is thus an area in which religions have a legitimate and vital stake, and there is every reason why it would be proper for Buddhism both to endorse the Universal Declaration and call upon others to respect and implement it.<sup>57</sup>

If religions have a legitimate stake in human rights, we might expect to find many of the rights and liberties spelled out in human rights charters present in either an express or implied form in their moral teachings. These typically include commandments or precepts forbidding killing, stealing, adultery, and lying, as do the first four of the Five Precepts. These evils are prohibited because it is immediately apparent that they are antithetical to human flourishing-in-community. The rationale for these prohibitions, I suggest, coincides to a large extent with that of the various human rights manifestos.<sup>58</sup> These manifestos, indeed, may be regarded as a translation of religious precepts into the language of rights. The process of casuistry can be seen at work in both. Just as a limited number of moral precepts can be expanded to meet the needs of different social situations (many of the extensive *Vinaya* rules, for example, have their source in a handful of moral precepts),<sup>59</sup> so the many articles in human rights charters are extrapolated from a comparatively small number of basic rights and freedoms.

It must be admitted there are grounds for skepticism towards the parallel which has just been suggested since it cannot be denied that the

Buddhist precepts look and sound very different from contemporary declarations on human rights. The Buddhist precepts make no reference to "rights" at all, and are couched instead in the form of undertakings.<sup>60</sup> Let us examine what these undertakings involve. On the basis of our earlier analysis it would seem that "taking the precepts" in Buddhism is actually the formal acknowledgment of a subsisting duty, a duty which arises from Dharma. The person who takes the precepts is saying in effect "I hereby recognize my Dharmic duty not to do x,y, and z." Since duties have their correlative in rights, however, rights must also be implicit in the good the precepts seek to promote. We saw earlier that rights provide a way of talking about what is just and unjust from a special angle. We noted further that a person who has right has a benefit, a benefit which can be described as either a claim or a liberty. In the context of the precepts, then, the right-holder is the one who suffers from the breach of Dharmic duty when the precepts are broken. In the case of the first precept this would be the person who was unjustly killed. The right the victim has may therefore be defined as a negative claim-right upon the aggressor, namely the right not to be killed. In simple terms we might say that the victim has a right to life which the aggressor has a duty to respect.

That the translation between precepts and rights is accurate, and that the agreement between the two formulations is more than superficial or accidental, is supported by the authenticity with which the Dalai Lama was able to affirm the *Global Ethic*. Kuschel comments as follows:

Something else seems decisive to me: authenticity and humanity. The reason why the Dalai Lama's speech was so convincing, and indeed seized people's hearts, so that it was often interrupted by spontaneous applause, was that this man simply wanted to be an *authentic Buddhist*. His plea for mutual respect, dialogue and collaboration, for understanding between peoples and respect for creation, was not an adaptation to Christian or Western values, but came from the depths of his own Buddhist spirituality.<sup>61</sup>

✓ Further evidence of the linkage between the Buddhist precepts and social justice is found in the Theravāda tradition. Writing on the theme of "Justice in Buddhism" Vajiragnana states: ✓

✓ Man is responsible for society. It is he who makes it good or bad through his own actions. Buddhism, therefore, advocates a five-fold disciplinary code for man's training in order to maintain justice in society. . . These five. . . precepts are

extremely important fundamental principles for promoting and perpetuating human welfare, peace and justice.<sup>62</sup>

I suggest, then, that the apparent differences between the moral teachings of Buddhism and human rights charters is one of form rather than substance. ~~Human rights can be extrapolated from Buddhist moral teachings~~ in the manner described above using the logic of moral relationships to illumine what is due under Dharma. A direct translation of the first four precepts yields a right to life, a right not to have one's property stolen, a right to fidelity in marriage, and a right not to be lied to. Many other human rights, such as the rights to liberty and security can either be deduced from or are extant within the general corpus of Buddhist moral teachings. A right not to be held in slavery, for example, is implicit in the canonical prohibition on trade in living beings.<sup>63</sup> These rights are the extrapolation of what is due under Dharma; they have not been "imported" into Buddhism but were implicitly present.

If modern conceptions of human rights and Buddhist moral teachings are related in the way I have suggested, certain conclusions follow for our understanding of the Buddhist precepts. If there are universal and exceptionless rights, as human rights charters affirm, there must be universal and exceptionless duties. If human rights such as a "right to life" (by which I understand a right not to have one's life taken unjustly) are exceptionless, there must also be an exceptionless duty to abstain from unjustly depriving a human being of life. The First Precept in Buddhism, therefore, should be understood as an exceptionless duty or moral absolute.

Is this reverse translation, from absolute human rights to absolute moral duties, supported by textual sources? There is every reason to think that it is. Such an understanding of the precept is clearly evident in classical Buddhism, which tirelessly reiterates the principle of the sanctity of life found in the pan-Indian teachings on non-harming (*ahimsā*), and which gives no reason to suppose that its moral precepts are to be understood as anything other than exceptionless norms. If, on the other hand, it is thought that the precepts are *not* to be understood as moral absolutes, then it is difficult to see what justification there can be for Buddhists to hold that there are universal and exceptionless human rights. It would be inconsistent to affirm the latter but deny the former.

The above account of human rights in Buddhism has been given entirely within the context of an understanding of human good which has its apex in *nirvāṇa*-in-this-life. Reference to the transcendent dimension of human good and its ground has been avoided for several reasons. The first is that no reference need be made to transcendent realities in order to ground human rights. That this is so can be seen from the absence of any reference



to such realities in contemporary human rights charters, and the fact that many atheists are vigorous defenders of human rights. Where Buddhism is concerned, the vision of human good set out in the third and fourth noble truths provides the necessary basis for a doctrine of human rights. Human rights turn out in essence to be what justice requires if human good is to be fulfilled. The second reason for avoiding reference to transcendent realities is that my aim has been to suggest a basis for human rights acceptable to classical Buddhism as a whole. Since all schools of Buddhism affirm the third and fourth noble truths and the vision of human good they proclaim, the required common ground for a pan-Buddhist doctrine of human rights is present.

The above should not be read as a *denial* that there can be a transcendent ground for human rights in Buddhism. Because the transcendent dimension of human good is left obscure in Buddhist teachings, however, the transcendent ground for human rights is also obscure. In terms of the account given here, the transcendent ground for human rights would be post-mortem nirvana, not in the sense of an absolute reality (as suggested by Küng) but as the universalization of human good on a transcendent plane. The twin axes of human good are knowledge (*prajñā*) and moral concern (*karuṇā*) and on the graph defined by these axes can be plotted the soteriological coordinates of any individual. Through participation in these twin categories of good, human nature progressively transcends its limitations and becomes saturated with nirvanic goodness. Eventually, in post-mortem *nirvāṇa*, this goodness attains a magnitude which can no longer be charted. If a transcendent ground for human rights is desired, this is where it should be sought.

✓ To sum up: it is legitimate to speak of both rights and human rights in Buddhism. Modern doctrines of human rights are in harmony with the moral values of classical Buddhism in that they are an explication of what is "due" under Dharma. The modern idea of human rights has a distinctive cultural origin, but its underlying preoccupation with human good makes it at bottom a moral issue in which Buddhism and other religions have a legitimate stake. The *Global Ethic* endorses the view that the principles it sets forth on human rights are neither new nor "Western" when it states: "We affirm that a common set of core values is found in the teachings of the religions, and that these form the basis of a global ethic."<sup>64</sup> ✓

A final thought. Above I have spoken only of *human* rights, and in the context of Buddhism this perspective may be unduly narrow in that it seems to preclude the universe of sentient non-human beings from any entitlement to rights. Buddhists may feel, therefore, that it is less prejudicial in discussions of this kind to revert to the older terminology of "natural" rights. Whether or not animals have rights, and whether these are the same

rights as human beings, is a matter which requires separate discussion. If human rights flow from human nature, as suggested, it may be that rights of different kinds flow from natures of different kinds. Such would seem to be the understanding of classical Buddhism.

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## NOTES

1. The text of the Declaration, along with commentaries and supplementary information is available in Küng and Kuschel (eds.) (1993).
2. Küng and Kuschel (eds.) (1993:8).
3. For a range of cultural and ideological perspectives on human rights see Pollis and Schwab (1979).
4. On the absence of ethics in Hinduism see Creel (1977:20ff).
5. In spite of its contemporary importance, however, little appears to have been written on the subject from a specifically Buddhist perspective. The only monograph on the subject appears to be Perera, 1991, and I am grateful to the Ven. Mahinda Deegalle for bringing it to my attention. Panikkar (1982:76n) refers to a UNESCO Symposium which took place in Bangkok in 1979 entitled *Meeting of Experts on the Place of Human Rights in Cultural and Religious Traditions*, which apparently included discussion of Buddhism. I have as yet been unable to obtain a copy of the Final Report SS-79/CONF. 607/10 of 6 February 1980.
6. On the analogous question of whether there is an "African" doctrine of human rights see Howard (1986).
7. For information on these empirical questions see Humana (1992), Hsiung (1985), Rupesinghe (*et al*) (1993), de Silva (1988), also *Human Rights in Developing Countries*, Yearbook 1993 (Copenhagen, 1993: Nordic Human Rights Publications).
8. Dagger (1989:293). I am indebted to Dagger's excellent paper throughout this section.
9. Dagger (1989:294), original emphasis.
10. Finnis (1980:206).
11. Stackhouse lists five (1984:35ff). Little (1988) shows the dependency of the modern Western secular and liberal ideology on Christian theology by tracing the historical connection between the Christian concept of conscience and the intellectual framework within which the American doctrines of liberty and religious freedom emerged in the eighteenth century in the writings of Thomas Jefferson and James Madison. He suggests that this Western framework applies relatively unproblematically to Buddhism and Islam, and notes in general: "Thus, current human rights formulations, along with the important notions that underlie them, are by no means necessarily irrelevant to cultures outside the West" (1988:31). For perspectives on human rights from the world's religions see Rouner (1988) and Swidler (1982). Issues concerning

religion and rights are discussed by Bradney (1993). A commentary on the Universal Declaration from the perspective of Buddhism, Hinduism, Christianity and Islam may be found in *Human Rights and Religions in Sri Lanka*, published by the Sri Lanka Foundation (Colombo, 1988). The Buddhist commentary by Perera was republished separately in 1991.

12. Stackhouse (1984:35)

13. Stackhouse (1984:36).

14. For a survey see Carlyle and Carlyle (1950).

15. Finnis (1980:208).

16. The most influential modern analysis of rights is that by Hohfeld (1964).

17. Finnis (1980:199-205).

18. Finnis (1980:205), original emphasis.

19. Perera's discussion of Buddhism and human rights does not address these questions, and seems to assume that the concept of rights and human rights as understood in the Universal Declaration are directly applicable to canonical Buddhism.

20. For the view that moral values are determined by culture, as maintained by many anthropologists, see Ladd (ed.) (1983). The defensibility of a specific cultural custom (female circumcision) from a human rights perspective is discussed by James (1994).

21. *Pali Text Society Pali-English Dictionary, uju and ujju.*

22. On the concept of rights in Hinduism and the meaning of *adhikāra*, see Bilimoria (1993), also Creel (1977:19). In Buddhist languages the notion of rights may be distributed among a variety of terms, as perhaps, in Latin among the words *auctoritas*, *potestas*, *dominium*, *iurisdictio*, *proprietas*, *libertas* and *ius* (Dagger, 1989:291).

23. Quoted in Dagger (1989:286).

24. Finnis (1980:209).

25. Vajiragnana (1992)

26. See, for example, the *Siḅālovādasutta*.

27. Dagger (1989:297)

28. Finnis (1980:209)

29. Finnis (1980:210)

30. MacIntyre (1981:69). Cf. de Bary on the Chinese neologisms which have been coined to express these concepts (1988:183).

31. The institution of caste is criticized in numerous early discourses, notably the *Sonadaṇḍasutta*.

32. Carrithers (1985) suggests that the Buddhist concept of the "self" (which he relates to Mauss's concept of the "moi") is one which is easily transportable across cultural frontiers. This enhances the prospects for a Buddhist doctrine of universal human rights.

33. Useful discussions of the philosophical basis of human rights may be found in Donnelly (1985) and Nickel (1987).
34. On how far the Western concept of human rights is relevant or applicable to other cultures see Panikkar (1982), Teson (1985), Milne (1986), Welch (*et al*) (1990).
35. Perera (1991:xi).
36. MacIntyre (1981:69).
37. *A Global Ethic*, p.14.
38. *A Global Ethic*, p.23, original emphasis.
39. Küng (1986:383f), original emphasis.
40. *A Global Ethic*, p.62f.
41. Inada (1982:71)
42. Inada (1982:70), paragraphs joined.
43. Inada (1982:70).
44. Inada (1982:70f).
45. An earlier attempt to ground Buddhist ethics in dependent-origination can be found in Macy (1979). Macy offers the Sarvodaya Shramadana, a self-help movement in Sri Lanka, as "A notable example of the ethics of *paṭicca-samuppāda*," but, like Inada, fails to explain how a moral imperative arises out of this doctrine. Also drawn to the seemingly magnetic doctrines of no-self and dependent-origination is Taitetsu Unno, whose 1988 article, supposedly about rights, is taken up almost entirely in providing a Pure Land perspective on these two doctrines. While these doctrines offer a congenial metaphysical backdrop for Buddhist ethics, they cannot provide a *moral* ground for rights. Harris (1994) expresses doubts that dependent-origination can provide a satisfactory basis for Buddhist ecology.
46. In a second essay on the subject (1990) Inada gives much less emphasis to dependent-origination and seems to want to ground human rights in compassion. However, the nature of the argument, and in particular the concluding paragraph, are far from clear.
47. Perera (1991:28, cf.88).
48. Perera (1991:29).
49. A further problem, although I believe it is ultimately a pseudo-problem, is that Buddhism sees desire as the cause of suffering. Desire would therefore seem an unlikely foundation for human rights.
50. Perera (1991:28).
51. Article 1: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."
52. Perera (1991:24).
53. A discussion of human nature and human good in Buddhism will be found in my *Buddhism & Bioethics* (Macmillan, 1995).

54. A more familiar way of making the same point in Buddhist terminology would be to say that all beings are potential Buddhas or possess the "Buddha-nature."

55. Emphasis added.

56. Emphasis added.

57. In the view of Perera: "From the religious angle, it is possible to state that in this Declaration lie enshrined certain values and norms emphasized by the major religions of the world. Though not directly expressed, the basic principles of the Declaration are supported and reinforced by these religious traditions, and among them the contribution of the Buddhist tradition, to say the least, is quite outstanding" (1991:xiii). Though not wishing to deny that the early teachings support the principles of the Declaration, I do not agree that the contribution of the Buddhist *tradition* to the cause of human rights is in any way "outstanding."

58. In certain areas (such as the prohibition on alcohol and matters of sexual morality) the precepts go beyond the more limited aims of human rights charters. This is because Buddhism provides a particular vision of human good and also defines the practices required for its fulfillment.

59. Keown (1992:33).

60. Sometimes a contrast is drawn between the "voluntary" nature of the Buddhist precepts and the "commandments" of Christianity. While the format of the Buddhist precepts is certainly more appealing to liberal tastes, the distinction has little real meaning. The precepts apply whether or not they are formally "undertaken," and are commandments in all but name.

61. Küng and Kuschel (eds) (1993:104), original emphasis.

62. Vajiragnana (1992).

63. A.iii.208

64. Küng and Kuschel (eds.) (1993:14).



## WHY THERE ARE NO RIGHTS IN BUDDHISM: A REPLY TO DAMIEN KEOWN

Craig K. Ihara

Although this is a critique of a serious paper: Damien Keown's "Are There Human Rights in Buddhism?"<sup>1</sup> and on a serious issue: whether there are or are not human rights in Buddhism, I would like to begin by considering an example that may well seem irrelevant: ballet.

In any ballet, the male lead is at some point or other responsible for lifting or catching the prima ballerina. This is his role responsibility and if he fails to do it well or not at all, he has failed to do what he ought. In such circumstances others, including the choreographer, the other dancers, or the prima ballerina might express disapproval, criticism, even anger for his failure to do his part by saying any of a number of things, such as: "You're supposed to catch her there," "What's the matter with you?," "You're not doing your job (or playing your part)," "You're incompetent (or irresponsible)." Suppose instead that the choreographer or any of the other dancers came up and rebuked him by saying, "You've wronged the prima ballerina," or "You've violated her rights." Or imagine that the prima ballerina picks herself up and angrily proclaims, "My rights have been violated. . ." Now I maintain that doing so would be bizarre to say the least and that in fact no one in that situation would resort to the language of rights.

Of course this only one instance, but I maintain that it is indicative of ballet in general, as well as many cooperative enterprises, including team sports.<sup>2</sup> In any specific ballet, each dancer has a specific role to play. Each therefore has role responsibilities which dictate what each dancer should do at a given time on the assumption that others are also doing their part. A failure to do what one ought would be described simply as poor or faulty performance, and definitely not as a violation of anyone's rights.

Now assuming I am correct about this, does it follow that there is no concept of rights in ballet? Not according to Keown and Gewirth. As Gewirth says, it is "important to distinguish between having or using a concept and the clear or explicit recognition and elucidation of it. . . Thus persons might have and use the concept of a right without explicitly having a word for it."<sup>3</sup>

Granting Keown and Gewirth this possibility, the answer to the question — Is there a concept of rights in X? — depends on the criteria for deciding when the concept of rights exists or is being used either in ballet or in any other context, such as Buddhism, where there is no explicit mention of it.

Keown argues that even though there is no word for rights in Pali or Sanskrit that "the concept of rights is implicit in classical Buddhism,"<sup>4</sup> although he later concedes that: "Until rights as personal entitlements are recognized as a discrete but integral part of what is due under Dharma, the modern concept of rights cannot be said to be present."<sup>5</sup>

I shall argue that there is no concept of rights in classical Buddhism and that introducing it would significantly transform the nature of Buddhist ethics as Keown describes it. I shall begin by discussing Keown's arguments for the view that some concept of rights does exist in classical Buddhism, and then presenting my own view why there is not. Finally I will argue that while rights cannot be added to classical Buddhism without substantially transforming it, that it is still possible it should be done.

### *Part I*

Keown's argument depends heavily on a suggestion by Finnis in his anthropological study of African tribal regimes of law in which "due" is taken as "the best English translation" for a word normally translated as "ought."<sup>6</sup> Because "due" looks both to what one is due to do, and to what is due to one, Keown concludes, "It seems, then, that the concept of a right may exist where a word for it does not."<sup>7</sup>

Keown's argument that there is at least an "embryonic"<sup>8</sup> concept of rights in Buddhism parallels Finnis' argument. He says that "In Buddhism what is due. . . is determined by reference to Dharma" and claims that because Dharma establishes reciprocal duties, that it establishes not just "what one is due to do" but also "what is due to one," and hence: "Since Dharma determines the duties of husbands and the duties of wives, it follows that the duties of one correspond to the entitlements or 'rights' of the other."<sup>9</sup>

The central flaw in the arguments given by Keown and Finnis is to assume that every kind of "ought" or "duty" entails a corresponding right. For Finnis this error takes the form of holding "ought" equivalent not only to what is "due to do" but also what is "due to one." For Keown the mistake is thinking that reciprocal duties always "correspond" to reciprocal rights.

The general point about the conceptual relationship between rights and obligations was made long ago by Joel Feinberg in his well-known article, "The Nature and Value of Rights."<sup>10</sup> In it he points out, among other things, that:

. . . there seem to be numerous classes of duties, both of a legal and non-legal kind, that are not logically correlated with the rights of other persons. This seems to be a consequence of the fact that the word 'duty' has come to be

used for any action understood to be required, whether by the rights of others, or by law, or by higher authority, or by conscience, or whatever.<sup>11</sup>

Furthermore he provides some convincing examples which show that **although rights entail duties, duties do not always entail correlative rights:**

When traffic lights turn red. . . there is no determinate person who can plausibly be said to claim our stopping as his due, so that the motorist owes it to him to stop, in the way a debtor owes it to his creditor to pay.<sup>12</sup>

When we leave legal contexts to consider moral obligations as other extra-legal duties, a greater variety of duties-without-correlative-rights present themselves. Duties of charity, for example, require us to contribute to one or another of a large number of eligible recipients, no one of whom can claim our contribution from us as his due.<sup>13</sup>

That duties themselves do not entail corresponding rights can also be seen in contexts where duties are essentially role-based responsibilities. Ballet is one example. Every dancer has his or her own role, and with each role comes certain responsibilities to do certain things at certain times. But what a dancer ought to do is not comfortably analyzed in terms of what that dancer owes another, or what is due to another.

Even the prima ballerina whose own performance has been compromised because of the male lead's failure to support her, has not been wronged. This is because while the male lead has a responsibility to support the female lead, this is an obligation he has solely because of a role whose point and purpose is to contribute to the overall performance. To conceptualize either his role-responsibility as an obligation to the female lead or his shortcomings as injuries to her is to misconstrue what is going on. Both are participants in a larger project, and what they ought to do is not a function of, nor properly analyzed into, what is owed to others.

To take another example, consider a sport such as soccer. Unlike ballet, such a game includes not only role-responsibilities among members of a team, it also has rules which regulate play. Such rules of play provide a different kind of parallel to duties determined by Dharma. In soccer, for example, there is a rule which prohibits the players, excluding the goalie, from using their hands to catch or touch the ball while in play. Players who violate that rule are penalized and are thought to have done something wrong, but they not thought to have infringed on anyone's rights. As

Feinberg says duties and obligations are indicators of requirements of various sorts. They do not all presuppose or entail the existence of rights. Team sports in particular are good examples of contexts in which the language of rights is both unused, and unnecessary.

Furthermore, contrary to what Keown infers, the fact that husbands and wives have reciprocal responsibilities according to Dharma does not entail that they have reciprocal rights. Consider the analogous case in ballet. There is no contradiction in supposing that while the male lead has a responsibility to catch the prima ballerina at a particular point in the ballet and the prima ballerina has a responsibility to leap into the arms of the male lead at the appropriate moment, that either has a special claim against the other to their performance. The most they might be said to have is a reasonable expectation that they would perform in such and such a way. We might call that a right, but it would be an epistemological, rather than a moral, right. This is not a right in any of the senses Keown identifies.

What Keown fails to distinguish is a duty which involves another, perhaps cooperatively, with a duty to another. According to Dharma a husband may have a duty to perform a certain sort of action, such as provide for his wife, but this need not be analyzed in terms of having a duty to his wife. So for example, as in the case of a guardian or the executor of a trust, the obligation might either be to someone else, for example, the deceased husband, or to no one at all, as in the case of someone who has been legally appointed to execute trusts of that sort. Of course in this case although the obligation is not to the wife, there may be an obligation to someone else. The point I am making with this example is that an obligation to help someone need not be an obligation to that person. In other words, all rights might in some sense be benefits, as Keown maintains, but not all benefits are rights. "Reciprocal duties" might mean "duties which mutually involve or benefit" or it might mean "duties to each other." Duties in the first sense clearly exist in the Dharma system just as they do in ballet or soccer, but whether they exist in the latter sense such that a failure to do one's duty entails wronging someone is much less clear.

Now it might be argued with regard to the example provided above that the duty of an executor really is to the widow, since the widow can complain "You (the executor) should be providing for me," and in doing so expect to gain some specific benefit. In Feinberg's terminology, she appears to have a "claim to" the benefit. But even this does not establish the existence of a claim right, since she might just be pointing out what anyone could maintain, that the executor is failing in his role-responsibility. Similarly the ballerina could complain that "You (the male lead) are not supporting me" or "You should support me." This charge, if true, might lead to greater support but does not establish that she in particular has been wronged or has a right

against him. All it might be doing is to point out that the male lead is not performing his part in the dance properly.

I maintain that the notion of Dharma may be part of a vision of society in which human life is ideally a kind of dance with well defined role-responsibilities. This is a view that I believe is common to many traditional cultures, Confucian China for example.<sup>14</sup> Although there are beneficiaries in such a society, it does not follow that it embodies a point of view in which there are "others to whom something is owed or due, and who would be wronged if denied that something."<sup>15</sup> Contrary to Keown's opinion such a system does not entail or require having or using the concept of rights in order to be intelligible.

### Part II

What I have argued to this point is that Keown's arguments are inconclusive. There is at least a different model by which to conceptualize Dharma which does not lead us to conclude that there are rights in Buddhism.

Keown might actually be willing to concede this for two reasons. First, he has in several places qualified his claim from "the concept of rights is implicit in Buddhism" to "in classical Buddhism the notion of rights is present in embryonic form."<sup>16</sup> Second, even without a concept of rights in classical Buddhism, it might still be possible to achieve his principal objective of establishing "an intellectual bridgework" which will link human rights to Buddhism.

I do not take the former response too seriously, simply because it is extremely unclear to what an "embryonic" sense of rights would amount. If the claim is merely that any moral system with the concept of a duty must contain an embryonic sense of rights because duties always correspond to rights, this begs the question. It simply reveals our own biases.

The latter response might be thought to be more significant. However assessing the task raises several perplexing questions: One, why "must" this bridgework be put into place for rights to be introduced into Buddhism? Two, what kind of bridgework is needed? Perhaps all Keown needs to show is that the concept of rights can be introduced without doing classical Buddhist ethics any violence. In other words perhaps the important issue is simply whether rights are conceptually compatible with Buddhist ethics, even if it does introduce something quite new. From this point of view Keown may be arguing for the implicit prior existence of rights in Buddhism because that would demonstrate, *ipso facto*, the compatibility of Buddhism and rights. But if compatibility is the crucial issue, such a demonstration strictly speaking would not be necessary.

Obviously the answer to the question of conceptual compatibility depends on two things: the analysis of rights and the essential nature of Buddhist ethics. As to the former, Keown provides us with an excellent history of the concept of rights, and a working definition of a right as "a benefit which confers upon its holder either a claim or a liberty," but he most frequently appeals to the notion of a right as a "subjective entitlement."<sup>17</sup> In effect he adopts Finnis' view which he cites and which includes the following critical phrase:

[The modern vocabulary and grammar of rights] provides a way of talking about "what is just" from a special angle: the viewpoint of the "other(s)" to whom something is owed or due, and who would be wronged if denied that something.<sup>18</sup>

The second part of the compatibility issue depends on the analysis of Buddhist ethics. Keown identifies it closely with Dharma. Now I have serious doubts whether the best way of understanding the fundamental nature of Buddhist ethics is by way of Dharma. However if we follow Keown and take Dharma as our starting point, I will argue, in contrast to Keown, that rights in the sense of subjective entitlements are conceptually incompatible with classical Buddhist ethics and their introduction would require a fundamental conceptual transformation.

To see this it is helpful again to reflect on systems of role-based responsibilities. Doing so can help us see that conceptualizing such systems in terms of rights often misconstrues their fundamental nature. Think, for example, what it would be like to construe the responsibilities dancers have in a ballet as consisting of rights dancers have against one another. To do that would be to confer an importance on the point of view and the welfare of individual dancers that is not part of ballet. Among other things, mistakes would have to be construed as injuries to specific parties, rather than failures to perform one's role properly. It might even mean that changes in a dance routine would require negotiations and concessions on the part of the dancers whose rights are threatened. If so, ballet could no longer be conceptualized as a cooperative enterprise with common objectives, but would focus on preserving the potentially conflicting interests of individual participants.<sup>19</sup>

This is just one example of how a cooperative enterprise would be conceptually transformed by reducing it to the interrelationship of the duties and rights individuals have to and against one another. The Dharma system, insofar as it should be construed as such a cooperative system, would likewise be transformed by the introduction of rights.

Keown points out something important about rights when he says, "One important feature of any right is that it provides a particular perspective on justice."<sup>20</sup> Sometimes he identifies that perspective simply as "the point of view of the person(s) who benefit(s)." But this, even on Keown's own analysis, is not really enough, for one can benefit without having a personal claim to that benefit. A right is a kind of moral property that an individual has over and above what she has a right to, and it is precisely that kind of moral property that is absent in a variety of cooperative activities such as dance. If duties in Buddhism are best understood in terms of Dharma, and Dharma is the same kind of cooperative enterprise as dance or soccer, then it is impossible for rights to be introduced without changing Buddhist ethics in a very fundamental way.

Keown tries to convince us that the introduction of a modern conception of rights, including human rights, into Buddhism is unproblematic, at most the shift from one perspective on justice — that of duties — to another — that of rights. According to Keown classical Buddhism has at least an embryonic concept of rights, and all that needs to be done is to make explicit a modern concept of rights as subjective entitlement and to introduce the notion of human rights.

In my view there is a much more significant change being proposed and which I fear not only Keown, but many others as well, are overlooking. The change to a modern concept of rights is one from conceptualizing duties and obligations as the role-responsibilities of persons in a cooperative scheme to seeing them as constraints on individuals in their interactions with other individuals all of whom are otherwise free to pursue their own objectives.

### *Part III*

Given that I have argued there is no concept of rights in classical Buddhism, and that introducing rights significantly distorts classical Buddhist ethics, it might seem that I must therefore be opposed to introducing rights into Buddhist thought. But this does not follow. Certainly I do hold that there should be an intellectual presumption against doing so, but even such a presumption should not be respected under all conditions. It might be that given the nature of modern moral discourse, not only in the West, but increasingly around the world, and including the increasingly multi-cultural and often chaotic nature of modern society, that rights-talk is the best way of coping with a world without common customs and traditions. Whether introducing rights-talk into Buddhism is or is not justifiable is a complex matter which I will not take up here, but the non-existence of rights in classical Buddhism, and the radically transforming effect rights-talk would have on classical Buddhist ethics, are only two considerations.

More important from a Buddhist point of view are the practical implications of such a revision. Would rights-talk serve as an *upāya* (skilful means) toward the overall elimination of suffering? Would a revised Buddhist ethics which included rights-talk and a correspondingly increased concern for social justice, prove to be the basis of a new *sikkhāpada* (training rule) for Buddhist practitioners? If so, Buddhism has never been so dogmatically wedded to scripture, tradition, doctrine, or language that it could not adopt new ways of reaching those in need of help.<sup>21</sup>

Furthermore I do not deny that there are conceptual materials in Buddhism out of which a theory of rights could be constructed. Keown has picked one likely candidate, a sense of human dignity grounded on the potential for enlightenment. Whether human dignity should be given such a prominent place in Buddhism, and whether dignity should be the basis of a Buddhist theory of human rights are questions which I do not have time to discuss here. However I agree that under some conditions both can and should be done. To that extent I do not disagree with Keown. What I hope to have done is to call into question his effort to show that rights are already present in classical Buddhism, and to suggest that the introduction of rights would be a much more radical departure for Buddhist ethics than he thinks.

#### NOTES

1. Damien Keown, "Are There Human Rights in Buddhism?", *Journal of Buddhist Ethics* 2 (1995): 3-27.
2. I omit some of these from the body of the text because such examples require considerable specific background knowledge of the game in question. For example, in baseball a player who does not at least try to lay down a bunt during a called squeeze play has failed to do what she ought. There is every reason for her team members and manager to berate her for her failure to fulfil her role-responsibilities, but it would extremely odd for anyone, including the runner tagged out at home, to complain that her rights had been violated. Talk of players' rights is appropriate when contracts are being negotiated, but not on the field of play.
3. Quoted in Keown, "Are There Human Rights in Buddhism?", p. 8.
4. *Ibid.*, p. 10.
5. *Ibid.*
6. J. M. Finnis, *Natural Law and Natural Rights*. Clarendon Law Series, edited by H.L.A. Hart. Oxford: Oxford University Press, 1980), p. 209.
7. Keown, "Are There Human Rights in Buddhism?", p. 9.
8. *Ibid.*, p. 10.
9. *Ibid.*, p. 9.



10. Joel Feinberg, "The Nature and Value of Rights," in Morton E. Winston (ed.), *The Philosophy of Human Rights* (Belmont, CA: Wadsworth Publishing Company, 1989), pp. 61-74.
11. *Ibid.*, p. 62.
12. *Ibid.*
13. *Ibid.*
14. Craig K. Ihara, "Are Claim Rights Necessary?: A Confucian Perspective," Unpublished manuscript.
15. Keown, "Are There Human Rights in Buddhism?", p. 8.
16. *Ibid.*, p. 10.
17. *Ibid.*, p. 8.
18. *Ibid.*, p. 8 (emphasis added).
19. *Ibid.*, p. 7. Keown recognizes that certain sorts of social structures, in particular hierarchical ones, can stand in the way of the recognition of natural rights, but he assumes that they are compatible with subjective entitlements, at least embryonic ones.
20. *Ibid.*, p. 8.
21. In passing I must say that I believe it probably would be a mistake to introduce the notion of rights into Buddhist ethics. First of all invoking rights has the inevitable effect of emphasizing individuals and their status, thereby strengthening the illusion of self. While Buddhism has a holistic view of life, the rights perspective is essentially atomistic. Secondly, as an ethic of compassion there is an ample basis for a rich social ethic even without invoking the notion of rights. In fact while Keown sees duties grounded in Dharma as one perspective on justice between individuals, I have argued that duties as found in Buddhism may well be about role responsibilities. Morality from the former perspective is about respecting the rights of others; from the latter it is playing one's part in a cooperative enterprise. Finally, given the problems with rights-talk, for example, the lack of consensus on their scope and content, and on any methods by which disagreements about rights might be settled, it isn't clear that adopting the language of rights furthers the cause of cross-cultural communication. Focusing cross-cultural discussion on ~~suffering~~ rather than rights might be the more fruitful tack.

## WHY THE BUDDHA HAS NO RIGHTS

Peter D. Junger

As has been often noted, the concept of "human rights" tends to be based on modern Western European assumptions that, to a large extent, can be traced to earlier Judeo-Christian and Greco-Roman concepts;<sup>1</sup> assumptions that are alien to many, if not all, of the innumerable Buddhist traditions. It is not so often noted that it is difficult, if not impossible, to make sense of the concept of human rights — as opposed to some of the particular items that are lumped together under that rubric — within the common law tradition that prevails in England, in the English speaking nations of North America, in the British Commonwealth, and in other countries whose political and judicial institutions have been inherited from England, a legal tradition that can be traced back without interruption to feudal practices and that is based on centuries of judicial precedents, not on rational deductions drawn from positive legislation or abstract principles.

As Eugene Kamenka has pointed out:

The belief in human rights as a great moral value, a UNESCO symposium characteristically insists, is not a specifically western or Judeo-Christian contribution to the world. It is to be found in all the great moral documents of mankind, and in all its aspirations since primitive times. If the concept of human rights is to have any specific meaning, is to be seen as implying a view of man and society, this is untrue. The concept of human rights is a historical product which evolves in Europe, out of foundations in Christianity, Stoicism and Roman law with its *jus gentium*, but which gains force and direction only with the contractual and pluralist nature of European feudalism, church struggles, the rise of Protestantism and of cities. It sees society as an association of individuals, as founded — logically or historically — on a contract between them, and it elevates the individual human person and his freedom and happiness to be the goal and end of all human association. In the vast majority of human societies, in time and space, until very recently such a view of human society would have been hotly contested; indeed, most cultures and languages would

not have had the words in which to express it plausibly. Of course, all human societies have had a concept of suffering and most of them have had a concept of human worth, of justice, of fair dealing, of meeting one's obligations. But the society of the great seventeenth- and eighteenth-century social contract theorists, the society of the right-and-duty-bearing individual standing in external "contractual" association with other right-and-duty-bearing individuals, the society which the great German sociologist, Ferdinand Tönnies, called the *Gesellschaft*,<sup>2</sup> is a modern, European phenomenon. The Greeks, like the Chinese, saw man in a familial, social and cosmic setting; and their concern was not with rights but with duties, and with balance, harmony, *moira*, *dikee* and *jus*, a balance that transcended the individual, that made society part of a great cosmic pattern and that rested on a network of obligations, not just to individuals but to forces and institutions, human and divine, that shaped and transcended such individuals. Men in pre-modern societies lived in a *Gemeinschaft*<sup>3</sup> that saw man as part of a social organism, a structured community based on a common religious tradition, a hierarchy of power, a network of mutual obligations that made and shaped men, rather than served them. Even in Roman law as the Romans and their immediate successors knew it, there was a concept of right, and certainly of duties — but no concept of rights.<sup>4</sup>

The common law, like the Roman law, has a concept of right, and a concept of duty, but it has no concept of rights in general, of rights in the abstract. And the Buddhist tradition, like those of the classic Greeks and the Chinese, evolved within a *Gemeinschaft*, within a *community* of monks and nuns and householders, or, more precisely, it evolved within a community that consists of all the myriad of interdependent beings. As Masao Abe tells us:

The Buddhist view of "human rights" is significantly different from that found in the Western tradition. Strictly speaking, the exact equivalent of the phrase "human rights" in the Western sense cannot be found anywhere in Buddhist literature. In the Western notion of "human rights," "rights" are understood as pertaining only to humans; nonhuman creatures are either excluded or at most regarded as peripheral and secondary. "Human rights" are understood

not from the nonhuman or wider-than-human point of view but only from the human point of view – an anthropocentric view of human rights. By marked contrast, in Buddhism a human being is not grasped only from the human point of view, that is, not simply on an anthropocentric basis, but on a much broader trans-homocentric, cosmological basis. More concretely, in Buddhism human beings are grasped as part of all sentient beings or even as a part of all beings, sentient and nonsentient, because both human and nonhuman beings are equally subject to transiency or impermanency. (That nothing is permanent is a basic Buddhist principle.) If this universal impermanency that is common to both human and nonhuman beings is done away with, the problem of life and death peculiar to human existence cannot be properly resolved. Both the Buddhist understanding of human suffering and its way of salvation are rooted in this trans-anthropocentric, cosmological dimension.<sup>5</sup>

As one who aspires to follow the Buddha Dharma and who has studied and practiced and taught the common law for these last forty years, it strikes me that there is at least one reason that explains why neither of my traditions makes use of the concept of human rights: both traditions are of practices that are concerned with arriving at a goal starting from the way things are right here, right now in all of their interdependent complexity, not starting from philosophical speculations as to how things must — or should — be in a radically simpler world without much ambiguity. It is my goal in this article to explain why the *concept* of human rights is not likely to be useful in either following the Buddha Dharma or in practicing of the common law. The follower of the Dharma and the common law practitioner are both concerned with the particular, with this particular case, right here, right now; the concept of human rights, on the other hand, is so abstract and general, and so incoherent, that it is not likely to lead to right understanding, or even to right conduct, in terms of either practice. More importantly, both the follower of the Dharma and the practitioner of the common law are concerned with processes — with practices, with the flow of particular interrelated moments — in a world that is continually in flux and that has no room for unchanging absolutes like "human rights" that are deduced by a rigidly ahistorical rationality.

I should make clear, however, that it is not my intent to denigrate the interest that is sought to be protected by the proclamation of any particular "human right." It would be hard for anyone in our Western society, and especially for one who tries to follow the Buddha Dharma, to oppose the

protection of most of those interests. Nor am I raising objections to the use of the term "human rights" as a convenient phrase to refer to complex *desiderata* or as a rhetorical device or skillful means for advocating right conduct on the part of those who govern others, even though I doubt that talk of human rights is very skillful when addressed to those, like the vast majority of Buddhists, who are not party to the traditions of Western Europe.<sup>6</sup>

The following remark by an international lawyer and diplomat from Thailand who received his legal training in the West, strikes me as a very sensible approach to human rights for one within the Buddhist tradition:

We live in a multicultural world, where the light in which a person sees cultural values depends on the social environments to which he is accustomed. To admit the reality of such a wholesome world is a giant step toward a closer appreciation of a more tolerable concept of human rights. If we are aware that a world of distinct cultures exists and eventually accept it, we will recognize and ultimately tolerate different cultural values and therefore essentially different concepts of human rights. After all, the international instruments proclaiming the Rights of Man or the International Covenants of Human Rights merely incorporate the views and concepts advocated by the authors and draftsmen of those instruments, who have invariably been trained in Western or European legal traditions.<sup>7</sup>

It is, I trust, in this spirit that I write this article suggesting that, though followers of Buddhist traditions do value most, if not all, of the interests underlying the rhetoric of human rights, they may not have much use for the label itself, which is, after all, a product of the traditions of Western Europe and the parochial histories of that region. There is little that is wrong, and much that is right, with the Western European concept of "human rights" when that concept is viewed from within that tradition; but problems arise when efforts are made to impose that concept with all its Western trimmings upon traditions — like those of Buddhism — that have quite different concepts, if only because they have quite different histories.

*"Human Rights" as a Congeries, not as a Coherent Concept*

Although the concept of human rights is the product of recent historical processes, such rights are often invoked as if they were timeless absolutes discoverable either by rational thought or by checking to see if they

are listed in various declarations of the United Nations, and in particular in that body's "Universal Declaration of Human Rights."<sup>8</sup> Viewed in the latter fashion, the listing of rights seems to have much in common with the list that Borges reports appeared in a Chinese encyclopedia,<sup>9</sup> for the "rights" listed in the Declaration seem to comprise little more than a disparate aggregation of claims, privileges, powers, and immunities that are not connected to one and other in any coherent fashion. A sampling of the various rights proclaimed by the Universal Declaration of Human Rights should suffice to make this point clear.

*Article 1*

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

*Article 8*

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

*Article 10*

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

*Article 16*

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

2. Marriage shall be entered into only with the free and full consent of the intending spouses.

3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the state.

*Article 17*

1. Everyone has the right to own property alone as well as in association with others.

2. No one shall be arbitrarily deprived of his property.

*Article 18*

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

*Article 21*

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

2. Everyone has the right of equal access to the public service in his country.

3. The will of the people shall be the basis of the authority of government; this shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

*Article 23*

1. Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.

2. Everyone, without any discrimination, has the right to equal pay for equal work.

3. Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

4. Everyone has the right to join trade unions for the protection of his interests.

*Article 25*

1. Everyone has a right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

*Article 26*

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be generally available and higher education shall be equally accessible to all on the basis of merit.

2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

3. Parents have a prior right to choose the kind of education that shall be given to their children.

Now what is one to make of this congeries of "rights?" Certainly it is apparent when one examines them, even in a cursory fashion, that many of them presuppose the existence of social institutions — such as trade unions and professional education and the United Nations itself — that did not exist at the time of the historical Buddha (or at the time of the founding of the common law, for that matter) and that clearly, however important they may be for particular persons at particular times, are not central, or perhaps even germane, to the Buddha's teachings. Some of these postulated institutions, such as trade unions or the individual ownership of "property," may not even be consistent with the organization of modern societies in accordance with Buddhist teachings. Thus, for example, the division of a community, the *Gemeinschaft*, into two antagonistic groups of "labor" and "management" does not seem to be in accord with the Buddha's teachings and the idea of abstracting *this cup* and *this field*, and so forth, into an intangible undifferentiated sort of object called "property" that is subject to being "owned" by an individual who can do with it as he wishes, quite without regard to that individual's relations with the greater community, also seems far removed from anything that the Buddha taught.

It is also apparent that the language of the Declaration is a peculiar mix of vagueness and specificity, which can perhaps be explained by the exigencies of negotiating an agreement among parties who were not really in agreement about its terms, or even about the rights that it should protect, though it hardly seems appropriate in the definitive declaration of the



fundamental and universal rights that supposedly are possessed by everyone, or at least everyone whom we classify as human. In particular, from the standpoint of a common lawyer, there is the troublesome vagueness about whoever it is against whom the rights listed in the Declaration are asserted, and about the specific nature of the rights. Thus it is all very well to say that everyone has the right to work, but exactly who is supposed to be the employer? And exactly what is the work that is being claimed? Of course, one can say that the rights are asserted against the state, or against society, but that does not quite make sense to one brought up in the common law tradition when there is no means of enforcing, or even specifying the exact content of, those rights.

One of the major maxims that have influenced the development of the common law is *ubi jus, ibi remedium*, "where there is a right there is a remedy." Although this maxim is often used to justify the creation of new remedies, it also supports the argument that the absence of a remedy proves that there is no right. Furthermore, the common law simply has no way of giving a remedy against something as vague as "society" and it has never really been able to supply remedies against the state (as opposed to individuals who purport to be acting as agents of the state). The common law, moreover, to revert to our earlier example, though it might in theory supply a remedy by which a claimant could obtain a particular job, has never had a way of enforcing a claim to "work" without reference to some particular job.

From the Buddhist perspective on the other hand, considering that the absence of one's self lies at the center of the Buddha's teachings, it is difficult to imagine a Buddhist, *qua* Buddhist, according much reality to — to say nothing of clinging to — a recent, and rather dubious, mental construct like a state or a society.<sup>10</sup> Nor, to return to our particular example, are traditional Buddhist societies likely to be able to make much sense of the concept of a "right to work," a concept that is only intelligible within a tradition that radically divides labor from capital and the employed from the employer (and both from the unemployed) in a fashion which would be incomprehensible in any traditional *Gemeinschaft*.

From a Buddhist point of view, the trouble would seem to lie not only in the illusory nature of the purported rights, but also in their implicit denial of the fact of *dukkha*, the fact of the ubiquity of suffering and of the unsatisfactory nature of all conditioned things. It hardly does for one to say to an unemployed steel worker in the United States that he has a right to work even if he does not have a job, or for one to tell a peasant tilling a rice-field in Southeast Asia that she has a right "to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability,

widowhood, old age or other lack of livelihood in circumstances beyond his control." Such claims seem more like a denial the truth of suffering than a step leading to its cessation. Surely it does not profit a man to tell him that he as a right to security in this world of impermanence, as if he could in some way avoid the consequences of sickness and old age — or even of death, which is, after all, the ultimate case of "lack of livelihood in circumstances beyond [one's] control." Although it may make us feel that we have accomplished something to declare that everyone has a right to happiness, or to its pursuit, the fact of *dukkha* remains a fact.

The world of dew—  
 A world of dew it is indeed,  
 And yet, and yet. . .

Of course it would be nice if everyone had work, and not too much of it, if everyone had enough to eat and a roof over their heads, if everyone's dignity — everyone's Buddha nature — were universally recognized. But that is not the way things are right now. And although one may — and as a Buddhist perhaps should — aspire to bring about such changes, the Buddha's teaching, as I understand it, is that one should not to cling to such aspirations, or to any other cause of suffering, including rights. From this point of view rights seem more like an incitement to clinging than a cure for suffering.<sup>11</sup>

#### *Human Rights as the Product of Reason*

Now there may be those who will object to what I have said up to now on the ground that it is unphilosophical and rather unfair, for, after all, the imperfections in the implementation of the concept of human rights hardly proves that that concept is not a good idea. But my claim is not so much that the concept of human rights is not good, but rather that the peculiar collection of rights set out in the Declaration suggests that that concept is not coherent.

Still there are those of an abstract bent who will undoubtedly argue that one can — and perhaps that one must — conclude on some as yet to be specified ground that human beings do have rights simply by virtue of being human and that the job of an ethicist or a philosopher or the sort of person who takes part in a symposium like this is to explore those grounds, or the logical nature of those rights, without worrying about the individual rights themselves. The fact that a bunch of politicians, aspiring to be statesmen, did a clumsy job of specifying those rights back in San Francisco in 1948, though regrettable, is in this view hardly significant.

It should be noted at this point, however, that even if there were no other objection to this approach, the emphasis on *human* rights does not seem quite compatible with the Buddha's teachings. A Buddhist would undoubtedly be more comfortable with this argument if one were said to have these rights not by virtue of being human, but by virtue of being sentient, or even just by being. The parochialism of the Western concept of human rights is not limited just to time and geography. The teachings of the Buddha, as I understand them, enjoin me to respect the interests of others — the "rights" of others, if one wants to use that label — without limiting the others to the merely human, or to "agents" or to "persons" or to other limited groups of "right-bearers."

Some Western philosophers who espouse human rights do seem at least partially sensitive to this objection:

It is a mistake, in my view, to make the distinction hinge on the difference between *human* beings and others: it is not their humanity, a simple biological characteristic having no necessary moral implications, but their personality that makes the crucial difference between right-bearers and other objects. The *natural personality* of nearly all human beings consists in their having a certain kind of self-awareness, a conception of themselves as initiators of actions that make a difference to the course of events. They are conceptually equipped to envisage alternative possibilities, to prefer one state to another, and to decide on a course of action intended to bring about one in preference to another. Moreover, each not only knows himself as such a person, but also distinguishes himself and his initiatives from other similar persons and theirs. This characteristic may not be confined to human beings: some chimpanzees educated by human teachers have shown a conceptualizing capacity that may extend to this kind of self-conceptualization; it is possible that intelligent dogs or dolphins may have it, or be capable of learning it from human beings. On the other hand, there are some human beings who do not have it; congenital idiocy or brain damage could deprive one of it. Yet it is so nearly universal a feature of human beings that the generalization that human beings are natural persons is pragmatically reasonable, at least as a rule of thumb.

A person knowing himself to be a person in a world of persons is aware that they, like him, have projects important

to them, and that his actions may impair theirs as theirs often impair his. This may be no more than a grim fact of life; he may take what evasive action he can, and regret the mess when it fails. On the other hand, he may come to feel that people who understand very well what it is to have their own projects spoiled by the carelessness and unconcern of others ought to have some respect for his — and for him as *their* author. And he may resent their trampling on these projects without a thought, and, even more, their treating him as a mere impediment or as an instrument for their own projects, as though he had none of his own that mattered. And if his resentment were grounded in their failure to appreciate what in his view any person ought to be able to grasp in his dealings with another person, he would be supposing a general moral principle — that of respect for natural persons. This amounts to saying that any natural person is also a moral person, a bearer of rights, which constitute for any other person reasons (though not necessarily conclusive reasons) for forbearance in respect of his projects.

From this basic deontological notion of respect for persons, which has nothing whatsoever to do with valuing them, derives a set of very general principles. . . <sup>12</sup>

It seems to me, however, that the insistence here that one has to be a person in order to have rights, is no more consonant with the Buddha's teachings than the requirement that those who have rights have to be human, especially as the test of being a "person" seems to be that one must have a self-conscious self, a test that is difficult to reconcile with the teaching that all things are empty of self. The teachings of the Buddha give much simpler reasons to respect the desires of other beings:

All beings fear punishment; all fear death. If you take yourself as the measure, you will never harm, you will never kill.

All beings fear punishment; all love life. If you take yourself as the measure, you will never harm, you will never kill.

If in seeking happiness you bring harm to others who also seek to be happy, in the future you will never be happy.

If in seeking happiness you never harm others who also seek to be happy, in the future happiness will come to you.<sup>13</sup>

The rational deductive approach to human rights assumes, of course, several things: in particular, (i) that the concept of rights, and especially human rights, is meaningful and coherent and (ii) that there is indeed some ground from which such rights can be deduced or upon which such rights are based. It also assumes that one can, once one has found the ground on which human rights are based, deduce by ratiocination the content of the rights themselves and, in some extreme cases, that one can, with recourse to nothing more than one's own rationality, deduce the ground itself. As an example of the latter approach, consider the following passage by Alan Gewirth:

In this book, while trying to profit from the work of my predecessors, I present a new version of rational justification. The chief novelty is the logical derivation of a substantial normative moral principle from the nature of human action. Although the importance of action for morality has been recognized since the ancients, I undertake to show that the connection between them is much closer and more substantive than has hitherto been thought. My main thesis is that every agent, by the fact of engaging in action, is logically committed to the acceptance of certain evaluative and deontic judgments and ultimately of a supreme moral principle, the Principle of Generic Consistency, which requires that he respect his recipients' necessary conditions of action. To prove this thesis, I have argued that the very possibility of rational interpersonal action depends upon adherence to the morality that is grounded in this principle. Because every agent must accept the principle upon pain of self-contradiction, it has a stringent rational justification that is at the same time practical because its required locus is the context of action.<sup>14</sup>

Somehow it does not seem that many persons, or governments, would be persuaded to behave themselves by the "pain of self-contradiction," which must surely be one of the least distasteful forms of *dukkha*, and one that has, I suspect, afflicted every philosopher who has ever written, even Nagarjuna. As Walt Whitman put it:

"Do I contradict myself?

Very well then I contradict myself."<sup>15</sup>

Nor is Gewirth likely to persuade any Buddhist — even a Buddhist philosopher — that he has by pure logic discovered "a supreme moral principle," and one that no one up to now, not even the Buddha, has happened to notice. Pure logic is not the path we are enjoined to follow to reach the truth, is not the middle way.

As a student and teacher of the common law I am convinced that its tradition has been perverted by a positivist, and academic, emphasis upon wrongs as opposed to rights, and I suspect, with pretty good reason, that that perversion is a consequence of the sort of philosophical abstraction that requires one to deduce what the law should be — or what it is — from some source outside of itself like a "sovereign" or the "will of the people" postulated by Article 21 of the Universal Declaration of Human Rights or some God-given concept of "natural rights" or even Gewirth's rationality. On the other hand, the "rights" that arguably make up the major substance of the common law, even as it is today, are quite unlike the nominal entities called "rights" that comprise the intention of the Universal Declaration, even if the latter represent, or disguise, aspirations and interests that fit comfortably within, and to a large part are derived from, the common law tradition. As Justice Holmes once wrote:

The life of the law has not been logic: it has been experience. The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed or unconscious, even the prejudices which judges share with their fellow-men, have had a good deal more to do than the syllogism in determining the rules by which men should be governed.<sup>16</sup>

From a Buddhist viewpoint, the whole idea of "grounding" the concept of human rights seems pretty problematical, if not downright perverse, especially as the major use of the concept seems to be to supply a justification for ethical, or political, prescriptions that need no justification or grounding. As I understand the Buddha's teachings, one practices right actions because that practice leads to the cessation of suffering — or, better yet, one just practices them. If one "has" right views, then one knows that there is no independent foundation that supports right actions, including the action of respecting the "rights" — or, rather, the interests — of others. Pursuing and clinging to illusory reasons for doing what is right — rather than just doing it — is not following the path to the cessation of suffering. In the arising and cessation of all things that comprises this ocean of birth

and death, there is no ground upon which rights could be founded, there is no ground at all.

The heart — and to me the appeal — of the Buddha's teachings lies in the recognition of the interdependence, the emptiness, of all *dharmas*, in the recognition that there is, and that there can be found, no fundamental ground, no foundation, for the way that things are — *and that no such foundation is needed*. To recognize that the concept of human rights is the product of a particular time and place, without any claim to universal validity or to some Platonic other-worldly foundation, is not to justify hunger or the abuses of human rights in Bosnia, or Burma, or Tibet; rather, it is a clarifying of the mind — a seeing of things as they are — and a step, even if it is a small one, toward the cessation the suffering.

Some such recognition is not, of course, limited to those who find themselves within the Buddhist tradition. For example, Richard Rorty has written:

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As I see it, one important intellectual advance made in our century is the steady decline in interest in the quarrel between Plato and Nietzsche. There is a growing willingness to neglect the question "What is our nature?" and to substitute the question "What can we make of ourselves?"

One of the shapes that we have recently assumed is that of a human rights culture. I borrow the term "human rights culture" from the Argentinean jurist and philosopher Eduardo Rabossi. In an article called "Human Rights Naturalized," Rabossi argues that philosophers should think of this culture as a new, welcome fact of the post-Holocaust world. They should stop trying to get beyond or beneath this fact, stop trying to detect and defend its so-called "philosophical presuppositions." On Rabossi's view, philosophers like Alan Gewirth are wrong to argue that human rights cannot depend on historical facts. "My basic point," Rabossi says, is that "the world has changed, that the human rights phenomenon renders human rights foundationalism outmoded and irrelevant."

Rabossi's claim that human rights foundationalism is *outmoded* seems to me both true and important. . . I shall be enlarging on, and defending, Rabossi's claim that the question whether human beings really have the rights enumerated in the Helsinki Declaration is not worth raising.

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In particular, I shall be defending the claim that nothing relevant to moral choice separates human beings from animals except historically contingent facts of the world, cultural facts.

This claim is sometimes called "cultural relativism" by those who indignantly reject it. . .

Traditionally, the name of the shared human attribute which supposedly "grounds" morality is "rationality." Cultural relativism is associated with irrationalism because it denies the existence of morally relevant transcultural facts. . . But one need not be irrationalist in the sense of ceasing to make one's web of belief as coherent, and as perspicuously structured as possible. . . We see our task as a matter of making our own culture — the human rights culture — more self-conscious and more powerful, rather than demonstrating its superiority to other cultures by an appeal to something transcultural.<sup>17</sup>

Thus one follower, at least, of the rather commonsensical American pragmatic tradition, who places a high value on human rights, does have a clear understanding of the absurdity of attempts to ground those rights on something other than "the historically contingent facts of the world," on something other than the way things are right here, right now. That something is still sadly missing in Rorty's writings, the fact that he seems to sense only flatness where the follower of the Dharma ultimately finds tranquility and joy, does not detract from the validity of his critique, but seems rather to come from the failure to recognize that the consolations of religion can be found by those who recognize the contingency and interdependency of all conditioned things, by those who grasp the fact that: "Form is exactly emptiness, emptiness exactly form."<sup>18</sup>

*Human Rights as a Contingent Product of Western Tradition: A Split in the Western Tradition*

It is generally accepted that the concept of Human Rights grows out of Western European traditions, not out of Asia, or Africa, or the Americas before the coming of the European colonialists; thus, for example, no one claims that the concept of Human Rights is native to any of the Buddhist traditions.<sup>19</sup> The fact that the Universal Declaration of Human Rights is a



"Western" document has led to objections by some who do not find it appropriate as a legal document of universal applicability, but who would not necessarily repudiate the principles that inspired it.<sup>20</sup> It was for this reason that "The Declaration towards a Global Ethic"<sup>21</sup> adopted by the Parliament of the World's Religions in 1993 was carefully drafted so that it would not be a "reduplication of the Declaration on Human Rights."<sup>22</sup>

It is not so often stressed that the concept of Human Rights is the product of two rather different Western traditions: the Continental civil law tradition, with strong ties to the more rationalistic practices of Continental philosophy, on the one hand, and, on the other, the Anglo-American legal and constitutional tradition, which has always seemed to me to be the cousin german to the British empiricist and pragmatic traditions. The Continental tradition is the primary source of the body of "international law" that has come to incorporate, with considerable discomfort, the concept of human rights and it is also the primary source of the of concepts of natural rights and natural law that are often claimed to be the foundation of human rights; the Anglo-American tradition, on the other hand, produced the concept of "inalienable rights" in the British North American Declaration of Independence that is often cited as the *fons et origo* of the concept of human rights.<sup>23</sup>

In this article, I can do no more than sketch the difference between the two traditions, and this sketch should not be taken as much more than the view of someone so much a product of the Anglo-American that he simply cannot make sense out of the more abstract and "rational" arguments coming out of the Continental tradition. (I suspect, however, that it is exactly my inability to take those "rational" arguments seriously that frees me to hear the Buddha's teachings that there is no independent, persistent self and that all things are interdependent.)

The major differences between the two traditions arise from their having different histories, from their being the product of different causes and conditions. At one time, however, this division did not exist.<sup>24</sup> After the disappearance of the institutions of the Roman Empire in Western Europe there grew up a diverse collection of kingdoms and customs, that, in retrospect, can be seen to have shared a common culture, now known as the feudal system,<sup>25</sup> in which political power and private rights were defined and regulated by customary relations between — not so much "individuals" in the modern, Western sense, as the holders of customary "offices." One key feature of this common feudal culture, and one that has persisted in its Anglo-American descendant, was that its customary relations — its laws — were declared, reinforced, and even established, by the judgments of courts rather than by legislative decrees.<sup>26</sup>

Around the end of the twelfth century, however, on the European continent there was a break in this tradition, and the customary feudal law that had just grown up over the preceding centuries was replaced by the newly rediscovered "Roman law" of the late Roman empire, a law that had been dead for some six hundred years and that was ill adapted to existing institutions and ill-prepared to deal either with feudal relations or with relations between the emerging nation-states of modern Europe. One unfortunate consequence of this reception of Roman law was that the law became an academic subject studied and taught by professors at the newly instituted universities,<sup>27</sup> rather than by the practitioners and judges of the courts of law.<sup>28</sup> Another was that in adopting the law of the late Roman empire as set out in Justinian's *Corpus Juris*, there was strong pressure to also adopt Justinian's fundamental principle that "whatever pleases the prince has the force of law," a doctrine that stands firmly in the way of any effort to protect human rights and other interests from the tender mercies of the state.<sup>29</sup> After all, if law is not the product of the customs of the community, it has to come from somewhere, and the whim of the prince is as "rational" a source as any.

In England, on the other hand, there never was much of a reception of Roman law; as opposed to the continent where the civil law based on the *Corpus Juris* of Justinian replaced the customary feudal law, in England the customary law was never abandoned — rather it gradually evolved into the modern common law. The English resistance to the adoption of Roman law does not have to be explained by some fundamental difference between the English spirit and the continental *Geist*, nor as a result of initially different word views. The simple, contingent fact was that in at least one significant respect conditions were different in England: during the reign of Henry II the law and custom common to all of England — the common law — had evolved, had been shaped by Henry's judges, into the most sophisticated and fully developed legal system in Europe, a legal system that was quite capable in its own right of dealing with the new problems brought forth by new times.

The differences between the two legal systems has been summarized by a continental scholar of English legal history:

For centuries, in fact until the Judicature Acts of 1873 and 1875, the Common Law of England consisted of a system of actions or legal remedies, each commanding its own procedure, whereas continental law knew general procedural rules which governed all or large classes of causes. English law prefers precedent as a basis for judgments, and moves empirically from case to case, from one reality to another.

Continental law tends to move more theoretically by deductive reasoning, basing judgments on abstract principles; it is more conceptual, more scholastic and works more with definitions and distinctions. In other words it was moulded by the Roman Law of the medieval universities. It was this professors' law, marked by exegesis and commentaries on learned books and glosses, which made continental law different from the Germanic and feudal customs and laws of England. With the exception of Bracton's great law-book, we find none of it in the Common Law, where the Year Books, with their reports of court cases, were typical and utterly different from William Durand's systematic *Speculum Judiciale*. In England lawyers received their training in the Inns of Court, technical colleges where they learnt their craft like every medieval craftsman, in contact with practising masters, not in universities at the feet of scholars who were apt to lose themselves in controversy. English law worked essentially within the existing feudal framework, whereas continental law incorporated a vast amount of extraneous elements, mainly of Roman origin. Consequently the feudal idea of relation was central in English, and the Roman idea of will in continental law. A final difference is the absence of codification in England. The tradition of case law and empiricism makes very poor soil for codification — the Romans, who were first and foremost practical jurists, never had a codification — but with systematic theory and logical deduction from general premises, codes came naturally on the Continent.<sup>30</sup>

### *The Continental Civil Law Tradition*

In tracing the history of the concept of human rights, the civil law system of the continent is of peculiar importance because what we today call international law — the law of nations — is a product of the civil law tradition. Even in common law countries, international law is recognized as part of the civil law tradition and is not considered to be part of the common law.<sup>31</sup>

Unlike the common law, which just grew like an English garden over the last eight hundred years, the civil law was the product of the deliberate adoption on the continent, though in different regions at different times, of the Roman law as it had been written down and collected in the *Corpus Juris* during the reign of the Eastern Emperor Justinian.

Right through the early Middle Ages and up to the mid-twelfth century English and continental law belonged recognisably to one legal family, Germanic and feudal in substance and in procedure. Except for possible linguistic complications, a traveller from the Continent in the days of King Stephen would have had no problem in recognizing the rules, arguments and modes of proof in an English manorial, borough or feudal court. A century later the landscape had changed: Roman law and Roman-canonical procedure were transforming life in many parts of the Continent (and others were to follow), whereas in England a native law, common to the whole kingdom, that was — and remained — free from the substance and the procedure of the new continental fashion, had arisen. The moment when this dichotomy arose can be pinpointed exactly. It was in the reign of King Henry II, when certain reforms in judicial organisation and procedure were carried out which modernised English law before Roman law entered the scene with such wide and immediate success that no need was felt in later centuries, when the neo-Roman model was available, to give up the native system. . . .<sup>32</sup>

On the Continent at this juncture the main modernisation of the law was taking place in the urban world, particularly in northern Italy and Flanders, where local courts of aldermen where the goal was to punish the defendant, were granted liberty to use progressive procedures and rules. Nowhere did these dispersed efforts lead to a new, unified, national or even regional law. The Church courts, manned henceforth by the learned bishops' officials, began to apply the new law from the Bolognese textbooks around 1200. About the middle of the thirteenth century the kingdoms began to follow suit. . . . Gradually, under the influence of the universities and following the example of the ecclesiastical courts, Roman law was transforming continental civil and to some extent criminal law, with the active help of governments. But it was the universities that created the new and modern, as opposed to the archaic and feudal law; they provided the books and the men who alone could bring about this new departure on the Continent. In Italy (north and south), southern France and eastern Spain — old Mediterranean lands — this new Roman law was already firmly entrenched

in the thirteenth century. In northern France, Germanic and feudal custom resisted, particularly since it produced some original modernisation of its own, but even there in the thirteenth century the commentators of customary laws were already working with Roman law as their system of reference: they were familiar with its vocabulary, it provided their grammar and it was the universal treasure house where customary lawyers could find answers to the questions left unanswered by local usage. Gradually the courts were manned by people with university degrees. Germany resisted the spread of the civil law even longer, but when it gave in, it went further than France and "received" the "common written laws" *in toto*.<sup>33</sup>

This law, which was to be found in old books, rather than living practices, was supposedly based upon, and rationally deducible from some foundation outside itself: on the whim of the prince or on the principles of "natural law" (either as revealed by God or developed in the *jus gentium*, that portion of the Roman law that had been developed and applied by the Praetor Peregrinus to disputes to which foreigners were parties.) The civil law was seen as a body of principles, rules, and definitions to be found in the Roman *Corpus Juris*, and in later legislation, which supposedly is capable of resolving all disputes that come before the courts. Unlike the common law system, the judgments of civil law courts are not treated as controlling precedent, or even as being very important; what is controlling are those principles, rules, and definitions, and, if for some reason they are insufficient to resolve a case, the glosses of the law professors. Thus it was almost inevitable that in time most of the major civil law jurisdictions would, starting with the Code Napoleon, codify the civil law, so that today in most civil law countries the law appears to be the product of relatively recent legislation.

One consequence of all this is that civil lawyers do not see their science as being dependent on historical processes; rather the civil law is seen as a rational, deductive system.<sup>34</sup> Another is that the civilians — as civil lawyers are called — tend to see the law as the product of a legislature or other external law-giver, rather than as an open-ended practice that is directed by, but not deducible from, precedents handed down within its own tradition. Thus civilians tend to be legal "positivists" who find the source of law in "positive" legislation enacted by a "sovereign,"<sup>35</sup> or, if they cannot stomach the consequences of such a legal theory, in the commands of a higher sovereign, i.e., in the commands of God, which in turn raised serious problems since the days of the so-called "enlightenment" when God seemed

to be, if not dead, at least rather far removed from the immediate world of law courts and politics and battlefields, or, for those who could not believe in God, in the unbelievable theory that civil society and law are founded on a so-called "social contract."

As anyone who recognizes the interdependence of all things would suspect, the civil law did not develop into its modern form unaffected by changes in its cultural, political, and religious environment. Even a hasty and incomplete, and distorted, sketch like the one I am giving here must include some reference to the rise of Protestantism and its bloody consequences in the Thirty Years War, a war whose devastation was not felt to any great degree in England, cut off as it was by the English Channel.

As the Roman law, though it developed the *jus gentium* to deal with the claims of foreigners, never developed a body of law regulating the conduct of politically independent nations, the civil law was not prepared at first to deal with disputes between states, or their rulers, nor were there any courts in which disputes could be heard.<sup>36</sup> Around 1625, however, Hugo Grotius, a Dutch Protestant, published a book entitled *Of the Law of War and Peace (De Jure Belli ac Pacis)*, which is today considered to be the first treatise on the Law of Nations, a subject that covered, among other matters, what we now know as International Law (and was once known as the Law of Christian Princes).

*De Jure Belli ac Pacis's* stature and historical importance lie less in its internal logic or the durability of its normative assertions or associations than in its originality in systematically organizing the entirety of the subject. For specific content, Grotius drew heavily upon the work of earlier writers, employing all manner of legal and moral principles with which, for the most part, his audience was already generally familiar. Before him, however, no one had even attempted to unify these principles so as to establish the authority of their systematic sum, in contrast to that merely of specific principles or limited clusters of principles.

The central thesis of DJBP was the then altogether revolutionary idea that nations, no matter how great their political or military power, are subject to the same principles of law as individuals, in their legal capacity, their contractual undertakings, their social responsibilities, their decisions to resort to war and their conduct of war. All human conduct was rendered measurable by its conformity to a homogeneous, inclusive natural law. A Protestant bible of

international relations, some would later call it — not because it was immediately placed on the papal Index of forbidden works (although the listing is not without significance in this respect), but because it emphasized values with which Protestantism had become closely identified: individuality, personal responsibility and paternal authority within the family as a prototype for the authority of rulers of states, but with the consent of the governed as a basis for the rulers' legitimacy. Capitalist manifesto, precursor of Rousseau's Social Contract, conservator of aristocratic social prejudices — DJBP has represented each of these to one generation of scholars or another. To legal historians, at any rate, it represents nothing less than an unprecedented effort to establish, both a priori and a posteriori, a regime of universal law independent of church and empire.<sup>37</sup>

This universal law was not, however, independent of Western, and especially Christian, legal and theological concepts, and its universality did not really extend beyond the bounds of Christendom. Grotius was nothing, if not a religious Christian, and his treatise, which covered all of the law, not just the Law of Nations, can be read as an effort to restate the law underlying the greater Christian community that encompassed, and transcended, the various national states of Western Europe that were beginning to replace the earlier feudal communities.

There is much in Grotius's concept of a natural law governing the greater community that would appeal to a Buddhist, but the foundations of that concept are peculiarly Christian and not easily restated in terms comprehensible to a follower of the Buddhist traditions. Even today the strongest supporters of the idea of human rights based on natural law are likely to emphasize that idea's Christian antecedents and to justify it on principles that are not easily reconciled with the traditional teachings of the Buddha. For example, what would one expect a traditional Buddhist — or even a Westerner like myself who tries to follow the Buddha Dharma — to make of this passage from Jacques Maritain's little treatise on *The Rights of Man and Natural Law* that bears the heading "Natural Law and Human Rights"?

We must now consider the fact that natural law and the light of moral conscience within us do not prescribe merely things to be done and not to be done; they also recognize rights, in particular, rights linked to the very nature of man. The human person possesses rights because of the very fact

that it is a person, a whole, a master of itself and of its acts, **and which consequently is not merely a means to an end, but an end, an end which must be treated as such.** The dignity of the human person? The expression means nothing if it does not signify that by virtue of natural law, the human person has the right to be respected, is the subject of rights, possesses rights. There are things which are owed to man because of the very fact that he is man. The notion of right and the notion of moral obligation are correlative. They are both founded on the freedom proper to spiritual agents. If man is morally bound to the things which are necessary to the fulfillment of his destiny, obviously, then he has the right to fulfill his destiny; and if he has the right to fulfill his destiny he has the right to the things necessary for this purpose. The notion of right is even more profound than that of moral obligation, for God has sovereign right over creatures and He has no moral obligation towards them (although He owes it to Himself to give them that which is required by their nature).

The true philosophy of the rights of the human person is therefore based upon the idea of natural law. The same natural law which lays down our most fundamental duties, and by virtue of which every law is binding, is the very law which assigns to us our fundamental rights. It is because we are enmeshed in the universal order, in the laws and regulations of the cosmos and of the immense family of created natures (and finally in the order of creative wisdom), and it is because we have at the same time the privilege of sharing in spiritual nature, that we possess rights vis-a-vis other men and all the assemblage of creatures. In the last analysis, as every creature acts only by virtue of its Principle, which is the Pure Act; as every authority worthy of the name (that is to say, just) is binding in conscience only by virtue of the Principle of beings, which is pure Wisdom; so too every right possessed by man is possessed only by virtue of the right possessed by God, which is pure justice, to see the order of His wisdom in beings respected, obeyed and loved by every intelligence.<sup>38</sup>



Despite the efforts of Grotius and other continental scholars to base the civil law on a foundation of natural law the civil law tradition has had a rather spotty record of recognizing and protecting human rights.

One American constitutional scholar has offered us the following description of the failings of the civil law system, a description that he considers to be grossly over-simplified, and rather unfair, but one that does a good job of summarizing the problems that the civil law tradition has had with the concept of human rights (and with the related concept of constitutional democracy).

At the end of World War II, it appeared that creating and maintaining constitutional democracy were arts pretty much monopolized by those cultures that had been cohabitating with the Common Law. History since then has been more checkered. Nevertheless, a critic of the Civil Law might plausibly hypothesize that one basic reason for failures of constitutional democracy lies in that legal system. Not merely does its derivation from efforts to codify the Law of the Roman Empire taint it, but its modern reincarnation was the result of efforts by the Emperor of the French to bring order to his nation and its conquests. However facilely one transfers the system's concept of "sovereign legislator" from emperor to democratically chosen parliament, the image of sovereign legislator, whether a collective body or a single ruler, ill fits the norms of limited government.

Perhaps even more damaging, the constitutionalist critic might continue, is the Civil Law's hubris: Tempted, like Adam and Eve, by pride and ambition, it tries to fill every void the deity left, eliminate all chaos, impose perfect form, and bottle up the great wind. When what has been called an "obsession for formal rules and procedures" escapes from the courtroom to wider political arenas, what its proponents claim are the system's greatest virtues become mortal sins. Orderliness, rationality, and comprehensiveness might hone effective intellectual instruments to settle disputes between private citizens or issues of traditional criminal law. When, however, political leaders apply those mental sets to complex problems such as the reach of legislative power, the ambit of rights to privacy and religious freedom, or the quest for compromises among the interests of a dozen competing groups, difficulties multiply, for these sorts of issues are far

less amenable, if they are amenable at all, to rule-bound solutions.

The Civil Law, the critic might continue, encourages its people to undertake tasks of constitutional engineering that lie beyond human capability. As the bloody agonies of Iraqi Shi'a and Kurds reminded George Bush in 1991 in the aftermath of Operation Desert Storm, most decisions have consequences that their makers do not, perhaps even cannot, foretell. No single person or group of persons, however brilliant or methodical, can accurately predict the future or provide rules for that future. Only in the most general and perhaps even aprincipled way can political leaders hope to conquer unforeseen obstacles. The Civil Law's prompting leaders to attack the unknown with tightly reasoned logic and rigid adherence to formal rules and abstract principles is likely to be counterproductive, if not disastrous; it proliferates rather than eliminates chaos. In sum, the critic might charge, when the Civil Law infects constitutions, its mentality invites rigidity and inspires policies that are principled but impractical.

Worse, the constitutional critic might continue, the Civil Law's tense commitment to order leaves judges no respectable room to maneuver when confronted by authoritarian rule. Unable to reconcile defending constitutional democracy with their role in a fixed legal system, Civil-Law judges have often become panderers to power. Not only did professional German judges form a corps of prostitutes for Naziism, but, during the Occupation, French judges offered similar services at discount prices.<sup>39</sup>

Although the failings of the civil law tradition when it comes to protecting human interests can, at least in part, be blamed on that tradition's dependence on "tightly reasoned logic and rigid adherence to formal rules and abstract principles," that is not solely the fault of the natural law tradition of Grotius and Maritain, a tradition that does, after all, explicitly set out to protect human rights. There was another school of political thought that arose during the sixteenth and seventeenth centuries that has been influential with the doctors of the civil law: the "realist" tradition of Machiavelli and of Hobbes that leads directly to the "positivist" theories of Bentham, Austin, and Kelsen, a tradition that denies the existence of natural

law and that considers law to be nothing more than the positive enactments of a state or sovereign, a tradition that lead ultimately to the conclusion that there is really no such thing as the law of nations or international law, since there is no sovereign to enforce its decrees.<sup>40</sup>

This realist, positivist tradition, which from the beginning of this century to at least the end of the second World War was the dominant influence on the accepted theories of international law, did not have much room for a concept of human rights. Thus it is not surprising that an international lawyer would note:

Apart from other considerations, two theories or attitudes stood in the way of any general recognition by international law in the nineteenth century and first two decades of the twentieth century, of the need to protect human rights. First, there was the so-called 'dualist' theory, according to which only states were the subjects of international law. Individuals, on this theory were objects but not subjects of international law, and without standing to enforce their rights before, or be heard by, an international tribunal. Accordingly, this theory precluded the recognition at international law of individual human rights. Secondly, there was the doctrine that a state has complete sovereignty over its own nationals to the extent that such sovereignty constitutes a sphere of reserved jurisdiction into which international law is not permitted to reach. This doctrine represented an obstacle to the concept of international protection of human rights, a concept which necessarily involves each state accepting a restriction of its sovereignty in becoming bound by external obligations not to deny protection to the human rights of its own nationals.<sup>41</sup>

### *The Anglo-American Common Law Tradition*

What I have said up to now about the development of the civil law is written by someone who cannot claim to know much about the matter. On the other hand, I do — or, at least should — know something about the evolution of the common law. This does not, however, make my task much easier. I am confronted with two problems. One is that knowing perhaps too much about the matter I am likely to get lost in the details. The other is more significant: because the common law is the product, not of logic, but of its own history — because the common law is in my view, the view of a common lawyer, a process, a means of accomplishing something — it is

difficult to relate it to timeless, even if recently invented, ahistorical concepts like "human rights."

On the other hand, and this is perhaps the only justification that I can give for afflicting you with this article, it does seem to me that anyone who tries to fit the concept of human rights into a tradition that recognizes that everything in this ocean of birth and death is arising and fading away — and that places its hope for salvation in the process of following a path to the other shore — is also going to have similar difficulties with such timeless absolutes.

One important point about the common law tradition, although this is not often noted in modern academic scholarship, is that, from its inception, the practitioners of the common law have been more concerned with rights than with wrongs. From the days of Ranulf de Glanville and the book named after him, from the end of the twelfth century of the Common Era to the present day, the important legal issues have almost always concerned the recognition and allocation of rights, not the rectification of wrongs.

In fact, in Glanville's time, at the very start of the English common law, with the exception of what today we would classify as criminal actions,<sup>42</sup> the only actions known to the common law were actions based on a right. All of these actions were commenced by the plaintiff — called the demandant — purchasing a form — known as a writ — from the chancery, directing the sheriff to summon the defendant — who was often called the "tenant" — to satisfy the plaintiff's claim, and, if he did not do so, to come into court to explain why he had not done it. In none of these actions was there any allegation that the tenant had done anything wrong; all were based on the claimant's *right* to whatever it was that he claimed: a parcel of land, some cattle, a debt, an accounting from a bailiff, or whatever. In fact, the greatest of these early actions, the action to recover land held by the tenant, was commenced by a writ called the "Writ of Right."

The rights asserted by the claimant in these actions, however, have little in common with the concept of "human rights," a concept that, as we have seen, was not to be invented for several centuries. The rights that were asserted in the original common law actions were always a right to get a particular thing from a particular person who was withholding it. It was not until the thirteenth century that "tort"<sup>43</sup> actions evolved, in which the plaintiff was able to recover the damages for as compensation for a wrong, such as an assault and battery for example, committed by the defendant. In time, for reasons that are intriguing, but simply not relevant to our discussion here, many of the earlier right-based actions were replaced by actions that were in form "tort" actions, but in actuality remained actions to recover something that the plaintiff claimed as of right, not because of a wrong.

Even today, despite the ubiquity of civil actions brought to redistribute losses arising from personal injuries that are, in theory, based on the wrong of "negligence," the significant legal issues under the common law still have to do with rights, not with wrongs. Who has the right to Grandmother's ring, when Grandmother's will does not mention who is to get it? Who is entitled to what, now that the building the contractor was to repair got washed away in the flood? Is the compensation received by an inventor from the sale of a patent taxable as income, or does the inventor have the right to have it treated as capital gains? Is a congregation of soft-shelled Buddhists entitled to a building permit to erect a temple in a residential area where the zoning law permits only single family residences and churches?

It is issues like those, issues involving claims of right, not claims of wrong, that are central to the day to day operation of the common law system, despite the fact — or, rather, because of the fact — that most claims of right do not result in litigation. After all, if the rights are clear — if one can predict with near certainty how a case will be resolved — there is nothing to litigate. If Grandmother had disposed of the ring in her will or if the contract had an unambiguous clause covering the destruction of the building by flood — or if there had been no flood — then there would be no reason to go to court. Established rights are generally respected; it is wrongs that are anomalous.

Particular rights of this sort are not at all like the generalized abstractions called human rights and they present no problem from a Buddhist's point of view. The precepts may enjoin us not to take what is not given, but it is the local law, not the universal Dharma, that defines how a gift is to be given and who has the power to make it.<sup>44</sup> To the extent that human rights can be analogized to rights of this type, they too will present no difficulties for a Buddhist, who is after all enjoined to respect the claims of others whether they are called "rights" or not. The right to Grandmother's ring or to a building permit are, at this time and at this place, simply facts about the contingent, conditioned world that are not to be ignored, but equally are not to be clung too.

It is not, however, common law rights of this type that have been seen as the source of the modern concept of human rights.

As has already been said, the common law, unlike the civil law, is descended directly, without any sharp break, from the feudal law of the middle ages. As one continental scholar said:

[D]uring my stay in England I was able to get to know the history of the common law, which is an exciting experience in itself, but has the additional charm, for a continental, of surprise at its utter strangeness. Anyone setting foot in the

land of the common law may as well forget his Roman law education; what alone may help him is his knowledge of medieval feudal law.<sup>45</sup>

Now the medieval feudal law was most definitely not a product of legislation nor was it composed of the commands of a sovereign; rather it was a body of custom governing the relations between and among all the members of a community, of a *Gemeinschaft*. This tradition — or the myth of the tradition — that the law governs the relations between all members of the community and binds even the king, was of great political importance in England during the sixteenth and seventeenth centuries when it was used to counter the absolutist claims of the Stewart Monarchs.<sup>46</sup> It is this tradition the culminates in 1776 in the Virginia Declaration of Rights and the Declaration of Independence of the thirteen united States of America.

The eighteenth century, in Europe and America, drew to its close as the century that had clearly and unequivocally proclaimed the inalienable and imprescriptible rights of man. The proclamations were not, to begin with, the creatures of Gallic enthusiasm, of a revolutionary category of reason run riot in human affairs. They were the product of sober English philosophies, English Puritanism and nonconformism, 'respectable' English resistance to absolutism and concern for freedom and toleration. They drew above all on the philosophy of John Locke and the traditions of the Glorious Revolution of 1688. . .<sup>47</sup>

And beyond that they were the product of the English common law.<sup>48</sup>

Despite the frequent use of Locke's writings as a justification for the recognition of the fundamental rights that were proclaimed at the time of the American revolution and are protected by the constitution of the United States, those rights themselves are — with one possible exception<sup>49</sup> — the result of the legal and political history of England, not of philosophical speculations. Most importantly, those rights were either rights to fair procedures in courts — for example, the right to due process or to the writ of *habeas corpus* — or simply rights to be left alone without interference by the king or parliament — for example, the rights of freedom of speech and freedom of religion.

Although the recognition of both those types of rights is in the constitution of the United States is very much the parochial product of English legal and political history, they are likely to be looked upon with favor by followers of the various Buddhist traditions. Still, if only because it

is a fact — part of the fact of *dukkha* — that the world is often unfair, the concept of "fairness," or of "justice," is not a central concern of those traditions, though, of course, that does not mean that fairness is not something to be desired in a government; on the other hand, it is not likely that many of the procedural rights enshrined in the constitution of the United States, such as the writ of habeas corpus, or the prohibition of bills of attainder, or the right to a jury trial in cases at common law, can meaningfully be translated to other legal systems or other political traditions.

If such procedural rights are not of central concern, the right — the ability — to be left alone, the freedom of religion and speech and thought, is critical if one is to be able to follow the Buddha's teaching that one should rely on oneself.

In Buddhism, which is based on the doctrine of the Middle Way, neither the Buddha nor the great Buddhist sages said, "My teachings alone are true." They did not encourage persecution by religious wars, burning at the stake, massacres, or forced conversions for the sake of their own Dharma, nor did they state that all teachings are the same. In the First *Suttanta* of the *Digha Nikaya*, the Buddha said: "Make a trial, find out what leads to your happiness and freedom — and what does not, reject it. What leads on to greater happiness — follow it."

This practical and sure way of distinguishing truth amid falsehood was meant by the Buddha to be applied to his own teachings as well, for he emphasized that one ought not to believe in the authority of any teachers and masters but should believe and practice the religious truth embodied by them. This is the Middle Way in action — as something practiceable, by means of which one can steer a course between blind dogma and vague eclecticism.<sup>50</sup>

Thus any government that is in turn governed by Buddhist principles would certainly cherish and protect the freedom of thought and expression for all persons, even if it would not see those persons as the autonomous individual rights-bearers of the Western European traditions.

Some of the rights set out in the Universal Declaration of Human Rights — for example, those of articles eight and ten — are procedural rights of the type that can be traced back to the Anglo-American tradition, while others — like those of article eighteen — protect the freedoms of thought and expression and can also be traced back to that tradition.

More problematic is the right to own property that is set out in article seventeen of the Universal Declaration of Human Rights. That right, which arguably can be traced back to the so called "takings clause" of the fifth amendment of the United States constitution,<sup>51</sup> is not a product of the common law tradition, but rather of the philosophical speculations of Locke and Hobbes and other philosophical purveyors of the remarkably naive — at least from a Buddhist point of view — idea that society and government are based on some sort of social contract. Unlike the civil law, and the Roman law before it with their concept of *dominium*, the common law traditionally has made little use of any concept of "property" or of "ownership;" at common law what is important is possession, and the right to possession, and estates and other interests in land (or in goods and chattels), and there is hardly ever a reason to speak of "property."<sup>52</sup>

Although no Buddhist is likely to object to a legal system that permits one to possess a begging bowl and a set of robes, or even to possess land, the right to own property — with all of its contractarian and anti-communitarian baggage — should be looked upon with great skepticism, for it is the contractarian ideology and its utilitarian offspring, with their emphasis on individuals blindly pursuing their own selfish interests, that are largely responsible for the modern destruction of traditional communities. Moreover the modern glorification of the "right" to own property is hard to reconcile with the basic teaching that ignorant clinging to things is the cause of *dukkha*.

Be that as may be, over time the rights that are the product of the Anglo-American legal tradition and are enshrined in the constitution of the United States were transformed into something much more problematic.

The demand for rights in the seventeenth and eighteenth centuries was a demand *against* the existing state and authorities, against despotism, arbitrariness and the political disenfranchisement of those who held different opinions. The demand for rights in the nineteenth and twentieth centuries becomes increasingly a *claim upon* the state, a demand that it provide and guarantee the means of achieving the individual's happiness and well-being, his welfare. These two different conceptions of rights. . . like the opposed conceptions of "freedom from" and "freedom to," stand in constant danger of fundamental conflict with each other — a conflict that dominates our contemporary world.<sup>53</sup>



*The Buddha's Teachings*

Whatever may be the sources of the concept of human rights, one thing is clear: human rights are something that are asserted against governments, against the people or institutions who govern others (though sometimes they may be thinly disguised by references to empty abstractions like the "state" or the "commonwealth"). There are religions whose primary focus is on governance, or at least there is one such religion, if it is a religion: Confucianism;<sup>54</sup> there are religions that have nothing to say about governance at all, except perhaps to suggest that it is wise not to attract the attention of the state: Taoism, for example; there are theistic, theocratic religions like Islam that do not distinguish between religion and government; and there are theistic religions, like most of the Western versions of Christianity, that make a distinction between the governance of this world and that of the City of God.

Buddhism does not, however, fall into any of these categories, although in East Asia, Buddhism and Confucianism have strongly influenced each other, so that it is easy to find statements on political themes from Buddhist sources, but almost inevitably these texts are more Confucian than Buddhist. In its own right Buddhism has never, up to this century at least, developed a political theory, to say nothing of a theory of human rights.

It might have been expected that, with the attention given to the conduct of the laity and the frequency of his advice in social matters, the Buddha would at some time have sketched the political construction of an ideal state: yet no thought of any reform in the existing political set-up is apparent. The warrior class (*Khattiyas*), priestly class (*Brāhmaṇas*), householders, *Gahapatis*, *Setthi*s, *Suddas*, all occupied a definite status and there is no suggestion in the Buddha's Discourses that this distribution would become modified, except in cases of reference to a general promiscuity resulting from the collapse of morality. Nor does it seem that the Buddha felt the need for any such change since his teaching was designed for, and addressed to, "a householder, or householder's son, or son of some other clan." It seems that he attributed the success of a system to the morals of the people working it rather than to any virtue inherent in the system itself. This, surely, is sound enough, if it is taken that a community develops a system according to its own understanding of life and improves on it as that

understanding improves, always assuming that no other system is forced on it from the outside against its will . . .<sup>55</sup>

The Buddha's teachings are applicable in all circumstances, in hot lands and in cold lands, in the dry season and in the rainy season, in times of plenty and in times of hunger. It is in this sense that they are universal.

Do not do anything harmful; do only what is good; discipline your own mind; this is the teaching of the Buddha.<sup>56</sup>

The Buddha's teachings have been heard, and have been followed, under myriads of different forms of government, in kingdoms and in republics, under dictatorships and under democracies. Whatever the political form may be, the four noble truths remain true, the eight-fold path remains the path.

Regarding the formulation of a definite scheme of government which would last indefinitely, producing always satisfactory results solely by reason of its own excellence, it seems unlikely that any person of vision, or even any thinking person, would ever have embarked on the task. In the last two thousand years, Western Europe has worked out many types of governments, but, in the main, they present a series of checks and modifications tending towards one side or the other of the principle for which the Greeks of the fifth century BC fought the Persians at Marathon and Salamis, namely, freedom of individual thought *versus* regimentation of thought. To some extent it might be considered that Plato was advocating the latter, but there is no question that the Buddha entirely advocated the former. . .

By reason. . .of the importance assigned to the moral standards and outlook of man in the Buddha's teachings, one must look for a description of the qualities of the people who will operate a scheme rather than for any intrinsic virtue in the scheme itself. If the scheme is one of an autocracy such as prevailed in the Buddha's day, then one must look for political teaching of the nature that will render that autocracy benevolent; this will consist in injunctions to the kings and their proclaimed duties. Of such we have several examples.<sup>57</sup>

But, of course, none of those examples contain any discussion of human rights, or of rights of any sort. The Buddha's ethical teachings are concerned with virtues and right conduct, they are not concerned with rights, and certainly not with rights against the state.

Still it is undoubtedly true that the virtuous man — the brahmin — will respect the rights of others that are recognized by the local laws. Those rights, however, are not going to be the product of any teaching of the Buddha; rather they will be defined by the laws and customs of the particular time and place.

On the other hand, the virtuous man — the brahmin — is not going to cling to his own rights.

The one who takes nothing in this world which is not given — nothing long or short, small or large, good or bad — this one I call a brahmin.

He is free from the very basics of desire for this world or for the next, he is the unfettered one, the desireless one — this one I call a brahmin.<sup>58</sup>

### *Conclusion*

The concept of human rights is a recent product of the history of Western Europe and of the civil law and common law traditions. To a large extent it has arisen as a response to the religious wars of the sixteenth and seventeenth centuries and to the horrors — the genocide — of the second world war. The concept of human rights is also to a large extent a product of the modern philosophical and political tendency to replace traditional communities with associations of autonomous individuals pursuing only their individual ends.

The teachings of the Buddha, on the other hand, are timeless and adaptable to any legal or political regime. The Buddha, and the successful followers of the Buddha's teachings, having wisdom and compassion, have no need for rights for themselves. And that is why the Buddha has no rights.

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## NOTES

1. Thus Leonard Swidler says:

Human rights, or at least the recognition thereof, are a  
relatively recent development in Western Civilization, that  
has been universalized. However, their roots reach back into  
Greco-Roman and Judeo-Christian cultures (Swidler: vii).

On the other hand, Ambassador Sompong Sucharitkul of Thailand, an  
international lawyer and diplomatist, who was educated at the Universities  
of Oxford, Paris, and Harvard, the Middle Temple in London, and the  
International Law Academy in the Hague and is a member of the  
International Law Commission, has written:

The concept of human rights originated in the political and  
philosophical thinking of the past few millennia. The concept

was revived in the middle ages in the Orient and in the West. The American and French revolutions have vividly expressed the concept (although limited in application). The concept has now spread world-wide and as it gains universal recognition and acceptance, it is temporarily relapsing in a country that once championed its cause (Sucharitkul: 305).

It should be noted that Ambassador Sucharitkul does not limit his concept of human rights to those that are the product of the modern Western European traditions. See, text accompanying Note 7 *infra*.

2. *Gesellschaft* is the usual German term for a business association or company, thus a limited liability company is called in German a *Gesellschaft mit beschränkter Haftung*.

3. *Gemeinschaft* is best interpreted as "community" or "commonality."

4. Kamenka, "Anatomy:" 5-6.

5. Abe, "Religious:" 202.

6. It should be noted that the Dalai Lama's frequent remarks on human rights are usually addressed to Western audiences or made in fora that have adopted Western conceptions of international law.

7. Sucharitkul: 305.

8. Universal Declaration of Human Rights.

9. These ambiguities, redundancies, and deficiencies recall those attributed by Dr. Franz Kuhn to a certain Chinese encyclopedia entitled *Celestial Emporium of Benevolent Knowledge*. On those remote pages it is written that animals are divided into: (a) those that belong to the Emperor, (b) embalmed ones, (c) those that are trained, (d) suckling pigs, (e) mermaids, (f) fabulous ones, (g) stray dogs, (h) those that are included in this classification, (i) those that tremble as if they were mad, (j) innumerable ones, (k) those drawn with a very fine camel's-hair brush, (l) others, (m) those that have just broken a flower vase, (n) those that resemble flies from a distance (Borges: 142).

10. These concepts, which differ markedly from the more traditional concepts of a city or a polity, on the one hand, or a community on the other, are recent inventions. [T]he state — "the impersonal state" we now take for granted — dates only from the eighteenth century" (Onuf: 281). Society, as a congeries of individuals rather than a community is, so far as I can tell, an even more recent invention.

11. From attachment arises misery; from attachment arises fear;  
in giving up your attachments, you will be freed from misery  
and fear.

From infatuation arises misery; from infatuation arises fear;  
in giving up your infatuations, you will be freed from misery  
and fear.

From desire arises misery; from desire arises fear; in giving up your desires, you will be freed from misery and fear. From craving arises misery; from craving arises fear; in giving up your craving, you will be freed from misery and fear. (*Dhammapada*, "Pleasure:" 5-8.)

12. Benn: 66-67.

13. *Dhammapada*, "Punishment:" 1-4. ✓

14. Gewirth: x.

15. Whitman: 92.

16. Holmes: 1.

17. Rorty: 115-17. At the end of the first paragraph of the quoted text there is a reference to the following, to my mind very sensible, endnote:

Rabossi also says that he does not wish to question "the idea of a rational foundation of morality." I am not sure why he does not. Rabossi may perhaps mean that in the past — for example, at the time of Kant — this idea still made a kind of sense, but it makes sense no longer. That, at any rate, is my own view. Kant wrote in a period when the only alternative to religion seemed to be something like science. In such a period, inventing a pseudoscience called "the system of transcendental philosophy" — setting the stage for the show-stopping climax in which one pulls moral obligation out of a transcendental hat — might plausibly seem the only way of saving morality from the hedonists on one side and the priests on the other (Rorty: 244).

18. *The Heart Sūtra*.

19. As Damien Keown points out "Buddhism is a latecomer to the cause human rights, and for most of its history has been preoccupied with other concerns," *Journal of Buddhist Ethics* 1995 2: 4.

20. Thus the draftsman of "The Declaration towards a Global Ethic" adopted by the Parliament of the World's Religions gives as one of the reasons for not repeating the "statements from the UN Declaration on Human Rights," that "such a declaration of an ethic would not escape the charge made especially by the Indian religions, that this was a typically 'Western' document" (Küng: 55).

21. The text of the Declaration appears in Küng and Kuschel (eds.) (1993).

22. Küng: 55.

23. The eighteenth century, in Europe and America, drew to its close as the century that had clearly and unequivocally proclaimed the inalienable and imprescriptible rights of man. The proclamations were not, to begin with, the creatures of Gallic enthusiasm, of a revolutionary category of reason run



riot in human affairs. They were the product of sober English philosophies, English Puritanism and nonconformism, "respectable" English resistance to absolutism and concern for freedom and toleration. They drew above all on the philosophy of John Locke and the traditions of the Glorious Revolution of 1688, with its Act of Settlement and compromise, non-individual, Bill of Rights. . . (Kamenka, "Anatomy:" 1).

24. This is not to say that there were not many different divisions between the various cultures of Western Europe; the claim is only that the precursor of the current division between the Anglo-American and Continental legal traditions had not yet become arisen.

25. Tradition has it that the term "feudal system" was first used by John Selden in the seventeenth century; thus the concept of the "feudal" was developed at roughly the same time as the concept of the modern "state." See *supra* Note 10.

26. I am under the impression that nothing very much like these feudal courts and their modern Western European descendants ever developed among the cultures of Asia where the Buddhist tradition prevailed, even at those times and places where something like the Western feudal system arose. In fact, law courts appear to be a peculiarly Western European institution that arose in the middle ages and that still persists in both common and civil law countries, but that never developed in other societies that have not adopted the common or civil law systems.

27. Especially at the University of Bologna. The development of the universities, the reception of the Roman law, the revival of interest in Greek philosophy, and especially Aristotle, and the development of theological studies that culminate — or, perhaps, begin — with the *Summa* of Thomas Aquinas, are obviously all interdependent, and it is undoubtedly misleading to ignore — as I am doing — all but the legal developments.

28. Even today German jurists refer to the Anglo-American common law system as a *Richterkönigtum*, a kingdom of judges. Anglo-American lawyers, on the other hand, can hardly conceive of a system where the law is to be found primarily in the treatises of the professors rather than in the judgments of the courts.

29. According to Thrasymachus, those with the power to ordain and enforce the laws of the land describe those who obey their laws as just subjects, and those who disobey them as unjust. The words "just" and "unjust" have no other meaning — certainly no meaning whereby a despotic tyrant or a tyrannical majority ruling in self-interest can be called unjust.

With the statement that justice is nothing but the interest of the stronger, we have the origin of the doctrine that might is right: those with the might to govern are the only ones who can determine what is right and wrong.

The position taken by Thrasymachus is taken later by the Roman juriscult Ulpian for whom "whatever pleases the princes has the force of the law." Still later, Thomas Hobbes in his *Leviathan* declares that what is just and unjust in any community is wholly determined by the positive or man-made laws enacted by those with the power to ordain and enforce them. In the nineteenth century, the positivist view is advanced by Jeremy Bentham in his *Principles of Morals and Legislation* and by John Austin in his *Province of Jurisprudence Determined*. In the twentieth century, the positivist view is advanced by professors in American law schools who call themselves Legal Realists (Adler: 1129).  
[footnote omitted]

30. Caenegem, *Birth*: 88-89. (Notes omitted)

31. Civil law, and the Roman law based canon law of the church, has always governed some areas of English law; even today one of the divisions of the High Court deals with cases of Probate, Divorce, and Admiralty, subjects that were traditionally handled by ecclesiastical or civil law courts, where the practitioners were university trained doctors of canon and civil law who took their meals at Doctors Commons, rather than the barristers who practiced in the common law courts and who ate their meals, and got their legal education, at the inns of court.

32. Caenegem, *Judges*: 114.

33. Caenegem, *Judges*: 117-18.

34. The specific rules set out in the civil law codes are, of course, incapable of unambiguously resolving all the questions that may come before the courts; this problem is resolved — or at least disguised — by the inclusion within the civil law codes of "general clauses" that, in effect, instruct the judges in hard cases to do whatever is just and right.

35. See *supra* note 29. There is, of course, no neat and necessary association between the civil law and legal positivism. The most horrifying examples of legal positivists — especially in the context of international law, and therefore of human rights — are English: Jeremy Bentham (1790-1859), the philosopher who invented utilitarianism and whose contribution to legal thought can only be explained by the hatred that he acquired for the common law when he studied it and found, as is often true of those of a philosophical bent, that he did not have the makings of a very good common lawyer, and John Austin (1790-1895) — not to be confused with John Langshaw Austin

(1911-1960), the founder of the "ordinary language" school of philosophy — England's first professor of jurisprudence, a would-be philosopher who could, of course, find nothing very philosophical to say about the actual practice of the common law and who is notorious for his definition of law as "the command of a sovereign." The major philosophical position that is opposed to legal positivism is that of the Natural Law school, a school with its roots firmly in the civil law tradition since it is based on either the *jus gentium* of the Roman Law or on the theological writings of Thomas Aquinas who was in turn influenced by the civil law and its Roman antecedents.

36. If the dispute were between two Catholic princes it could perhaps have been resolved by the Papal curia, but if the dispute were between Catholic and Protestant princes there was no court with jurisdiction to decide, or even hear, the case.

37. Gordon: 462. (Note the reference to establishing a legal regime, "both a priori and a posteriori." That is very much in the civil law tradition, but is totally alien to the common law tradition, where the legal regime is established by historical causes and conditions, not by logic.)

38. Maritain: 64-66. Earlier in this essay Maritain made clear that his concept of natural law was derived from the Christian tradition in which Grotius is a key figure.

The idea of natural law is a heritage of Christian and classical thought. It does not go back to the philosophy of the eighteenth century, which more or less deformed it, but rather to Grotius, and before him to Suarez and Francisco de Vitoria; and further back to St. Thomas Aquinas; and still further back to St. Augustine and the Church Fathers and St. Paul; and even further back to Cicero, to the Stoics, to the great moralists of antiquity and its great poets, particularly Sophocles. Antigone is the eternal heroine of natural law, which the Ancients called *the unwritten law*, and this is the name most befitting it (Maritain: 59-60.)

39. Murphy: 93-95. (footnotes omitted)

40. See *supra*, note 29.

41. Starke: 114.

42. Called "appeals." Unlike most modern criminal cases appeals could be initiated by private parties, but even so the appellors did not normally recover anything as the result of the appeal (except the satisfaction of revenge).

43. "Tort" is just the French word for wrong; French, or rather "Law French," was the language used in common law courts long after everyone else in England was speaking English.

44. This is a subject that is dear to my heart and is one on which I have written in the past (Junger). I fear that I tend to be interested in learning unimportant things like the form of the conveyance of the Jetavana Grove, or the legal rules governing the descent and distribution of Buddhist temples in Japan, but those are the interests of a lawyer with an unfortunate academic bent, not those of a follower of the Buddha Dharma.

45. Caenegem, "Common Law:" 165.

46. It is still of great political importance, especially in the United States, as is demonstrated by the following footnote taken from the concurring opinion of Justice Jackson of the United States Supreme Court in *Youngstown Sheet & Tube Co. v. Sawyer*:

We follow the judicial tradition instituted on a memorable Sunday in 1612, when King James took offense at the independence of his judges and, in rage, declared: "Then I am to be under the law — which it is treason to affirm." Chief Justice Coke replied to his King: "Thus wrote Bracton, 'The King ought not to be under any man, but he is under God and the Law.'" 12 Coke 65 (as to its verity, 18 *Eng. Hist. Rev.* 664-675); 1 Campbell, *Lives of the Chief Justices*, 1849: 272. 343 U.S. 579, 634, 655 n. 27 (1952).

47. Kamenka, "Anatomy:" 1.

48. For the common law background of American constitutional rights, see, for example, Chafee.

49. See *infra* Note 51 and accompanying text.

50. Abe, "Religious Tolerance:" 201.

51. "Nor shall private property be taken for public use without just compensation." Although the ideas underlying this constitutional provision can almost certainly be traced back to Locke, the actual language seems to have been originated by the draftsmen of the Bill of Rights to the United States Constitution.

52. In England it is still true that in theory no one, except Queen Elizabeth, "owns" land; land is just held for some period of time by tenant who hold it, mediately or immediately, of the Queen. In the United States, on the other hand, because of the nineteenth century fixation on "property" as an individual right, a fixation which closely parallels that of the late twentieth century on free markets, the institution of such feudal tenure has been abolished — except in Maryland — a fact that makes it difficult to protect the community from the predations of modern robber barons.

53. Kamenka, "Anatomy:" 5 (emphasis in original).

54. See Chen for a discussion of the Confucian view of world order that includes a short discussion of human rights at page 40; see also Needham.

55. Saddhatissa: 149.

56. *Dhammapada*, "The Buddha:" 5.

57. *Saddhatissa*: 153-54. *Saddhatissa* goes on to list several cases where the Buddha did give advice on qualities of a good ruler.

58. *Dhammapada*, "The Brahmin:" 27-28.

# BUDDHISM AND HUMAN RIGHTS IN THE THOUGHTS OF SULAK SIVARAKSA AND PHRA DHAMMAPIDOK (PRAYUDH PRAYUTTO)

Soraj Hongladarom

*Introduction: The Problem of Buddhism and Human Rights*

The United Nations Universal Declaration of Human Rights of 1948 raises the problem of how the concept of human rights are compatible with the cultures and practices of those civilizations where the concept has not taken a firm root. The concept of human rights, as expressed in the UN Declaration, is regarded as alien, or as an imposition of foreign, namely Western, powers on the lives and minds of non-Western people whose cultural development does not go along the same path trodden by the West. In the case of Thailand (formerly Siam),<sup>1</sup> which was not directly colonized by any Western powers, the concept is also generally regarded as foreign, and the Thai word for human rights — *Sitthi Manussayachon* — still rings an unfamiliar sound. For most Thais, the word simply conjures up the image of someone who disregard the traditional pattern of compromise and harmonization of social relations; someone, that is, who is quite out of touch with the traditional Thai mores.

However, the mores themselves are changing. As the country is surging toward industrialization, and as the people are ever estranged from the traditional way of living, more Thais are beginning to realize the need for human rights. This is well attested by the Black May incident of 1993, when scores of Thais lost their lives fighting for democracy against the army. The discourse of Thai people is beginning to presuppose the basic premises of human rights, even though these are not spelled out explicitly. The situation is that of a dynamic where traditional mores are being left behind and the people are groping for a new one. This situation, then, raises, the problem of how to accommodate human rights within the constitutive beliefs of Thai culture. Since the core of Thai beliefs is represented by Buddhism, a problem then ensues concerning how to reconcile the religion and its way of life with the new mores, part of which is the conception and actualization of human rights.

In this paper I shall investigate the situation, comparing and contrasting two famous thinkers in contemporary Thailand — Sulak Sivaraksa<sup>2</sup> and Phra Dhammapidok (Prayudh Prayutto).<sup>3</sup> The former is a

more serious in political philosophy and social critic who has often been given a hard time by power holders for his daring outspokenness and truth telling. The latter is a Buddhist monk and scholar. He is an author of a book, *Buddhadhamma*,<sup>4</sup> which is widely recognized in Thailand as one of the most lucid expositions of the Buddha's teaching. His thoughts on Buddhist views on various aspects of life are very well respected. Being a respected monk, he has never been in trouble with the authorities.

Although both are steeped in the Thai Theravāda tradition, however, their views on the role of Buddhism regarding problems of society, including that of human rights, diverge in a significant way. While Sulak favors a kind of socially engaged Buddhism in which the religion is seen as an instrument toward betterment of the society in terms of justice, democracy and respect for human rights, Prayudh Prayutto tends to be more conservative, and for him Buddhism seems to be more concerned with the cessation of suffering at the individual level rather than trying to improve society at large. I shall try to show in this paper how both thinkers deal with the problem of the relation between Buddhism and human rights, accentuating the key problem of the relationship of Buddhism toward its social environment.

#### *Buddhism and Human Rights in Sulak Sivaraksa*

For more than three decades Sulak Sivaraksa has been a leading voice of conscience for the Thai people. His continual and courageous criticisms of successive unjust regimes have given him a lot of trouble with the authorities. During the time when seemingly all sectors of the Thai society were effectively silenced by totalitarian regimes, his was the sole voice raised against them, aiming at raising the awareness in Thai people of the true meaning of democracy and justice.<sup>5</sup> Sulak calls for a return to the real roots of the Thais, and examination of imported Western values and technologies. He rails against Western educated intellectuals in his society who appear to worship Western techniques and ways of thinking without really understanding the roots and historical contexts of those techniques and thinking. That is, he persistently criticizes the normal attitude among Thai bureaucratic planners who blindly adopt the Western models without critically examining whether they really lead to "good life." He calls for a return to the traditional pattern of Thai life. This call, however, does not mean he is advocating a nostalgic glorification of the past. In fact he has many stinging words directed against aspects of Thai history. But the call is part of his campaign against the rampant consumerism in Thailand today. For him Thais should abandon consumerism and return to their indigenous culture with a strong critical attitude.

(Sulak) thinks that Buddhism is anything but a religion devoted solely to an individual search for salvation with no regard for the social environment within which such search takes place. He is often vehement against monks who abandon the true teaching of Buddhism and become mere instruments of power wielders to legitimize their rules.<sup>6</sup> In *Sāssanā Kap Sangkhom Thai* (Religion and Thai Society), one of Sulak's most important work, he writes:

The saying that Buddhism is concerned only with individual salvation is a complete neglect of its basic principle, that is, the denial that individual soul exists. The Buddha's teaching concerns only individuals, but it is also involved with something wider, which cannot be other than the society and politics. And this is what the Buddha often said in the Pali canon, which is the main scripture of the Theravāda tradition. The attempt to understand Buddhism without its relations to the society is an error. Buddhism is an attempt to relate with the individual's serious disease. It is primarily a way to defeat limitations of the *attā* in a way that brings in involvement with the social and the political. Until Buddhists are well aware of this fact, their adherence of Buddhism cannot help them get rid of their *attā*.<sup>7</sup>

That is, the supreme goal of Theravāda Buddhism, attainment of the state of extinguishment of all defilements or *nibbāna* (Sanskrit, *nirvāna*), is not possible if the Buddhist cuts himself or herself out of his or her involvement with the social and the political, according to Sulak. Since Buddhism teaches that existence of a self is an illusion, to try to proceed to *nibbāna* by getting *this individual self of mine* to arrive at salvation is thus a contradiction. Rather one must be aware that one's own self is indistinguishable from that of all others, and in fact that there is no underlying self behind the momentary consciousnesses which are constantly in flux. This means for Sulak that an individual must relate to others, and any attempt to cut oneself off from such relation is a presupposition of an individual self in the first place.

This idea of the impossibility of attaining *nibbāna* without dissolution of the individual self and relation toward others, then, is the core of Sulak's view on the relation between Buddhism and human rights. The ideal form of society is one where its members are all free from self attachments. However, Sulak realizes that such a society is only an ideal, and Buddhism has to compromise with its social environment in order that its teachings be accessible to the outer circle. That is, the original Buddhist community, which at first consisted only of arahants, later included more laypeople so that its



teachings could reach them and change them for the better.<sup>8</sup> Thus the ideal community of the selfless arahants form an ideal, or a standard on which ethical and moral judgement of lay societies are based. Thus such violations of human rights as slavery, torture, etc. could only be a movement in the opposite direction to the ideal, for these violations all result from strong attachment to the self of the violators of human rights. Without any attachment to the individual self, without the consciousness of "Me" and "Mine" as *Bhikkhu Buddhadasa* teaches,<sup>9</sup> there is no motive to violate any of the rights enshrined in the UN Declaration. Instead, respect for human rights follows naturally from such non-attachment.

Nevertheless, for Sulak it is not enough for setting the ideal ethical standard which can be used to evaluate social actions. There must be political action by the ruler to actualize and to enforce human rights. According to Sulak, the action of the political ruler is directly related to the well-being of the people as a whole. Sulak states that the political ruler and the people are two parts of a tripartite relation, whose remaining part is the Sangha community. The three parts all necessarily depend on one another and have duties toward one another. The king, or the political ruler, has the duty to care for the well being of the Sangha and the people, as well as protect them from harm and danger. The Sangha, on the other hand, has the duty to teach the Dhamma to the king and the people, and to remain steadfast as the moral exemplar. The people, then, have the duty to remain righteous and pay allegiance to the king and the Sangha. If one part, on the other hand, does not follow the path of righteousness, for example, if the king is unjust, or if the Sangha does not follow the teaching of the Buddha, then serious calamities occur. The tripartite relation theory stems from the time of Emperor Asoka, who reigned as a *Dhammarāja*, the supreme benefactor and upholder of the Buddhist religion. According to Sulak,

It is true that the Sangha community has never been as powerful as the Western clergy. It never has as much power. But it has a countervailing power. In what way? In legitimacy and righteousness. If the king does not follow the dhamma, he is the *adhammarāja*, and is thus vulnerable to destruction. But if he is a *dhammarāja*, then he will depend on the Sangha community. The Sangha acts as one who looks after the people. It teaches the people to pay respect to the *dhammarāja*. It is a countervailing force against the king, preventing him from being too harsh on them. It strives for moderation.<sup>10</sup>

Thus in ancient times there was a counterbalance to absolute monarchy. The monarch has to remain on the path of righteousness; otherwise he would not receive legitimacy from the Sangha, and his overthrow would then be legitimate. The idea, however, is hardly applicable in the present time, for the political ruler of contemporary Thailand is hardly a model of the *Dhammarāja* ruler:

I would like to tell you about the present situation. I would like to say that in the present society, the tripartite dependency does not work any more, especially after the overthrow of absolute monarchy in BE 2475 (1932). Those who came to power, including the original perpetrators in BE 2475, all came to power through unscrupulous means. No matter how well intentioned they were, they came to power through betrayal and unjust seizure of power with no trace of legitimacy. . . They came in and abolished the existing constitution, and set up a committee to draft a new one. Then there would be an election. All these are merely means to legitimize the power wielders themselves. These people cite their upholding of the monarchical institution, because people still believe that this institution is the source of legitimacy. People still believe that the king is still *dhammarāja*. The political power holders want the monarchical institution to support them.<sup>11</sup>

In Sulak's eyes, the legitimacy of the monarch as *Dhammarāja* in Siam stopped with the overthrow of absolute monarchy and founding of representative democracy in 1932. However, the holders of political power since then were almost all unjust and unrighteous, so there has been no real *Dhammarāja* in the country since the founding of democracy. This point is the motif behind Sulak's repeated criticisms of all those who come to power in Thailand through the unjust means of *coup d'état*. For Sulak, these means of coming to power are gross violations of human rights, for the military who usurp legitimate power based on the will of the people do not respect the principle of democratic will nor do they have any sense of human dignity and rights as, for example, enshrined in the UN Declaration. The *Dhammarāja* is the ruler who is steadfast in the path of justice and righteousness. He acts in accordance with the Dhamma, which is the way the nature of thing is. To act contrary to the Dhamma, therefore, would be to act in a way that is contrary to nature. Calamities in various forms result. Thus, the contemporary rulers of Thailand, even though they do not claim to be kings, nonetheless have to act in accordance with the Dhamma. Otherwise they would lose all their

legitimate claims to power, and are thus subject to criticisms, censure and overthrow.

For Sulak, the concept of human rights is clearly indigenous to traditional Thai culture, of which Theravāda Buddhism is an essential part, and it is ironically the imposition of Western ideas that result in loss of such rights in contemporary Thailand. As I have already mentioned, Sulak views the traditional Thai village life as where the quintessentially Thai identity and values lie. This view is the motive behind Sulak's repeated criticisms of consumerism. In the traditional Thai life, there were also some cases of injustice and violations of human rights, to be sure. But these are small scale and tempered by the adherence to the Buddhist teaching by all parts of the society.<sup>12</sup> On the other hand, the imposition of the ideas of consumerism, greed and exploitation of the natural environment, which Sulak quite rightly regards as originating from the West, is perpetrated by power holders who are unrighteous and who are mere pawns of Western governments and multinational corporations. The imposition of these Western ideas, then, is a symptom of Thailand's loss of identity due to their misconception that whatever is "Western" is better and more desirable than the traditional way. The way of life of the traditional village is destroyed, resulting in Thais being alienated from themselves. Gross violations of human rights follow from the acts of these unrighteous governments. Since greed and selfishness underlie the power holders' attitudes, it is natural for Sulak to see that human rights suffer *as a result* of the imposition of Western ideas rather than that human rights result *because of* such imposition.

According to Sulak Sivaraksa, then, the relation between Buddhism and human rights is such that respect for the latter is already there in the teaching of Buddhism. Since Buddhism teaches non-existence of the individual self, concerns for others and dissolution of selfish attitudes naturally follow. Human rights for Sulak are not only the preserve of the West; on the contrary, Sulak's repeated criticisms of the West show that blindly following the Western model results in loss of human rights. Thus what is needed is not such blind following, but a critical attitude and a deep respect of one's own cultural heritage. For Sulak genuine respect for human rights would not be possible if Thais still look down on their heritage and uncritically accept anything coming from the West without seeing its potential danger.

### *Buddhism and Human Right in Phra Dhammapidok*

In one of his lectures given to the lay audience on "Education for Peace," Phra Dhammapidok outlines some of his ideas on the relation between Buddhism and its social environment as follows:

In order to solve this problem (i.e., loss of peace) Buddhism teaches that we need to attend to the root cause. Everything depends on its cause. An effect is a result of a cause. We need to see where the cause is. But here there are so many causes.

Why are people making war? Because they hate each other, or sometimes their interests come into conflict. Sometimes it's because their views are different. . . They are attached to the view that their own particular religion is the best; anyone else's are all bad. These are all the world's problems.

In sum, Buddhism teaches that these problems are all caused inside the minds of human beings. Before they are expressed externally as killing, using weapons, throwing grenades, using planes to bomb, etc., these actions must originate in the mind first. Human beings need to intend before they act. Hence the problem first arises in the mind.

The problem arises in the mind. What does the mind contain? It contains the knot of the problem for which the Buddha already gave a principle. We are talking simply and clearly, so we need some Buddhist terms. They are packed with meanings. If we use ordinary people's language we will have to talk for a long time. But if we use the Buddhist terms we need only three of them. They represent almost everything.

The Buddhist terms indicating the root causes inside the mind which compel humans to act in ways that are recognized as loss of peace are: (1) *Tanhā* (desire), (2) *Māna* (self-aggrandizement), and (3) *Diṭṭhi* (belief, attachment to one's viewpoint).<sup>13</sup>

These ideas represents almost all of Phra Dhammapidok's view on the relation between Buddhism and its social environment. The problem, according to him, springs originally from inside the mind and is ultimately solvable only by uprooting these causes. Thus for him the role of education is of paramount importance, for it alone is capable of going inside the mind to change it for the better. It is not surprising, then, that he is intensely concerned with the problem of education, and has written numerous books and given countless lectures on the role of education.<sup>14</sup> For him education

does not limit itself only to the level of self perfection leading ultimately to *nibbāna*; he also points out various shortcomings in the education system of modern Thailand. Here is where his thought is most likely to be in the category of social criticism. However, the most important role of education is none other than the perfection of an individual in such a way that he realizes the Dhamma and gets rid of all defilements, or at least tries to improve himself according to the Buddha's teaching the best he or she can.

Nevertheless, his main point regarding the relation between Buddhism and society is clear. Since society is composed of individuals, the only way that social problems can be solved in such a way that no problems could arise any further is that all individuals in that society attain the state of selflessness. Effort by individuals at education and self perfection counts for the most in his view.

Phra Dhammapidok's idea on the primary importance of mental motivation figures prominently in his view on human rights. In a lecture given at the 1993 Parliament of the World's Religions in Chicago, he presents his view on the issue, which, due to its importance, I am quoting here in full:

The concept of human rights arose from a historical background of division, segregation and competition. Human rights are a necessary protection from aggression from other parties, an answer to a negative situation: when humanity is plagued by aggression and contention, it is necessary to devise some protection from aggression. Human rights have led to the establishment of laws and regulations devised to try to maintain harmony within human society. Within developed countries these qualities are very effective and as such are very useful to the global situation.

While human rights are useful within the environment of dissension, they are not very far reaching. They are only a compromise. Compromise is not capable of leading human beings to true unity and harmony. Compromise is a situation in which each side agrees to give in a little to the other in order to attain some mutual benefit. A quality of force or mental resignation is involved.

As long as human beings do not outgrow their old ways of thinking, it will be impossible to bring about true peace in the world. The concept of human rights is useful in an age of fighting and contention, or when human thinking is

divisive and separatist, but is not enough to lead humanity to true peace and harmony.

In essence, the concept of human rights have three major flaws:

Firstly, the concepts themselves are flawed. They have resulted from a background and basic attitude of division and segregation, struggle and contention. This situation led to an attempt to assure self-preservation and protect mutual interests, which became human rights. Human rights must be obtained through demand.

Secondly, human rights are a convention, they are a purely human invention and do not exist as a natural condition. They are not "natural rights." Being a human invention, they do not have any firm and lasting foundation of truth. They must be supported by laws and they must be accepted by all parties in order to work. They are not lasting. If human rights are to be lasting and firm they must be connected to natural reality. In order for human rights to be founded on natural reality, human mentality must be developed to a stage where people are prepared to preserve human rights. Only in this way will human rights be sustainable.

This leads us to the third flaw of the concept of human rights, which is that it is a purely social convention, dealing with social behaviour. It does not consider the quality of mental motivation within the individual. Social behaviour must always be connected to mental motivation, which is both the instigator and the guiding influence of that behaviour. If the mental foundation is faulty, or there is not a good foundation within the mind, then instead of leading to a good result, the result will be more and more contention.<sup>15</sup>

The basic idea is clear. Human rights, according to Phra Dhammapidok, are results of contention among individuals. Thus at best they represent a way of living together which is not optimal. Pure motivation, which is not based on hatred or contentious feelings, is necessary to achieve the ideal, and activists who struggle for human rights would not be moving toward the ideal if their inner motivation is not pure. There is a gap between the ideal

community and one where human rights are necessary. Since human rights, for Phra Dhammapidok, are but social invention, they are contingent and not necessary for the ideal community. In such a community, where hatred and divisiveness is not known, there is no need for human rights. These rights are necessary when individuals are not free from divisiveness and delusion; they form a basis of laws, for example. But it seems that for him human rights are superseded when the community has developed and achieved the state of the ideal.

Right social regulations, according to Phra Dhammapidok, consist of those which promote the spiritual development of the individual. He distinguishes between the Dharma, which is natural law, and Vinaya, which is human law. Since human rights serve to secure peace and order for a society, a safeguard against unbridled aggression, they could be regarded as a form of the Vinaya. However, the latter derives its value only from its being the means toward realization of the Dharma or natural law, which for him means "man's internal independence and freedom."<sup>16</sup> The role of the others is also necessary, for the monk could attain the supreme end only through material help provided by others. An orderly and peaceful society is a necessary condition for the monk to attain such state.<sup>17</sup> On the other hand, the monk who realizes the true Dharma is of tremendous help to the others in showing them the Path.<sup>18</sup>

The concept of human rights in Phra Dhammapidok's view is also related with that of the social *kamma* (Sanskrit, *karma*). This is the *kamma* committed by the society as a whole. When a society allows itself to be led by an unjust and unrighteous dictator, for example, it incurs the social *kamma* and has to pay for the consequences.<sup>19</sup> The dictator may even not be a person, but an idea, for example consumerism. Thus a consumerist society, in which its members do not critically reflect on the danger of the idea, incurs a social *kamma*.<sup>20</sup> Thus, in the same manner as the individual *kamma* is overcome when the individual follows the path leading to Enlightenment, at the social level the same is the case when the society as a whole follows the same path. Phra Dhammapidok thinks that this is a rationale in Buddhism for an endorsement of social action.<sup>21</sup> In order to cure a society suffering from bad social *kamma*, a kind of social action aiming at creating a favorable condition necessary for spiritual development of individuals is required.

In sum, Phra Dhammapidok's view on Buddhism and human rights is that he sees the latter as resulting from divisiveness and contentions among individuals, which are not favorable toward realization of individual perfection. This does not mean, however, that for him human rights have no role to play at all. On the contrary, in order that individual perfection be possible at all, the external environment must be favorable, and for that to be so the society, it seems, need to endorse human rights. He is not clear,

however, on the question of whether the concept of human rights are impositions from the West, but presumably this point does not matter much for him. If a community is full of divisiveness, then a conception of human rights is necessary, and this seems to be the case for any community. Though the rights are necessary, they are never sufficient, and he is at pains to point out that if they are applied without the right conditions of the mind, then they will only lead the people astray, and will not be effective toward realizing the perfection at all. The right condition of the mind is then of primary importance. ✓

*Conclusion: A Comparison and Contrast*

While there are obvious agreements on many issues, a basic difference between Sulak and Phra Dhammapidok on the nature of Buddhism and human rights is clear. While Sulak views human rights as an integral part of the end of Buddhism, Phra Dhammapidok views them as merely a means. It can be said that both Sulak and Phra Dhammapidok are examples of how Thais cope with the problem of how best to adapt their belief system in the face of contemporary developments. The two, it appears, go different ways. The difference seems to come from the fact that both perhaps view the nature of human rights differently. Sulak views them as constitutive of the ideal end of Buddhism; Phra Dhammapidok believes they are symptoms of divisiveness.

Perhaps Sulak thinks that the effect of human rights is primary. That is, when the society is just and righteous, there is naturally a respect for human rights already. The legal or political aspect of such rights, as well as their enforcement, would not be necessary and would then be ignored. On the other hand, Phra Dhammapidok seems to think that human rights are inseparable from their legal and political aspect. That is, they are parts and parcels of procedural justice. Since law and politics are only needed when individuals are not enlightened, human rights then are not part of the ideal community.

Who is right, then? I am afraid that that would be out of the scope of this paper. Perhaps this question should not be raised at all. The question, nonetheless, accentuates the problematic of the relationship between Buddhism and its social environment. Thus an advantage of the question is that we now appreciate its inherent difficulty more fully, and realize that a lot more work and thinking needs to be done before an answer can be glimpsed.



## NOTES

1. The country was formerly known as Siam. It changed its name to Thailand in 1939, as a result of a nationalist and ethnic consciousness campaign. The name was reverted to Siam again in 1947, but two years later, in 1949, it changed back to Thailand again and has remained so ever since. Sulak is one of the very few in Thailand nowadays who still presses for changing the name of the country back to Siam. His reason is that the name "Thailand" is a consequence of nationalistic thinking whose aim is to elevate the status of ethnic Thais higher than all other ethnic groups in the country.
2. According to the Thai pronunciation, his name is "Sulak Sivarak," however, the formal spelling of his name in English is "Sulak Sivaraksa." This mismatch between actual pronunciation and spelling is common in Thai language and should not be confused.
3. Phra Dhammapidok's personal name as a monk is Prayudh Prayutto, but he has received successive ecclesiastical titles from the King, and his latest title is "Phra Dhammapidok." This is a title which the King can confer to any deserving monk, so it is usual to append the holder's personal name in parenthesis after his title. Phra Dhammapidok's former titles were, from lower to higher: Phra Rajavaramuni and Phra Depvedi. His publications, therefore, bear these differing titles, and the readers should be aware that these titles all belonged, at one time or another, to one and the same person.
4. Phra Rajavaramuni (Prayudh Prayutto), *Buddhadhamma*, revised and enlarged edition (Bangkok: Khana Radom Tham, 1982).
5. Sulak Sivaraksa, *Chuang Haeng Kān Patiwat* (Period of Revolution) (Bangkok: Kledthai Press, 1974).
6. "Worse than that (the military rulers of Thailand) is our Sangha, which lost its leadership, and was replaced by the new Western trained and educated elite. Now the Sangha is being used effectively by the military, the bureaucracy, the industrialists and commercial sectors, who combine to suck everything out of the people, as well as from Mother Earth — in the name of development or progress." Sulak Sivaraksa, *A Socially Engaged Buddhism* (Bangkok: Thai Inter-Religious Commission for Development, 1988): 44-45.
7. Sulak Sivaraksa, *Sāssana Kap Sangkhom Thai* (Religion and Thai Society) (Bangkok: Phāsikoo Press, 1980): 239-240.
8. Sulak Sivaraksa, *Sāssana Kap Sangkhom Thai*: 81-90.
9. Bhikkhu Buddhadasa, Thailand's foremost Buddhist monk and scholar, taught about the "Me" and "Mine" in various books. Some English introductions of his work are Bhikkhu Buddhadasa, *Dhammic Socialism*, trans. by Donald K. Swearer (Bangkok: Inter-Religious Commission for Development, 1986); Peter Jackson, *Buddhadasa: A Buddhist Thinker for the Modern World* (Bangkok: The Siam Society, 1988). A study of Buddhadasa's

thought and its affinity with the Mahāyāna tradition is Suwanna Satha-Anand, *Prajya Putthathās Kap Mahāyāna Tham (Mahāyāna Buddhism in Buddhadasa's Philosophy)*, Chulalongkorn University Research Report Series, No. 31 (Bangkok: Research Dissemination Project, 1993).

10. Sulak Sivaraksa, *Sāssana Kap Sangkhom Thai*: 93.

11. *Ibid.*: 98

12. *Ibid.*: 23-25. In fact this theme of traditional Thai way of life as a source of value recurs in almost every work written by Sulak. It forms the core of his criticism of greed, consumerism and selfishness which he finds almost ubiquitous in contemporary Thai society. See especially Sulak Sivaraksa, *A Socially Engaged Buddhism*: 42-47; *Thammai Jung Tāi Phua Prachathippathai (Why Die for Democracy?)* (Bangkok: Samaphan Press, n.d.): 33-53; "Ekkalak Khong Sangkhom Thai" (Identity of Thai Society) in *Chuang Haeng Kān Patiwat (Period of Revolution)* (Bangkok: Kledthai Press, 1974); *Wiphāk Ror Sor Chor: Lork Krāb Anand Panyarachun (Criticizing the National Peace Keeping Council: Exposing Anand Panyarachun)* (Bangkok: Samaphan Press, n.d.): 63-95.

13. Phra Dhammapidok, *Kān Suksā Phua Santiphāp (Education for Peace)* (Bangkok: Buddhadhamma Foundation, 1995): 18-19.

14. Another of his most well known books is Phra Rajavaramuni, *Prajya Kān Suksa Thai (Philosophy of Thai Education)* (Bangkok: Kledthai Press, 1975). He also outlines his ideas in published lectures, such as Phra Depvedi, *Thāng Ork Khong Sangkhom Thai (Way Out for Thai Society)* (Bangkok: Samakhom Sidkao Mahachulalongkorn Rajavitthayalai, 1988).

15. P. A. Payutto, *Phutthavithii Kae Panha Phua Satawad Thii 21 (A Buddhist Solution for the Twenty-first Century)* (Bangkok: Sahathammik, 1994): 13-15.

16. Phra Rajavaramuni, "Social Dimension of Buddhism in Contemporary Thailand" (Paper No. 15, Thai Khadi Research Institute, Thammasat University 1983): 41.

17. Phra Rajavaramuni, "Social Dimension of Buddhism in Contemporary Thailand:" 41.

18. Phra Rajavaramuni, "Social Dimension of Buddhism in Contemporary Thailand:" 41.

19. P. A. Payutto, *Good, Evil and Beyond: Kamma in the Buddha's Teaching* (Bangkok: Buddhadhamma Foundation 1993): 68.

20. P. A. Payutto, *Good, Evil and Beyond: Kamma in the Buddha's Teaching*: 68.

21. P. A. Payutto, *Good, Evil and Beyond: Kamma in the Buddha's Teaching*: 69.

## HUMAN RIGHTS AND COMPASSION: TOWARDS A UNIFIED MORAL FRAMEWORK<sup>1</sup>

Jay L. Garfield

### *Introduction*

His Holiness the Dalai Lama has been a tireless advocate for human rights in a global context. Some leaders and moral theorists of non-Western cultures — and some contemporary Western moral and political theorists — have argued that the assertion of fundamental human rights is merely an accidental feature of the moral outlook of modern Western moral and political theory. The extension or imposition of this moral framework and its demands on non-Western cultures, they argue, is an instance of cultural imperialism and hegemony, incompatible with and disruptive of those cultures. Some in the West have even argued that this framework has outlived its usefulness even in Western cultures and that the overcoming of modernism should include the abandonment of a moral and political discourse grounded in rights. His Holiness has consistently rejected this view, and has urged in his public statements and in his writings on morality and politics that the demand for the recognition of human rights is indeed universal in scope, and that to the extent that a culture deprives its citizenry of fundamental human rights, that culture is morally deficient. It follows from such a view that to demand of a society that it respect some fundamental set of such rights is not an instance of illegitimate cultural imperialism but an instance of mandatory moral criticism, even if it is not so experienced by those to whom such an effort is directed at the time. On the other hand, His Holiness, grounded in, and advancing with considerable eloquence, the tradition of Buddhist moral theory rooted in the teachings of the Buddha, as transmitted through texts such as Āryadeva's *Four Hundred* and Śāntideva's *Guide to the Bodhisattva's Way of Life* has been a consistent exponent of the view that moral life is grounded in the cultivation and exercise of compassion. He has urged in many public religious teachings, addresses, and in numerous writings that the most important moral quality to cultivate is compassion, and that compassion, skill in its exercise, and insight into the nature of reality are jointly necessary and sufficient for human moral perfection.<sup>2</sup> This view, is of course, not original with His Holiness. It is the essence of Buddhist moral theory. On the other hand, His Holiness is certainly the most eloquent exponent and advocate of this moral position of our time, and his application of this moral vision to public life and to

international relations is highly original and of the first importance, justly recognized by the conferring of the Nobel Peace Prize. For instance in one recent discussion His Holiness writes:

To me it is clear that a genuine sense of responsibility can result only if we develop compassion. Only a spontaneous feeling of empathy for others can really motivate us to act on their behalf.

...[D]emocracy is [the system] which is closest to humanity's essential nature. Hence those of us who enjoy it must continue to fight for all people's right to do so. ...[W]e must respect the right of all peoples and nations to maintain their own distinctive characters and values (1992: 6-7).

Now at first glance, there is nothing surprising about this pair of commitments — that to the universality of human rights and that to the cultivation and exercise of compassion as the foundation of morality. Both seem laudable. Both seem to be *prima facie* "noble" moral commitments. But a second look may raise deep and difficult questions. A number of influential moral theorists<sup>3</sup> have recently argued persuasively that moral theories grounded in rights (to which I will henceforth refer as "liberal" theories) and moral theories grounded in compassion are fundamentally incompatible with one another. Moreover, they have argued that liberal theories are critically deficient — that they fail to account for and to provide guidance in our morally most important circumstances — matters of interpersonal relations where sentiments, attitudes and behaviors are of moral significance, but where questions concerning the rights and duties of those involved are at best beside the point. If these critics of liberal moral theory are correct, focusing on rights and duties impoverishes our moral discourse and distorts our moral vision and is to be abandoned in favor of a morality grounded exclusively in compassion and attention to interpersonal relations. Importantly, responses to this view have typically defended liberal theories against compassion theories, arguing that the former are indeed adequate to the full range of moral questions, and that compassion theories, to the extent that they get matters right, are no more than restatements of liberal theories.<sup>4</sup> The interesting thing about this response is not whether or not it succeeds, but that it concedes to the compassion-theorist the most important point — that rights and compassion are in tension with one another. And if that point, on which the parties to this debate concur, is correct, then His Holiness' advocacy for both of these approaches to morality would turn out to be incoherent. On the other hand, if his moral vision is — as I will argue that it in fact is — both coherent and compelling, seeing just how that is so

will require getting very clear about the precise relation between compassion and rights.

In this essay in honor of His Holiness and in honor of his ceaseless campaign to keep morality and its demands at the center of public discourse I will first explore the *prima facie* tension between liberal and compassion-based approaches to morality. I will then argue that these approaches are in fact not incompatible, but that fusing them into a coherent whole requires a particular ordering: compassion must be taken as fundamental. Rights can only be coherently formulated and advanced in the context of a moral vision incorporating compassion at all if they are grounded in compassion.

It is when we attempt to subordinate compassion to rights and duties, or to give these considerations equal status that incoherence looms. This essay hence defends the fundamental Buddhist insight that compassion is the foundation of moral life as well as the liberal vision of human rights as universal and hence defends His Holiness' moral teaching both against liberal and compassionate critics.

#### *What Do We Want From Rights?*

In coming to an understanding of just what rights are, it is instructive to first ask what work they do. And that question is best answered by noting when they are asserted. That, of course, is when they are violated, or threatened with violation. It is when individuals or groups are threatened with abuse or actually abused that rights are asserted — when people are hurt physically, deprived of opportunities for expression of views, opportunities to practice religion, to move about, etc. We then speak of a right being violated. Rights can be hence seen as fundamentally protective. They protect individuals against interference. Rights such as this can be called "negative rights." The right to life is such a right. It is a right not to be killed. Fundamental rights typically have this character.<sup>5</sup>

To be sure, some rights have a more positive character. For instance, in many countries a child has a right to receive an education. But two kinds of considerations mitigate this observation: first, positive rights such as this require the active construction of the obligations or institutions concerned. A right to a primary education requires the establishment of an educational system and the enactment of appropriate legislation, just as one's right to the repayment of a debt by a borrower, requires the occurrence of the loan and the promise to repay it. Contrast this with the right to free exercise of religion. A nation which does not recognize such a right has not simply failed to confer it; in failing to do so, it violates a right that is more fundamental than any legislative authority. This is what makes possible the liberal moral

critique of institutions, as opposed to the mere bland comparison of democracy with tyranny as two interesting alternatives for ordering society. Second, positive rights such as these are always quite specific rights to particular actions by particular individuals or institutions. Fundamental negative rights are rights against everybody. My child's right to an education is a right that the local school system admit him to school. The shopkeeper on the corner is irrelevant to this right: he can neither satisfy nor violate it. But my right to life is satisfied by all who do not kill me, and can be violated by any assailant.<sup>6</sup>

We can identify three more specific functions rights serve, and which are central to defining the liberal moral outlook: they create a domain of free expression; they establish clarity regarding life expectations; they enable moral criticism. Each of these functions is complex, and deserves examination.

Human flourishing — both at the individual and at the social level — requires the freedom of expression to be realized in a number of ways. For an individual to experience him/herself as creative, as responsible, as a being whose views matter; who is taken seriously; who can interact spontaneously and genuinely with those with whom s/he lives it is essential that s/he be able to express his/her views without fear of persecution. Moreover, for a society to flourish it is essential that as many voices be heard as possible, and that no views be suppressed. The suppression of speech harms not only the individual whose voice is silenced but also the community deprived of what might have been the correct view of a crucial matter, or the beauty of a work of art never created. And of course a society of individuals each of whom fears to express his/her views is a miserable one. Social and individual flourishing hence require respect for the right to free speech.

But of course not all speech is protected absolutely. Speech may be slanderous. Speech may be used to menace, or to deceive. So it becomes important to demarcate the domain of speech to be protected. This is notoriously difficult, and almost certainly cannot be done explicitly by any clear set of general principles. But we can at least note, given the general motivations just sketched for the protection of speech, central cases of speech that merits protection: speech critical for individual self-development, such as that related to scholarship, art, or the development of bonds of friendship of family is clearly to be so protected. Moreover, speech related to the political process, to debates regarding social policy, and to the pursuit of religious practice is also to be protected. In short, those domains central to individual and collective flourishing, in order to contribute to those goals, must be domains in which one can advance views free from the fear of censorship. This is what the freedom of speech is.

But rights protect not only discourse and discursive practices such as the creation of art and the practice of religion. They also allow us to organize

our lives rationally, and to plan our lives with the confidence that our plans have some chance of success. That is, rights ensure a relative clarity of expectations. That others will respect our rights to property, for instance, allows us to plan to put that property to use. That others will respect our right to move freely allows us to plan travel, and to plan a career or course of action that will involve travel. And it is of course the recognition of these rights and their instantiation in a set of institutions enforcing them that allows this confidence necessary for rationally lived lives, free from the terror of the unexpected crushing of legitimate expectations.

Rights have yet another central role in our moral lives. They make moral criticism possible. It is important to remember that among our most ethically significant activities is our criticism of ourselves, our fellows, and of alien practices. The role of rights is most central in the latter case. For, sadly, we often find ourselves encountering in the world practices that we find morally abhorrent and wish to condemn and even to extirpate. And we often find that those engaged in those practices not only show reluctance to abandon them, but defend them as morally acceptable. And to make matters more disturbing, the participants in these practices may urge that our condemnation represents an illicit — even culturally imperialist — universalization of the parochial moral prejudices of our own culture to their very different context. They argue that just as they don't interfere with our moral practices, we should leave their very different culture intact and mind our own business.

A case in point is the rejoinder of the government of The People's Republic of China to pressure from Western governments and from non-government human rights advocacy groups, as well as the statements made by representatives of this government at the 1994 conference on human rights in Asia. In these statements this government asserted that such putative fundamental rights as that to free speech, freedom of emigration, freedom to practice religion, etc. . .and indeed the entire framework of individual human rights are artifacts of Western liberalism, and that any attempt to impose respect for such a set of rights on Asian cultures is simply a new version of imperialism.

Now, leaving aside how the debate between the Chinese leadership and *its critics ought to turn out let us notice what the liberal discourse of rights* does for its exponents in this debate: to put the matter simply, it makes the criticism of these practices possible in the first place. For absent the liberal framework, the most that we can do is notice that the Chinese government adopts different practices from our own, and comment that we, given our preferences, would prefer to live under our system than under theirs, and perhaps even that so would many of the Chinese and colonial subjects of that

government. But that fact doesn't allow us, as outsiders, to intervene in that system, or even, with any justification, to criticize it in a way that its practitioners should take seriously any more than our noting culinary differences between us and the Chinese, and our preference for our food would justify criticism of Chinese gastronomy. For they can respond to us in a parallel fashion: they could note that we liberals have a different system. They could remark that they, the Chinese, would prefer not to live in it, and prefer their own. However, they could remark, they acknowledge that they have no grounds on which to criticize our system, and ask that just as they refrain from doing so, we do likewise with respect to them. What makes moral criticism possible for the liberal is that the discourse of rights presents itself as a universal discourse in an important sense. It makes claims that transcend cultural difference. The rights posited are not American rights, Tibetan rights, or Buddhist rights, Western rights, or Men's rights, etc. . . . they are precisely human rights, which are self-evidently possessed by any person. A social structure that abrogates them is not, on this view, simply different from our own in that respect: it is morally wrong in that respect.<sup>7</sup> And to the extent that we can make the liberal framework precise — and that turns out to be a very great extent<sup>8</sup> — we can specify precise ways in which such a system is wrong and in which it must reform or be reformed.

### *Rights, Duties, and Privacy*

Rights entail duties on the part of others. Where I have a right to something, you have a duty to respect that right. Moreover, duties towards specific persons entail rights on the part of those to whom duties accrue. If you — say as a consequence of a loan — have a duty to pay me a sum of money, I have a right that you do so. If I have a right to practice my religion, you have a duty not to interfere with that practice. Since, as we have noted, rights divide into positive and negative rights, duties similarly divide into positive and negative duties. Negative rights and duties are those liberals regard as universal. And all of the fundamental rights we have noted are of this character. Positive rights are accorded by particular kinds of institutions, such as government structures, laws, employment contracts or voluntary agreements or associations. These last may be more conventional, less universal, and as such are generally justified on pragmatic grounds or on grounds of mutual agreement, rather than on universal moral grounds.

The important consequence of this mutual entailment between rights and duties for present purposes is that any moral theory that takes rights as foundational *ipso facto* takes duties as foundational. To the extent that our collective moral landscape is defined by our human rights, our collective moral landscape is equally well defined by our duties. While this may seem



like a trivial restatement, it raises a problem: I will argue below that compassion has a defining characteristic an intention and aspiration to benefit even those to whom we have no particular duties, and who have no particular rights against us. We act compassionately, I will argue, precisely when we act not from duty, and precisely when we do not simply respect the rights of others, but when we positively benefit or refrain from harming where there are no rights and duties.

Moreover, as we shall see, compassion governs our interactions in a private sphere where talk about rights would seem bizarre, for example, relations between parents and children.<sup>9</sup> To the extent that we define the moral landscape by rights and duties, we appear not to define it through compassion.<sup>10</sup> Liberalism and Buddhism are apparently at odds.

We can sharpen this point by attending to the deep connection between the liberal conception of the private/public distinction and the liberal discourse of rights and duties, and the consequent centrality of this distinction and of the demarcation of a specifically private sphere to liberal moral theory. This point is conceptual, but can be usefully illuminated through attention to the history of liberal theory. Modern liberal moral theory has its origins in the work of the Western philosophers Locke and Kant (as well as Hobbes and Rousseau). Each was concerned in his own way to defend the rights of individuals against hegemonic powers that militated against individual liberty — in the case of Locke the British Crown which threatened the development of constitutional democracy and mercantile capitalism, and in the case of Kant ecclesiastical authority that threatened academic freedom and the development of science. Each saw it to be necessary to demarcate that sphere of life in which one's liberty is properly limited by legitimate public authority from that in which one is properly regarded as autonomous, and so to demarcate a private sphere. For Kant the most important domain to protect as private is that of thought, and as such he is properly seen as the earliest forceful exponent of a fundamental right to freedom of thought and expression.<sup>11</sup> But for Locke, his philosophical predecessor, the original private domain is the home, and the most important right to privacy is the right to property, and to the non-interference with one's use of one's property and conduct in one's home.<sup>12</sup>

Both strains of privacy theory are influential in the contemporary world's most influential articulation of liberal moral and political theory — the Constitution of the United States of America. The constitutional protection of the right to privacy has been forcefully articulated in a series of interpretively important decisions in this century according to which the boundaries of the private sphere are demarcated by rights against self-incrimination, against the intrusion of the state into one's home and documents, against religious coercion, against the abridgment of speech, etc.,

and against the dictation of one's decisions regarding one's family size and structure.<sup>13</sup> These have been summed up by one Supreme Court Justice in the famous epigram, "The most important right is the right to be let alone."<sup>14</sup>

This epigram in a certain sense simply sums up liberal moral theory. Liberalism is predicated on the demarcation of a private sphere in which one is free to articulate one's ideology, daily life and vision of the good as one sees fit. What one does there may be the subject of comment by others, but not of moral criticism. One's duties concern what one does in the public sphere. Restrictions of one's prerogatives in the private sphere are always *prima facie* violations of rights.<sup>15</sup> I may be obligated to pay my taxes (a public matter) but I cannot be required to give money to my temple (a private matter) and if I do so it is not out of any duty (unless I have established one through a promise). Failing to come to work on time is a breach of duty to my employer (a public matter) but failing to go to bed at a reasonable hour is a private matter — perhaps stupid, but nobody's business but my own. Or so liberal theory would have it.

Liberal theory, in sum, gets us the goods adumbrated earlier — security of thought and conscience, security in planning our lives, access to the good ideas and beautiful works of others, and a platform for moral criticism — simply by restricting the zone of such criticism to the public, and establishing the sanctity of the private.<sup>16</sup>

Now to a certain degree, I have overstated my case. For liberal moral theory does not in fact ignore moral phenomena other than rights completely, and indeed the most prominent liberal moral theorists often have a great deal to say about character and about virtue. To do justice to all of the nuances of the liberal tradition would take us far beyond the scope of this discussion. For now, these few remarks will have to suffice to emphasize the contrast to which I wish to draw attention: first, while liberal moral theory is indeed richer than one might believe were one to focus solely on its discussion of rights, liberal political theory is very much concerned to articulate a framework of rights as an exclusive characterization of the moral structure of the public sphere. (Indeed the separation of the moral from the political is another respect in which liberalism diverges from compassion-based moral theory) Second, even within the moral domain, there is a preoccupation in liberal theory with an articulation of rights which often obscures other moral concerns, and a preoccupation within liberal theory generally with the articulation of the political dimension of our moral lives to the detriment of attention to the private sphere, a preoccupation explained by the demarcation of that sphere within liberalism in the first place. Finally, even when liberal moral theory does turn its attention to matters of character and virtue, the account of these phenomena is often grounded in a primary account of rights and duties.<sup>17</sup>

*The Limits of Rights in Moral Discourse*

We are now in more of a position to see what is problematic about liberal theory if we want compassion to have an important place in our moral life. When rights are taken to be fundamental, too much comes out morally permissible. Since, for instance, nobody to whom I have no particular contractual arrangement has any right to my generosity, I am in no way obligated to be generous. Since no one has a claim on my concern, I need not be concerned for anyone else. Compassion is hence, on this view, strictly optional — one of the many permissible ways to address the world.<sup>18</sup>

This highlights the most important limitation of liberal moral discourse: it is in an important sense silent about character. Since a person's character — his or her fundamental values and set of virtues, vices, dispositions and attitudes — is a private matter, and the first principal of liberal moral theory is to protect individual liberty in the private sphere, liberal theory can in no way by itself recommend or condemn any particular qualities of character.<sup>19</sup> To the extent that we find character to be a morally significant phenomenon, this is deeply problematic. In particular, to the extent that the cultivation of compassion is of genuine moral significance — and for any Buddhist moral theorist it must be — then liberalism is at least deficient in its neglect of this attribute, and at worst wrongheaded in characterizing it as optional.<sup>20</sup>

But there is yet another difficulty afflicting the foundation of liberal theory, one which is indeed acknowledged by the social contract tradition, but which is never satisfactorily resolved: the general duty to respect the rights of others requires a justification. Or, to look at the other side of the coin, the claim that persons have natural rights at all must be justified, antecedent to the task which often occupies most of a liberal's attention, that of specifying exactly what our rights and duties are. And of course one cannot simply appeal to a right to have one's rights respected, or a duty to do one's duty, on pain of infinite regress.

The social contract tradition adopts one of two strategies: theorists in this tradition sometimes argue that the sanction of the rights and duties we recognize lies in an explicit or implicit original agreement to which we are all either tacit parties or heirs.<sup>21</sup> Aside from the odd historical problems this raises, and the problems with the status of implicit or inherited contracts, there is a stunning logical problem with this kind of reasoning. For the original agreement to be in any sense binding there must already by duties to keep one's word and to be bound by agreements presupposed, and correlatively rights that others abide by their agreements. The regress just adumbrated is merely ignored by talk of social contracts as binding.

The second strategy is to argue that it is in each of our self-interests to abide by the hypothesized or hypostasized right-establishing contract — that the alternative is a social disintegration that benefits none of us. There are at least two problems with this form of reasoning, though: first, for most of us most of the time, it is simply false. It is often in fact, in terms of the kind of narrow self-interest to which morality is supposed to be a countervailing force, precisely in our self-interest to shirk our duties, and to violate the rights of others. This is not surprising. It is one of the reasons for the prevalence of evil. But more deeply, even were this true, it would be the wrong kind of justification for a structure of rights and duties. For it would then be the case that our having rights and duties would be contingent upon the supposed fact that it is in others' and our own self-interest to respect them. And again, the very point of rights and duties is to restrain action that, while justified from the standpoint of narrow self-interest, is morally wrong. Such restraint clearly demands independent justification.

Now of course the demonstration of the inadequacy of these routes to the justification of liberalism as a foundation for morality does not show that no route will succeed. But if some route is to succeed, it will require a lot of argument to show how. And it does appear that the reasons for the failure to provide a truly adequate foundation for liberalism are principled: valuable as rights are, they are not self-justifying, and broad as their scope is, it is not broad enough to encompass all that is morally significant. It is therefore appropriate to look for a broader foundation for our moral life, and to hope that such a foundation will allow us to preserve what goods rights promise, while giving us moral guidance in those areas where rights fail us. It is with such hopes in mind that we turn to an examination of compassion.

### *Why is Compassion Morally Significant?*

The first thing to notice about a discourse grounded in compassion is that such a discourse allows us to address moral life in what the liberal regards as the private domain.<sup>22</sup> That is, we can assess relations between parents and children; between spouses; between friends and siblings with regard to whether the interactions in question are compassionate or not, and with regard to whether they are of a kind conducive to the cultivation and encouragement of compassion. This is important not only because so much of moral life happens in precisely these domains, and because liberalism is so problematically silent about these domains, but also because our moral sensibilities, even though they are often played out on a more public stage, are cultivated in these domains. The importance of attending to the nature of our "private" affairs hence transcends the already great moment of those affairs themselves in our lives.<sup>23</sup>

Moreover, regarding our moral life in this way allows us to talk about a broad range of choices we make regarding morally significant behavior about which liberalism is silent simply because of its focus on rights and duties. So my choice to give or not to give to a beggar or to a temple; or my choice to treat my fellows with patience or courtesy become matters — as they ought to be — of moral evaluation. In short, speaking in terms of compassion significantly broadens the sphere of morality to encompass more of what we pretheoretically place in that domain, and more of what is recognizably foundational even to that which liberalism puts at center stage.<sup>24</sup>

In addition, we can make greater sense of moral development from the standpoint of compassion than we can from the standpoint of liberalism. There is a certain mystery about moral development as seen by the liberal: how do we come to be good persons? Since for the liberal to be a good person is to be a respecter of rights and a discharger of duties, moral education would seem to require and to comprise exactly education regarding duties and rights and training in discharging and respecting them. But if we actually examine what kind of upbringing in fact leads to the development of morally admirable persons, it just doesn't look like this. Loving families, close relationships, and exposure to kindness seem as a matter of fact to be the necessary conditions for satisfactory moral development.

This makes little sense if moral development is liberal moral development, but makes perfect sense if to develop morally is to develop compassion. For children learn modes of interaction and attitudes to which they are exposed in childhood. Children brought up compassionately learn to be compassionate. And it is these children who grow to moral maturity by any standards. They are precisely the individuals who respect the rights of others and who discharge their duties. Grounding that moral maturity in their compassion makes moral development comprehensible. Grounding moral theory in compassion has an interesting consequence: the public/private distinction so fundamental to liberal moral theory vanishes. That divide is, as we saw above, the divide between what is of moral concern — one's public life — and what is a matter of personal taste—one's attitudes and values. Liberalism constructs that divide because of its essential concern with the right to privacy as the fundamental moral good to be protected. But when we take compassion as the primary object of moral concern there is no basis for the primacy of such a divide. The concerns of morality are, from this standpoint both broad and uniform. The same questions can be asked about my behavior in my home that can be asked about my behavior in the street. The same standards of evaluation apply to my business and political relations that apply to my fundamental values or religious commitments.<sup>25</sup> This represents a very different view of the moral landscape. Again, we must ask

just how this view can be reconciled with the view embodied in liberalism. They cannot simply be joined. Moral life cannot be both heterogeneous and homogenous. And yet, there is something, as we have seen, of great value and truth in both.

Before turning to the task of reconciling these divergent perspectives we should note one final respect in which from the standpoint of compassion ethics looks different from how it looks when seen from the standpoint of liberalism: moral criticism must be seen differently. When a liberal criticizes a social practice or institution on moral grounds, s/he argues that it is violative of certain fundamental human rights. When one criticizes a social practice or institution from the standpoint of compassion, on the other hand, the grounds of such criticism are equally universalist, but are somewhat different and more straightforward: institutions and practices are not deemed wrong because they violate some right (though, as we shall see, this might often be the case, and might often be derivative grounds for such criticism) but rather simply because they are harmful to people; because they are not expressive of individual or collective compassion, and because they do not foster it among the citizens exposed to those institutions.<sup>26</sup> From the standpoint of liberal moral theory, this is an inadequate basis for moral criticism, simply because the individuals harmed or denied benefits may have no particular rights against those harms or to those benefits. But from the standpoint of compassion, that is immaterial to the immorality of such institutions.<sup>27</sup>

### *Rights Within Compassion*

Having scouted the principal differences in outlook between liberalism and compassion-based moral theory, it is now time to return to the central problem this essay aims to resolve: given that these two approaches to moral theory – which at first glance appear so harmonious — turn out upon inspection to be very much in tension with one another, is it possible to join them in any way? That is, is the recurrent plea of His Holiness the Dalai Lama on behalf of both human rights and compassion coherent? If so, how so?

Given our accounts of these two frameworks, it should be apparent that if liberalism is taken as foundational, this task is hopeless. For central to liberalism is the protection of the private, and central to that protection is the protection of individuals from obligations to undertake any particular attitudes or visions of the good life. And compassion is nothing if not a very particular moral attitude, and an embodiment of a very particular vision of the good life. Liberalism essentially makes compassion optional.

But what happens if we adopt compassion as the foundation of our moral outlook, and try to reconstruct what we can of a liberal account of rights and duties upon that foundation? We shall now see that there is more hope in this direction. Moreover, we will see not only that we can construct a unified moral framework in such a way, but also that some of the outstanding problems concerning rights insoluble within the framework of liberalism admit of solution within the framework provided by compassion. In particular, the problem of the sanction of rights and duties will turn out to have a straightforward resolution.

To begin from compassion is to begin by taking the good of others as one's own motive for action. [28] This happens quite naturally within the family and the circle of one's intimate friends and associates, when those relationships are healthy and intact. Hume remarks:

'tis rare to meet with one, in whom all the kind affections, taken together, do not over-balance all the selfish. . . there are few that do not bestow the largest part of their fortunes on the pleasure of their wives, and the education of their children, reserving the smallest portion for their own proper use and entertainment (*Treatise*: 487).

But compassion, like the gravitational force to which in local social life it is so analogous, obeys something like an inverse square law and so will end up being counterproductive on a large scale: the further in relation to us a person or other sentient being is, the less natural compassion we feel for his or her suffering, and the easier it is to be indifferent or even hostile. Were this phenomenon to persist unchecked in human affairs, the sentient universe would come, as a consequence of the operation of this essentially local force, to resemble the physical universe, shaped as it is by the essentially local force of gravitation: we would find ourselves living in small, internally tightly bound, but mutually hostile bands, each one of us bound to our immediate fellows, and intensely loyal to members of our clans at the expense of the interests of others, like tiny planets floating in sterile isolation in the frigid vastness of space:

But tho' this generosity must be acknowledg'd to the honour of human nature, we may at the same time remark that so noble an affection, instead of fitting men for large societies, is almost as contrary to them, as the most narrow selfishness. For while each person loves himself better than any other single person, and in his love to others bears the greatest affection to his relation and acquaintance, this must

necessarily produce an opposition of passions, and a consequent opposition of actions. . . (*Treatise*: 487).

This would of course be a profoundly unsatisfactory state of affairs. For one thing, it runs against even the narrow self-interest of all concerned. We deprive not only others of the benefits to be derived from interaction with us, but also ourselves the benefits to be derived from interactions with them. Moreover, we perpetuate an unstable and dangerous hostility that keeps us all in a state of peril. But moreover, it runs against both reason and another component of human nature — our capacity for imaginative exchange of our own situation for that of others. For reason urges that drawing distinctions in the absence of genuine difference is arbitrary, and that doing so in ways detrimental to the interests of all concerned is downright stupid.<sup>29</sup> And that is precisely what the narrow limitation of compassion does. For this reason compassion must be deliberately given a public, social face.

The construction of an edifice of rights can hence be seen, as Hume saw it, as a device for extending the reach of natural compassion and for securing the goods that compassion enables to all persons in a society. For, he saw, compassion is a natural endowment of the human being, present in each of us as the innate attitude towards those close to us — towards those for whom we care and towards those who care for us. Since we all require, as we have argued, the many goods that rights enable, including the ability to express ourselves, the security to plan and to conduct our lives, and the availability of a platform for moral criticism; and since we each benefit from a society in which all enjoy these goods, not only self-interest but regard for each other demands that we adopt a mechanism for enabling these goods. By a natural process of generalization, compassion extends to those in our larger family, and in our circle of friends, associates, and acquaintances. So while compassion is of the utmost moral significance, we need no moral theory or explicit social structure to ensure its operation in this intimate ambience. Human nature takes care of this. But to extend it far enough to ensure necessary social goods, we need a mechanism — a human convention. Conferring rights is simply the best mechanism we have devised to this end. Hume puts the point this way:

The remedy, then, is not deriv'd from nature, but from artifice; or more properly speaking, nature provides a remedy in the judgment and understanding, for what is irregular and incommodious in the affections. For when men, from their early education in society, have become sensible to the infinite advantages that result from it, and have besides



acquir'd a new affection to company and convention; and when they have observ'd, that the principal disturbance in society arises from the goods, which we call external, and from their looseness and easy transitions from one person to another; they must seek for a remedy by putting these goods, as far as possible, on the same footing with the fix'd and constant advantages of the mind and body. This can be done after no other manner, than by a convention enter'd into by all the members of the society to bestow stability on the possession of these external goods, and leave everyone in the peaceable enjoyment of what he may acquire by his fortune and industry (*Treatise*: 489).

After this convention. . .there immediately arises the ideas of justice and injustice; as also those of property, right, and obligation. The latter are altogether unintelligible without understanding the former (*Treatise*: 490-491).

Moreover, as we are all aware both as a consequence of our introspective evidence but also as a consequence of the evident ability of the media to stir the sympathy of millions for even those who are very distant physically, culturally and circumstantially from them, we are endowed with an innate ability and propensity to place ourselves in imagination in the place of others and to be moved by their suffering and interests, even when these others are far from us on every relevant dimension of distance. We teach each other to cultivate this capacity, and it forms the basis of our ability to extend the bounds of our community of interests beyond our immediate circle of friends. It gives rise to sentiments of solidarity with those we recognize as like us: in its most limited form petty nationalism or communalism (dangerous sentiments, perhaps, but better than egoism and steps on the way to something better); with greater scope, to nationalism; and finally, in those of the highest moral character, to universalism. In each case, the greater generalization is achieved by coming to see others as more like us, or like those to whom we already extend compassionate regard, and to imagine ourselves or those we already love in the circumstances of the other.<sup>30</sup>

But having extended the sentiment of compassion, we must then ask how to turn that sentiment into tangible goods for those to whom it is directed, as well as how to ensure that those goods are available even when imagination and instinctive human goodness fail, as we know they all too often do. And that is where rights come in. By extending either a basic set of general human rights to our fellow persons, or more particular rights of citizenship to those who share our vision of civic life and who participate

with us in its institutions, we grant enforceable claims to the goods of life and against oppression. These provide the tools with which each individual can protect him/herself and achieve his/her own flourishing. These tools will be available even when our compassion or those of others fails, and can even be used as rhetorical vehicles to reawaken that compassion.

This has been successfully demonstrated in the Indian independence movement, the American civil rights movement, the South African anti-apartheid movement, and, though sadly with less tangible success, in the Tibetan freedom movement. In each case, a double role can be discerned for rights: on the one hand rights are used as tools to fight against those who show a paucity of compassionate regard for the oppressed. They can be asserted in courts of law, in political processes, or in diplomatic channels in order to secure the goods that would ordinarily be available through fellowship. On the other hand, the very assertion of those rights makes a claim to humanity and hence a claim to compassionate regard. Mahatma Gandhi, the Rev. Dr. Martin Luther King, President Nelson Mandela and of course His Holiness the Dalai Lama have, in strikingly similar ways, used the assertion of rights as part of a rhetorical demonstration of the humanity of those on whose behalf those rights are asserted. This demand to recognize humanity is at the same time a call to others to put themselves in imagination in the place of the oppressed, and so to generate compassion, and so to act on behalf of the oppressed.<sup>31</sup>

The important feature of such appeals for present purposes is this: in no case is it either necessary or helpful to take the rights to which appeal is made as constituting moral bedrock. To merely note that someone has a right is not to establish that that person has a claim on me to act. And in general, rights claims by themselves will be impotent to establish such obligations. No particular Englishman could have been shown to have an obligation to assist any particular Indian; no American stands under any definite obligation to liberate any particular Tibetan. What generates our sense of moral duty in such cases is the fact that we come to care about those in need, and that we see them as our fellows. And we treat our fellows in a way nicely captured by the rights we are called upon to recognize. In short, others' rights generate claims on us not because of the brute fact of rights-possession, but rather because of the brute fact that those others are seen not to be other, but rather as our own. And hence they have a claim on our feeling. Rights are on this account not insignificant: as we see, they have a central moral role in gaining recognition; in giving specificity to claims for action; and even as tools against those who withhold recognition. But without a foundation in the compassion that recognition facilitates, rights become pointless. And if there is an antecedent relation of compassion, rights are unnecessary. To quote Schopenhauer:

If anyone were to ask me what he gets from giving alms, my answer in all conscience would be: "This, that the lot of that poor man is made so much the lighter; otherwise absolutely nothing." Now if this is of no use and no importance to you, then your wish was really not to give alms, but to make a purchase; and in that case you are defrauded of your money. If, however, it is a matter of importance to you that that man who is oppressed by want suffers less, then you have attained your object from the fact that he suffers less. . . . (*On The Basis of Morality*: 165).

Neither rights nor incentives can motivate compassionate action. But compassion can certainly provide the motivation for constructing a system of rights, and for the creation of incentives to further compassionate action.

### *Beyond Privacy*

The foregoing discussion neither entails that we reject a central role of rights in moral and political discourse nor that we regard them as morally fundamental. In its preservation of a role for rights it recontextualizes them as a mode of expression of and as a call for, the exercise of compassion, and as moral tools to ensure the personal and collective flourishing that is possible and valuable only in the context of compassionate interpersonal relationships and in the context of a compassionate attitude towards the world. Without such a context, a meaningful human life is not possible; meaningful accomplishments would not find their necessary conditions. And even if by some miracle these conditions were satisfied, and what would otherwise be meaningful accomplishments were achieved, they would have no larger significance if absent a culture designed to enable them to benefit other beings and the world.

But we thus retain rights in a very different form than that recognized by that liberal moral theory responsible for their articulation. And this is because by taking compassion as our moral foundation we erase the fundamental divide between the public and the private spheres that grounds liberal theory and a liberal construal of rights. The reason for this is that once one regards one's character, attitudes, and relations to others as topics of moral discourse, one allows morality and moral criticism to intrude into the most intimate realm of personal life; once one subjects one's view of the good to moral evaluation, there is no sphere of thought and action protected from such scrutiny by a demarcation of a zone of privacy; and finally once one allows the same moral questions to be raised about one's behavior in the household and family as about one's behavior in the marketplace or in the

international political arena, the very line between the public and the private domains whose demarcation is the point of liberalism and the task of rights is erased completely.

This erasure could be seen in one of two ways: negatively, it means that we open the boundaries of our private lives to intrusion to the demands of morality. We can not say, as can the liberal, that our choice about what kind of person to be, and other such moral decisions are "nobody's business but our own."<sup>32</sup> On the other hand, it also means that the positive reach of morality, and its potential as a force for human development is extended from the marketplace and political arena into the family and into our most intimate deliberations.

But the erasure of this fundamental principled divide must not be seen as the rejection of the value of privacy *tout court*. For privacy is indeed a good, and, as we saw above, a good essential to many kinds of flourishing. Much of what we do in life requires the kinds of protection comprised by the general right to privacy — including freedom of speech, association, religious practice, and so forth. The security that allows us to order our lives, to develop our talents and to express our views is a good deserving of protection, and its protection is a matter of primary concern to morality as it is articulated in public policy. But the very fact that privacy so understood, and the cluster of rights it comprises are such goods entails that they are goods that compassion leads us to grant to one another, and that a compassionate society grants to its citizens. The failure to do so would constitute a kind of cruelty. The privacy so granted, however, is of a different kind from the privacy understood by the liberal: it is a set of freedoms to pursue ends, to express views and to develop talents. But it is not a freedom from moral constraint. Those ends, views and talents are themselves understood as bound by our inter-relations, and the freedom that is one aspect of privacy so understood is hence constrained by our moral bonds to one another. On this view, our mutual responsibility is fundamental, not our personal rights. Personal rights emerge only as goods we extend to one another as a consequence of our concern.<sup>33</sup>

*Conclusion: Rights as Foundations vs. Rights as Derivative*

We can now sum this investigation up straightforwardly: human rights in the West have, for the past three centuries, been most frequently articulated within a liberal moral framework. While there is a real conflict between such a framework and an outlook that grounds morality in compassion, there is nonetheless no real conflict between seeing compassion as the fundamental moral phenomenon and recognizing and utilizing rights in moral criticism and in moral and political discourse. The apparent conflict

is resolved by grounding rights not in the liberal theory of the public/private dichotomy, but rather in compassion itself. On such a view the purpose and sanction of rights derive exactly from their role in extending natural compassion when it might not naturally be extended, in eliciting compassion where it is tardy, and in articulating compassion skillfully. Rights are hence important at a number of levels, despite being morally derivative.

Moreover, despite the erasure this entails of the principled boundary between the public and the private, a morality based on compassion allows us to recognize and to protect the fundamental values that are embodied in a right to privacy. The very rights that liberals properly advance and protect so vigorously are reconstructed and protected with equal vigor on a new basis when they are grounded not in individual autonomy but rather in collective mutual responsibility.

Taking rights and individual autonomy as foundational to morality does indeed give us a great deal ethically and politically, and nobody who looks at the general trend — albeit occasionally halting and marked by setbacks — towards greater freedom, democracy, and their ancillary human goods in the world can help but be grateful to liberal moral theory for its significant role in facilitating this progress. At the same time, however, we must recognize that this approach to morality comes at a price. That price is the essential individualism of liberal theory. And while that individualism is a useful liberative tool against tyranny, it can also be an obstacle to the development of mutual responsibility and to the extension of compassion to others that moral life also demands.

By instead starting from a perspective that takes our mutual responsibilities and our moral sentiments as foundational, we can avoid paying the price of this individualism, and can reconstruct, albeit on new foundations, many of the same rights the liberal defends. We thus get a more far-reaching moral sensibility. To be sure, we lose something the liberal values: the protection of our right not to care about others, and to pursue our own vision of the good life in isolation. But in a world characterized by the omnipresence of suffering that is a right well lost. Finally, we can now understand how it is possible, despite the vast difference in theoretical outlook between liberal and Buddhist moral theory, for a moral advocate such as His Holiness the Dalai Lama simultaneously to advocate the cultivation of compassion as the most basic moral task and advocate for the recognition of human rights. For properly conceived, the latter is but the social face of the former.

I offer this essay to His Holiness the Dalai Lama with reverence and with boundless gratitude for his continuous manifestation of pure compassion for all sentient beings.

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## NOTES

1. This essay is a contribution to *Universal Responsibility: A Felicitation Volume in Honour of His Holiness the Dalai Lama on His Sixtieth Birthday*, edited by R.C. Tewari, K. Nath, S.S. Bahulkar, and Venerable N. Samten.
2. See esp. H.H. the Dalai Lama (1984, 1992).
3. See especially Baier (1992, 1994a), Tronto, Noddings, and Garner.
4. See, for example, Care (1987) or Kohlberg (1981, 1984), as well as Flanagan and Jackson.
5. See Hohfeld, Thomson.
6. The right to vote might be urged as a counterexample here. This appears to be a positive right and one that is fundamental in the requisite sense. Matters get complicated here. But here is a quick sketch of a reply: One might argue that the right to vote is not a universal right: It is a right that one has in virtue of living in a democracy. It is not obvious that democracy is the only morally acceptable way for persons to organize their lives, though it may indeed be the best. On the other hand, one might argue that to the degree the right to vote is fundamental, it is also negative: It is the right not to have one's vote interfered with.
7. See, for example, Janiak for a good discussion of the liberal response to relativism on this score, and Rawls or Care (1987) for a powerful defense of the universal claims of liberalism.
8. See Rawls, Gibbard, Thomson, and Feinberg.
9. This is not to say that — whether within a classic liberal theory or in some other moral framework — there are no rights children may assert against their parents, or vice versa. Assuredly there are. Rather the point is that to try to accommodate all of what is morally significant about family life, or friendship, within the framework of rights will inevitably result in a sterile picture of this domain. For too much of what amounts, e.g., to good parenting involved acts and attitudes which are neither supererogatory nor the objects of plausibly enforceable claims.
10. See Tronto, Noddings, and Janiak for more detailed exposition of this point. It is, however, important not to over-emphasize this point: liberal moral theorists do not claim that moral considerations other than rights have no place in moral discourse. Rather they accord primacy to rights and to rights claims, and accord only a subsidiary role to other considerations. I thank Professor Ernest Alleva for emphasizing this point in conversation.
11. This is especially clear in "What is Enlightenment," where Kant says "Enlightenment is man's release from his self-incurred tutelage. Tutelage is man's inability to make use of his understanding without direction from another. . . *Sapere aude!* 'Have courage to use your own reason!' That is the

motto of enlightenment" (in "On History":3). Thanks to Andrew Janiak for drawing my attention to this passage.

12. Privacy theory is very complex, and is very much contested terrain. This is not the place to survey that literature of the debates it comprises. See Innes, Allen, Schoeman, and Feinberg for excellent perspectives on privacy in liberal moral and legal theory.

13. *Griswold vs. Connecticut* (381 U.S. 479, 1965), *Roe vs. Wade* (410 U.S. 113, 1973).

14. *Union Pacific Railway vs. Botsford* (141 U.S. 250, 1981).

15. See MacKinnon.

16. See O'Neill for an excellent discussion of the connection between liberalism and privacy, as well as MacKinnon. Care (1987) attempts to construct a moral theory blending rights and compassion by retaining the basic liberal framework but abrogating the right to privacy in circumstances where there is great distress in the world. Janiak argues persuasively that this attempt is incoherent. Liberalism without privacy is oxymoronic.

There is another important strain of privacy theory that deserves note. Innes has articulated this with the greatest clarity. She notes that privacy can be understood as protecting a sphere of particularly intimate aspects of individual expression and life:

. . . [P]rivacy. . . amounts to the state of the agent having control over decisions concerning matters that draw their meaning and value from the agent's love, liking, or care...Therefore, privacy claims are claims to possess autonomy with respect to our expression of love, liking, and care (91).

While I agree with Innes that these are central components in a zone of privacy whether it is a zone demarcated by liberal moral theory or accorded, as I will suggest below, through a compassion-based ethic, I think that her characterization is a bit too narrow. Much of what is "intimate" in the morally relevant sense goes beyond matters of "love, liking and care," and, for instance, includes religious, artistic, or political thought.

17. Professor Ernest Alleva has persuaded me to be fairer to liberalism on this score. I am aware that these few remarks do not do justice to the full range of liberal replies to the implicit critique of liberalism this paper represents. But to discuss those matters fully would take us far afield.

18. O'Neill puts the point this way:

Since the discourse of rights requires that obligations are owed to all others or to specified others, unallocated right action, which is owed to unspecified others, drops out of sight. It may be right to help those in need, or to treat others with courtesy -- but if these traditional obligations lack

counterpart rights they will not be recognized by theories that treat rights as basic (286). . .suppose we think there are both rights not to be tortured and rights to food. In the absence of enforcement, A tortures B, we are quite clear who has violated B's right; but if A does not provide B with food, nor even with an aliquot morsel of food, we are not sure whether A has violated B's rights. There nothing shows that it is against A that B's claim to food should be lodged or enforced (296).

Thomson in "A Defense of Abortion" argues strenuously for such an understanding of rights, and defends such a framework throughout. See also Benhabib.

19. As I note above, this does overstate the case slightly. But the important point remains intact once necessary qualifications are noted: Concerns about character are, for the liberal, derivative of concerns about rights; any intrusion into the private is to be justified by public concerns.

20. See Baier (1994a, b, c, d, e, f, g), Noddings, and Tronto. Kohlberg, responding to this criticism, writes that "The spheres of kinship, love, friendship, and sex, all eliciting considerations of care, are usually understood to be the spheres of personal decision-making, as are, for instance, the problems of marriage and divorce." [230] But this just re-states the problem. For the liberal, to say that these are "personal" matters is to exclude them from the domain of moral discourse and criticism. For the moral theorist who takes compassion as foundational, it is to put them at the very center of that domain. The challenge for the liberal is to explain the seriousness of these issues; for the theorist of compassion, to show how the rights the liberal correctly articulates can be recovered without reconstructing this zone of privacy. Baier writes in "The Need for More Than Justice" (Baier 1994i):

For the moral tradition which developed the concept of rights, autonomy, and justice is the same tradition that provided "justifications" of the oppression of those whom the primary rights-holders depended on to do the sort of work they themselves preferred not to do. . .As long as women could be got to assume responsibility for the care of home and children and to train their children to continue the sexist system, the liberal morality could continue to be the official morality, by turning its eyes away from the contribution made by those it excluded (25).

21. Principal figures in this tradition are Rousseau, Locke, and Hobbes. For excellent discussions of the structure of social contract theory, see Care (1967) and Rawls.

22. See Baier (1994a), Tronto, and Noddings. But see also HH the Dalai Lama (1992).

23. Baier emphasizes this with great force in (1994e, f, and h). In "Trust and Anti-Trust" she writes:

A complete moral philosophy would tell us how and why we should act and feel toward others in relationships of shifting and varying power asymmetry and shifting and varying intimacy. . . [T]hese relationships. . . such as parent and child. . . make up much of our lives, and they, as much as our relations to equals, determine the state of moral health or corruption in which we are content to live (300-301).

24. Janiak makes this point with particular force and clarity.

25. In "The Need For More Than Justice" (Baier 1994i) Baier emphasizes this:

One cannot regard any version of morality that does not ensure that caring for children gets well done as an adequate "minimal morality," anymore than we could so regard one that left any concern for more distant future generations as an optional extra. A moral theory. . . cannot regard concern for new and future persons as an optional charity left for those with a taste for it (29).

26. Another way to put this is point is that from the standpoint of compassion-based moral theories, what it is to be human is to participate in compassion. Tsong Khapa puts the point this way:

Indeed, the joy and glory of humans, as well as the skill of humans, are the principle of carrying the burden of others' aim, because staying only in one's own aim is shared with the animals. For that reason, the character of the great ones is limited to the benefit and happiness of others (*LRCM* in Wayman: 26)

27. Professor Ernest Alleva points out (personal communication) that there are two other important differences between liberal moral theory and moral theory grounded in compassion worthy of note:

First of all (and this consideration is very important for Schopenhauer in his criticism of rights-based moral theory) rights theories typically do not extend moral consideration to non-human animals, or, to the extent that they do, justify such consideration in highly artificial or problematic ways. Given the necessary conditions rights theories typically require for moral standing, it is very difficult to grant animals any genuine moral standing. Morality grounded in compassion allows us to account much more directly not only for our actual moral sentiments with

regard to infrahuman animals, but also to explain why these sentiments are correct, and why all creatures have some moral standing and claim to our moral recognition.

Secondly rights-based moral theories, with their strong emphasis on individual autonomy, typically render highly problematic any "paternalistic" (I prefer "parentalistic") interference in the affairs of others — that is, the restriction of the autonomy of others for their own good. Debates regarding parentalism are extremely complex, and are certainly beyond the scope of this essay. But I would argue that the straightforward prohibition against such action that emerges from rights-based theories does less justice to the complexity of such situations than the more textured considerations that compassion brings into play: It is often wrong to intervene in such circumstances, but more often because of a lack of sufficient skill on the part of the intervenor to bring about genuinely favorable outcomes. Where such skill is in place, however, and where appropriate knowledge is brought to bear, with appropriate motivations, parentalistic intervention is often laudable.

28. Schopenhauer puts this point eloquently: "As soon as this compassion is aroused, the weal and woe of another are nearest to my heart in exactly the same way... as my own. Hence the difference between him and me is now no longer absolute" (*On The Basis of Morality*: 144).

29. See Schopenhauer in *On the basis of Morality* on the illusory character of the difference between individuals:

This conception that underlies egoism is, empirically considered, strictly justified. According to experience, the difference between my own person and another's appears to be absolute. The difference in space and time that separates me from him, separates me also from his weal and woe (205). Accordingly, if plurality and separateness belong only to the phenomenon, and if it is one and the same essence that manifests itself in all living things, than that conception that abolishes the difference between ego and non-ego is not erroneous, but, on the contrary, the opposite conception must be. . . Accordingly, it would be the metaphysical basis of ethics and consists in one individual's again recognizing in another his own self, his own true inner nature. Thus practical wisdom, doing right and doing good, would in the end harmonize with the profoundest teaching. . . (209).

Individuation is real. . . Each individual is a being radically different from all others. . . This. . . lies at the root of all egoism. . . Individualism is a mere phenomenon or appearance. . . My true inner being exists in every living thing as directly as it makes itself known in my self-consciousness only to me. . . It is this that bursts through as compassion on which all genuine. . . virtue therefore depends (210).

And Shantideva in *Guide to the Bodhisattva's Way of Life*:

But if I do find happiness in his happiness Then surely I should feel the same way towards all (VI:96 ab).

There is no doubt that those with the nature of compassion Regard those beings as the same as themselves (VI: 126 ab).

30. This insight is due in the West originally to Hume. But in recent moral theory, Baier (1994a), Noddings, and Tronto have developed and defended it with great force. But in Tibetan Buddhist philosophy it is quite old, represented in the literature on visualizing each sentient being as one's mother, and on the exchange of self for others. Here the use of moral imagination is urged as a primary vehicle for extending natural sympathy into universal compassion. Tsong Khapa writes:

. . . [T]he cultivation of sentient beings as kinsfolk is for generating gratitude. Now, the ultimate kin is the mother. Therefore, the three, mother-contemplative repetition, mindfulness of kindness, and show of return gratitude. . . generate compassion (*LRCM* in Wayman: 43).

See also Kensur Lekden in Hopkins: 37-38 for detailed instructions on visualizing others as one's mother, and for cultivating and transferring appreciation the mother's boundless kindness. He sums this discussion up thus:

Why should one make all neutral persons and enemies equal to one's mother? If she had fallen into a ravine or a river, or into a chasm made by an earthquake, and if her own child whom she had helped from the time of his entry into her womb would not help her, who would? (45).

31. Baier (1994i) notes:

It is however also true that the moral theories that made the concept of a person's rights central were not just the instruments for excluding some persons but also the instruments used by those who demanded that more and more persons be included in the favored group. Abolitionists, reformers, women, used the language of rights to assert their

claims to inclusion in the group of full members of a community (26).

32. Note that this does not create duties to, for example, give to particular beggars, or correlative rights on the part of, e.g., some or all beggars to alms from some or all persons. Rather it establishes a moral ideal that includes generosity and a compassionate regard for others as components, which ideal is relevant to anyone whether or not/she acknowledges its relevance, just as intelligence is part of an intellectual ideal even for those who don't care how smart they are. This is important, because the liberal might fear the following consequence from the elimination of the fundamental status of privacy: It could turn out that we are so overwhelmed, in virtue of the universal demands of compassion, by a sea of new duties — such as those to give to each beggar who could thereby benefit — that it becomes impossible to lead a rational, coherent life. This is akin to the difficulty that Williams shows to afflict utilitarianism. Integrity becomes impossible under such circumstances, as does the attainment of any goal requiring singleness of purpose. But this problem does not beset the current account, because the foundational status of compassion requires only the development and expression of a virtue or set of virtues, and because compassion itself requires that we respect an — albeit more circumscribed — zone of privacy. I thank Ms. Laurie Smith for calling my attention to this problem.

33. This view contrasts somewhat with Innes' account. We agree that privacy is important because it protects autonomy in a sphere particularly central to self-expression and self-development. But beyond the disagreement noted above regarding the content of that sphere, we disagree regarding the basis of that protection. Here Innes is closer to classical liberalism than am I. She writes:

Privacy protects our autonomy with respect to our expressions of love, care and liking. There are two possible explanations of the positive value we accord to this sphere of individual autonomy. The first of these is a consequentialist "relationship-creation" explanation. According to this explanation, privacy promotes the creation and growth of positively valued human relationships dependent on the agent's love, liking and care (95).

But she rejects this explanation (which I clearly endorse, suitably modified), writing:

Relationship-promotion explanations of privacy's value also fail to accord with our intuitions about privacy's consequence-independent value. If its value flows from the relationships it produces, it is clear privacy will be positively valued only in the world where it does promote close

relationships. . . However, this inverts our intuitions about privacy's value. . . [P]rivacy is valued *just because* it can halt the intrusions of the external world (101; emphasis in original).

These "intuitions," I would argue (though space prohibits developing this point here) are classical liberal intuitions, not shared by adherents to other moral frameworks, and invoking them here begs the question against compassion-based moral theory. Compassion theorists, I would argue, secure the goods the liberal cares about, but secures them for the right reason — that they promote individual and collective happiness. So when Innes continues,

Privacy's positive value stems from a principle of respect for persons as autonomous beings with the capacity for love, care, and liking, beings with an invaluable capacity for freely chosen close relationships; this principle dictates the positive value we accord to the agent's control over intimate decisions about her own actions and her decisions about intimate access to herself (112),

I would argue that the emphasis on autonomy as foundational inverts the correct order of moral explanation.



## BUDDHIST RESIGNATION AND: HUMAN RIGHTS (FREEDOM IS WHAT I AM)

Śantipala Stephan Evans

Western civilization is often criticized by Buddhists as being excessively individualistic. "Human rights" may be criticized on similar grounds. The notion of inalienable rights, somehow inherent in the individual, who then is encouraged to demand recognition, not only partakes of that individualism, but intensifies it, perhaps strengthening the very "I" which Buddhism advises us to weaken. Critics might point to the fragmentation of U. S. society as evidence that the individualism fostered by the human rights movement is destructive.

Asian governments accused of abuses, meanwhile, often claim that "human rights" is a Western concept irrelevant in the East. Moreover, Buddhist tendencies to self-effacement and resignation may leave individuals and groups hesitant to protest abuses in their own countries. In a word, the first Buddhist weapon against suffering is "resignation;" demanding one's rights seems to contradict that.

✓ Yet, intuitively, for many, Buddhism does support human rights. Dr. Ambedkar found in Buddhism the best religious foundation for human rights in India. Western Buddhists are well represented in the human rights movement. The Buddha's proclamation that "Not . . . by birth does one become a *Brāhmaṇa*. But in whom there exist both truth and righteousness. . . a *Brāhmaṇa* is he" (*Dhammapada* 393),<sup>1</sup> sounds like Martin Luther King Jr.'s hope that we be judged not by the color of our skin, but by the content of our character. ✓

In order to be convincing and inspiring, any Buddhist theory of rights should meet the following conditions.

1. Simplicity: ordinary Buddhists must be able to understand the argument.
2. Universality: based on principles that all Buddhists accept.<sup>2</sup>
3. Authority, or dignity: the theory must articulate the moral inviolability, or its equivalent, of the human person.
4. Integrate Buddhist "resignation" with human rights advocacy, including advocacy of one's own rights.

Damien Keown grounds human dignity in the ability of each to achieve enlightenment, and derives the content of rights from simple Buddhist ethics,

for example the *pañcasīla*. He meets the first two conditions above.<sup>3</sup> I have not seen the problem of resignation addressed at all. Yet this is critical. It is one thing to assert that the state has certain duties toward its subjects. It is quite another to grant citizens effective recourse when they believe those duties have been neglected.

Human rights abuses in Asia are well known: pro-democracy demonstrators gunned down in Rangoon, Beijing, and Bangkok; communal violence in Sri Lanka; repression and even extermination attempts against ethnic minorities. Escalating communal violence is particularly difficult as the state often lacks the moral authority or even the will to mediate.<sup>4</sup>

We must ask: how did the home soil of our faith degenerate into such barbarism? More to the point: what can we do now? How do we advocate — not abstract rights — but human life and welfare, both individually and collectively? There can be little doubt that Buddhists must do so:

All tremble at the rod. All fear death. Comparing others with oneself, one should neither strike nor cause to strike  
(*Dhammapada*) 129

...not to mention the more active Buddhist values of friendship (*mettā*), and compassion (*karuṇā*), extended to all, the enemy and the distant as well as to family and friend.

It is true that Buddhism is a "lightweight" in the arena of human rights.<sup>5</sup> It is also true that Asia is undergoing social and cultural transitions which, even at a more leisurely pace were no less violent in the West. Still there is ample raw material in the *sūtras* with which to forge a Buddhist social vision. Neglected for many centuries, Asian activists and scholars have already begun to recover it.

Educated in the West, Aung San Suu Kyi's vision of democracy and rights is in line with Western standards. Nevertheless, she grounds her ideas in the Theravada tradition. The potential for enlightenment shows the ultimate worth of every person. *Sīla, dasarājadhamma* (the ten duties of a ruler) etc. provide specific content to her ideas of rights and justice. Her treatment is simple, straightforward and convincing.<sup>6</sup>

Ven. Walpola Rahula covers similar ground in *The Heritage of the Bhikkhu*,<sup>7</sup> and demonstrates precedent for Buddhist activism. Sulak Sivaraksa of Thailand has founded the International Network of Engaged Buddhists. Thich Nhat Hanh offers activism and justification from a Mahāyāna point of view, contributing concepts such as "interbeing."<sup>8</sup>

It would seem that the scholarly work is done, the battle engaged. Like the occasional Confucian scholar, we might do well to cast aside our

laptops and join the struggle at the front. Authority, however, remains a problem. *Sīla*, though sanctioned with the law of karma is not ultimate. Indeed, the ultimate, *Nirvāṇa*, is beyond that law. In his famous discourse to the Kalamas, the Buddha expresses the right and duty of each to think for himself, even when deciding ultimate concerns. This attitude certainly supports the pro-democracy movement. But it may also contribute to the arrogance of abusive rulers. Since there is no higher authority than human choice why should they not choose greed and brutality, and to pay the price — both in suffering in a future birth and in delay of *Nirvāṇa*? If the potential for enlightenment is the ground for human dignity, where does that leave those who have no interest in realizing that potential? Sri Lanka, for example, has a tradition which denies the humanity of non-Buddhists.<sup>9</sup>

That *sīla* is not ultimate, is shown by the monks who chose to accept rebirth in hell for eating meat in order to bring Dharma to the Mongolians.<sup>10</sup> This obviously implies a higher ethic. Yet that higher ethic remains inarticulate. *Sīla* might better be understood as a grammar of meaningful behavior whose constraints empower expressiveness and the possibility of mutuality and community. That mutuality, then, might be part of the "higher ethic."

There are other questions. A Burmese monk says Aung San Suu Kyi is a trouble maker. A Vietnamese nun says that Thich Nhat Hanh is no true monk because of his involvement in politics. Many Thais are shocked by Sulak Sivaraksa and feel that he is engaged in a bitter pursuit of power that is not properly Buddhist. These opinions reflect, in part, the Buddhist hesitancy to self-assertion.<sup>11</sup> Moreover, voices for ethnic minorities are distressingly few. A 1947 declaration by the Sri Lanka Sangha proclaims the rights of the Sri Lanka people.<sup>12</sup> But who did they mean? Certainly not the Tamils. Rahula's book, which is really a manifesto for democratic reform, scarcely mentions them at all. And though the government of Sri Lanka seems interested in improving its human rights record, the suppression, not only of Tamils but of Sinhalese dissidents continues. The Tamil combatants, in turn, are certainly not interested in the rights of individual Tamils, nor of rival Tamil liberation movements.<sup>13</sup>

The intellectual tools for articulating a rights ethic may be stronger in Western religions than in Eastern ones.<sup>14</sup> However, that theology did not prevent the Inquisition or religious warfare and the region of the United States known as the Bible Belt has been the most vehement in withholding rights from African Americans. The human rights movement, indeed, is contemporary with the decline of those very religions and its ascendancy is so short and so fragile, that we should not assume that the West has answers for itself, much less for Asia. This does not excuse abuses, but suggests that solutions are yet to be found. Such solutions will require a comprehensive

Buddhist anthropology, including the relations among groups as well as persons, and addressing the new phenomena of the Western-style state and of the individual citizen. I can only hint at such an anthropology in this paper.

### *The Human Condition*

In the language of human rights the person is an invariant bundle of rights and duties; invariant not only over time but also among distinct individuals. We become abstract units in the machinery of the state. This abstraction may be necessary in order to formulate legalisms through which real human beings are protected, but it misses the richness of human existence. In Buddhist terms it violates *anattā* (non-self) and *anicca* (impermanence). Buddhism *may* recognize invariant laws by which the person develops, but the bundle of possibilities, limitations, habits, and so forth, which "person" stands for is in flux, lacking even a sacred core of being to which the rights and duties might apply.

The human condition is problem and possibility. The first and second noble truths seem to portray us as helpless creatures of desire (*taṇhā*): suffering the results of past acts, driven to acts which cause future suffering. According to the third and fourth noble truths, the cycle may be broken through personal effort. Freedom, then, is always possible: though trapped in the cycle of desire, we may at any moment *begin* to move toward enlightenment. The first and second truths also imply human freedom, however. For each act is intentional: *kamma* is *cetanā*.<sup>15</sup> At the very least, every act is a free indulgence of *taṇhā*.

### *Karma-Rebirth*

This is more popularly expressed among Asian Buddhists in the karma-rebirth mythology. This bundle of possibilities and limitations which I call "myself" is largely the result of past actions, both as *vipāka* (effect of past acts, *kamma*) and as habit. It is also the result of other, more external, forces: biology, geology etc. Although the traditional literature has only a vague awareness of social-historical forces and does not list sociology as an independent force we may not be out of line in adding it to the list of forces that operate independently of karma. We may say then that a complex of moral, physical, and sociological forces conspire to make me what I have become. This "what-I-have-become" is faced by a situation whose origin is likewise a complex of forces, including, perhaps my own *vipāka* returning by way of the world. Moreover, I usually will not recognize the connection between *kamma* and *vipāka* so that even the moral force seems obscure and

external. From this point of view, I appear as a *creature* of circumstance. My response to the situation, however, is free by definition (*kamma* is *cetanā*), saved from arbitrariness by the limits and possibilities of the situation on the one hand, and by the limits and possibilities of the "what-I-have become" on the other. Moreover, there is no possibility of not responding to the situation: every moment is an act, if only an act of perception, and will have its *vipāka*.<sup>16</sup> Even death does not stop the flow of intentional action, as the fruitioning of *vipāka* as well as habitual thrust and raw desire, span over into a new birth. We might say, with the existentialists, that we are condemned to freedom.<sup>17</sup>

The present act profoundly influences the future of both the world and of self: I create my own future in the same way that my past created my present. I am a *creator*. The "what-I-have-become" is the husk, as it were, of the past. The future is not yet. If there is anything that I *am* it is just the gap between has-been and will-be: the present act. I might say, "freedom is what I am," though freedom is no proper self. This continual creation of the future is normally carried out in ignorance, so that an act freely intended in itself leads to unintended results. I choose to *do* X, but I cannot directly choose to *become* Y. Rather what I become is the result of acts freely taken in ignorance of their long term effects.

This ignorance is what so often makes us feel fated or pre-destined. Yet Buddhism defines us as free even in our ignorance: we cause our own sorrow and happiness. Asian Buddhists understand this in a way that helps them (individually at least) to thrive in difficult circumstances. Knowing that my current situation is partly a result of my past deeds helps me to accept it as a stage or platform from which to move. Knowing that every act is effective, helps me to plan a path to a better future and to act toward it, if necessary, in small ways. The long view given by the vision of rebirth allows me to pursue a course that will offer a better life to my children though I may never see it.

In short, human-reality involves both freedom and contingency. This freedom is not an abstract, contextless lack of restraint, but an effective power over self and situation. Neither is contingency mere limits on that power; rather context enters into the very definition of who I am. That is to say, I am both a product of the world, society and the past and a producer of world, society and the future.

The concept of *vipāka* expresses the ambiguity of human-reality rather well. It happens to me, like a contingency, inevitably but unannounced: early arthritis, say, cuts short my career as a musician. Yet it is, after all, but the final phase of an act taken in freedom. The karma-rebirth mythology lacks the detail to yield a complete theory of world or an anthropology of groups, society and the state. We do see, however, that the world is, in part,

constructed by human activity. Rebirth moreover implies that individual human-reality extends beyond its community. On the other hand, life streams may remain intertwined across many lifetimes, emphasizing the power of relationships independent of the communal context.

To accommodate human freedom, then, is in the state's interest. People will aspire, and will act on those aspirations: for possessions, for self expression, for survival. To say we have a "right" may mean no more than that we *will*. To deny that reality is to invite unrest. Even death does not silence the force of will, as represented in the stories in which beings pursue each other life after life seeking revenge and counter-revenge. One imagines throngs of Tibetan ghosts haunting Dong in his dreams and beyond. If not inviolable, human-reality is at least *irrepressible*.

As a subject, it is in my interest to recognize and to act on my freedom, for just so do I take responsibility for my own life and deliberately create a future in which I may support self and family etc. Since karma is *cetanā*, even under a just regime living an ethical life is effective for me only to the extent that the choices are mine rather than in slavish obedience to the law. Indeed, subservience may be akin to *vibhavatanhā*, thirst for non-being: very bad karma indeed. Since every act is a choice, abdicating freedom constitutes inauthenticity, or in traditional terms, *avijjā*. The Buddhist ethical question is not whether or not we are free, but whether or not we accept responsibility for the freedom we cannot abdicate. According to *Dhammapada* 127 there is nowhere to hide from freedom and responsibility, even we might add, within the protective confines of a totalitarian state.

The Buddha was fond of saying that his Dharma led to happiness in this world as well as next, and even gave advice for achieving earthly happiness and a happy rebirth.<sup>18</sup> There is no dishonor in acting in one's own interest. *Karunā* and *mettā* enjoin us to act in the interests of others as well. Right livelihood, moreover asks me to take responsibility for the wider effects of my actions. Active support of an unjust government may violate right livelihood and since I cannot *not* act, silence is complicity.

But what about resignation and the stilling of desire? What is to be stilled is greed, hatred and delusion, or in the language of the noble truths: thirst for experience (*kāmatanha*), thirst to be something (*bhavatanhā*), and thirst to be nothing (*vibhavatanhā*).<sup>19</sup> What is to be resigned to is not oppression, but human-reality: my own freedom and contingency. In terms of the state, the delusion to be dispelled is that I am no more than an extension of it (pure contingency) on the one hand or that I have no dependence or responsibility to it all (pure freedom) on the other.<sup>20</sup>

*Anattā, Pañcakkhandha, Paṭiccasamuppāda*

Buddhist writers frequently invoke these ideas to speak of universal interdependence. Politically, interdependence implies a society in which each honors the needs of all. Yet in this view, the unenlightened individual is a blind node in a web of interrelations at which she may only guess, and in whose benevolence she can only hope. As an oppressed member of a less than ideal society, she is left waiting on the enlightenment of others. What the Buddha of the Pali Canon describes, however, is not a web of interrelations, but the arising of individual consciousness. He is less interested in a theory of the whole than in a description of the immediate, tractable situation of persons.

*Paṭiccasamuppāda* describes the arising of suffering, and in the process, describes the arising of the suffering being itself. In fact, this whole complex of ideas appears as an answer to the question: if there is no eternal soul, how do you explain transmigration? Or, for that matter, given *anattā* and *anicca* how is there continuity at all? Today we might ask why human behavior is not totally arbitrary. In his answer, the Buddha presents *pañcakkhandha* as the structure of human-reality and *paṭiccasamuppāda* as the dynamic process, or the engine which drives it.

In its standardized form, *paṭiccasamuppāda* reads as follows:

*avijjā paccayā saṅkhārā*  
*saṅkhārā paccayā viññānaṃ*  
*viññāna paccayā nāmarūpaṃ*  
*nāmarūpa paccayā saḷāyatanaṃ*  
*saḷāyatana paccayā phassa*  
*phassa paccaya vedanā*  
*vedanā paccayā taṇhā*  
*taṇhā paccayā upādānaṃ*  
*upādāna paccayā bhavo*  
*bhava paccayā jāti*  
*jāti paccayā jarāmaraṇasokaaparidevadukkhadomanassa*  
*upayūsā sambhavanti.<sup>21</sup>*

This is often interpreted as describing the workings of karma across three lifetimes, where *saṅkhāra* is glossed as a synonym for past karma, *viññāna* as rebirth consciousness and *nāmarūpa* as the embryo. The following stage, *saḷāyatana* is then taken to mean the physical development of sense organs and *bhava* as new karma. This interpretation is supported in *Mahānidānasutta* (*Dīgha Nikāya*) where the Buddha asks whether *nāmarūpa* could appear in the mothers womb if *viññāna* did not first descend there.

Given that different *sutras* give variants of the formula (this *sutta*, for example, omits *salāyatana*), we should not be rigid in our interpretations.

In the same *sutta*, the Buddha uses similar language to describe how grasping leads to violence in society. This cycle clearly refers to events within a life time, without the "magical" cement of *kamma-vipāka*. Moreover, still in the same *sutta*, he insists that not only is *nāmarūpa* dependent on *viññāna*, but that *viññāna* is dependent on *nāmarūpa* as well, suggesting a more immediate dynamic.

Another interpretation understands this as an ontological rather than a chronological process: the Buddha is describing the momentary arising and ceasing of suffering being. With this reading, *saṅkhāra* might be more naturally translated as "orientation," *bhava* as "becoming" and *viññāna* simply as "consciousness." *Nāmarūpa* is always difficult, yet here as in many places, "naming appearances" (*nāma* means "name," *rūpa* means "color" or "shape") or "the interpretive act," works well. That act then conditions or defines the instrumentality of perception, *salāyatana*, and so forth. In this view, the distinct subject and object are derivative, and *what* is "out there" and "in here" are interpretations. This meshes perfectly with the Buddha's refusal to affirm either existence or non-existence. There is simply nothing we can say about being-in-itself not because "it" is beyond language (i.e., transcendent) but because in saying something (or even just in pointing, perceiving) we have already interpreted. We cannot designate objective being independent of a perceiving subject but neither can we designate subjective being independent of a perceived object.

The *sūtras* support both interpretations, and I suspect that to the enlightened intellect they will converge. In either case, *paṭiccasamuppāda* deepens the theory of karma in affirming that not only do I receive the results of my acts — but that I *am* the results of my acts: thirst yields grasping yields becoming yields birth — and cycling back — yields an orientation (or karmic formations?) informed by ignorance. Moreover, by including the instrumentality of perception and contact, it is clear that the act is a response: called forth, as it were, by an *other*. In fact, throughout the *sutras*, *act* is analyzed into a relational event between self and other, neither of which is granted full independence from that event.<sup>22</sup> The doctrine of *anattā* (no self) radicalizes this to the point that we may say that what I *am* is response to an *other*.<sup>23</sup>

*Pañcakkhandha* is the structure of individual being. *Rūpa* (shape, color) may better be understood as appearance and instrumentality, than as the anatomical body as is often done; *saññā* is related to memory; *vedanā* is feeling; *saṅkhārā* is mental formations, or orientation, in which intention (*cetanā*) is decisive; and *viññāna* is simple awareness. Against the usual translation of *saññā* as perception, I'll say that *pañcakkhandha* as a whole looks



very much like a phenomenology of perception. Since it is also a decomposition of *nāmarūpa*, we may say that *pañcakkhandha* is the structure of the interpretive act. That is to say, *I am an (act of) interpretation of the world*. What I am, then, is dependent on what is "out there" to be interpreted. But also, the world (what is "out there") is dependent on the interpretation, for example because what I perceive is shaped at the most fundamental level by my past (*saññā*, and to some extent *rūpa*). What I am responding to, at each level of integration has already been shaped by incipient interpretation at prior levels. This sort of mutual dependence is what the Buddha meant when he said:

. . . in this very fathom long body with its perceptions and thoughts, there is the world, the world's origin; the world's ending and the path leading to the world's ending.<sup>24</sup>

"World" is constituted by human consciousness as the arena in which human consciousness appears. We are at once creatures and creators of the world.

The importance of the human-other is expressed in the many aphorisms about choosing our friends well — for we become like them.<sup>25</sup> Although Buddhism does not draw an absolute boundary between human and other types of existence, human birth is especially prized (e.g. *Dhammapada* 182). Perhaps the clearest expression of this is in the *Sigālovādasutta* in which the Buddha insists that our most important relationships are not with the sky, the earth, the four directions but rather with parents, children, spouse etc. Even for monks who "left the world" he counseled good friendships.

The *human-other* calls forth the *human* response: it is for this human-other that I can be human, that I may enter the realm of meaning. This calling forth is done with a certain consistency of signification and instrumentality, e.g. of language, gesture, of marking time. That is to say a culture, in terms of which human-reality is embodied, recognized and expressed. The human-other calls me forth — into a *particular* humanity. Raised in a Christian household in the West I *cannot* enter fully into the Buddhist tradition. Since human-reality *is* response, and *anattā* denies an independent *someone* (and culture-free expression is hardly imaginable), I appear as a simple extension of the community. What I am includes even the other's image of me: i.e., I am what appears to him, subject to his interpretive act as much as he is to mine. This existential compromise of autonomy is why a bad reputation is prominent among the evils listed in the *Sigālovādasutta*.

On the other hand, as language allows infinite (but not universal) expressiveness, culture empowers infinite (but not all) ways of being. Not only am I called forth (I exist *for* others), but also, I call forth (others exist for

*me*). The world is what appears when I respond to the human-other: we, in personal interaction call it forth: The other bears my world and is necessary to my human existence, and *vice versa*. In other words, this actual culture and community is created and sustained by my participation.

Besides a free contingency, then, human-reality is an ambiguous dialectic between self and other, person and community, individual and society. I am condemned to freedom in a world that depends on me even as I depend on it. Human worth appears as an invariant mutual dependency, one on the other. How this tension is lived varies from person to person and from culture to culture. Like language, one culture may not be immediately comprehensible to another and what is abusive in one, for example, polygamy, may not be so in the other. However, *sīla* provides a minimal cross-cultural grammar of behavior, while *paṭiccasamuppāda* reveals a kind of deep structure through which the underpinnings and internal authority of *sīla* may be discovered.

The ambiguity of human-reality leads us to attempt security by denying one side of it. Traditionally, as the heresy that "everything exists" or that "nothing exists." Politically, modern Western societies seem to place primacy in the individual, as though we were *not* extensions of community. This emphasis leads to disintegration, alienation, *anomie*, etc. Traditional Eastern societies seem to place primacy in the community, as though it were not fully borne by persons. This leads to expendability, psychological repression etc. To deny either side of the person-community ambiguity, however, is ignorance, which informs a certain orientation and modality of presence and of contact etc., an impossible project which experiences the inescapable ambiguity as anguish.

As a ruler, my reality may<sup>26</sup> seem to be infinitely greater than that of my subjects. Yet that inflated reality is conferred by the human-others for whom I exist as ruler. To the extent that I deny their reality, e.g. by forbidding free expression, they lose the power to inflate my reality. Rather they become for me an extension of my own contingency, like my own body, mastery over which is meaningless in isolation. Hence, I am likely to require "spontaneous" demonstrations of support. Yet, because human-reality is irrepressible, freedom lurks behind every face, the intent of which I can only surmise to be rebellious since *otherness*, independent freedom, is banished. Any expression of dissent gives the lie to the fiction of domination — as though my own body were rebelling, like cancer. In general, since I am *for* you, when I order your execution, I order also my own; when I order your imprisonment, it is mine as well.

The person appears embedded in a community felt as a secure world in which freedom is exercised. The reciprocal dependence of the community on the person is rarely recognized, giving community a kind of ultimacy. The

modern state appropriates the authority of community with the language of self-determination, peoplehood, etc., and the citizen clings to it as a kind of sham community over which he has little power. Even in democracies, power is constrained and sporadic, not the day to day re-creation of life of community. Now, though the state is essentially alien, I feel it as the source of my own reality and hesitate to challenge its abuses publicly. The quiet, interpersonal way in which abuses may be addressed in genuine community is utterly ineffective, however.<sup>27</sup> Powerless, I may accept abuse even against myself and my group, granting superior authority and wisdom to the state. This may seem odd, but insecure myself, I gain security by clinging to the larger reality. In other words, the citizen solves his lack of being by submerging in that of the state (whose emptiness is hidden). I then view the dissenter with deep suspicion, even hatred, for he discloses the relativity of my world. Nevertheless, *paṭiccasamuppāda* holds. I am a relationship to the state involving both freedom and dependence and my human-reality involves forging effective means of expressing both. I have a claim on the state, even as it has a claim on me.

The appearance of an out-group is threatening to both ruler and subject. The foreigner is a human-reality for whom I exist but in which relationship I have no language for creating/interpreting a meaning. I do not know who I am for him, and I cannot influence that image since I don't know the culture. The foreigner, in other words, removes part of my reality beyond reach. It becomes less threatening to interpret him as an undifferentiated extension of his group. Yet in denying his reality, I deny that of myself which he bears.

As a ruler, the foreigner is someone for whom I am not a ruler. The out-group reveals the relativity of my rule, hence of my being. Of course the ethnic minority within my own borders may be particularly threatening. On the other hand, it provides the hope of reaffirming my inflated reality, *vis a vis* a recognized *other*, through conquest: a project that fails in its success. When I order the suppression, or extermination, of the hill people, I order the destruction of a whole world: a world in which I and my people live as *others* and which indeed is mutually inclusive of *our* world. In other words, I order the destruction of my own world.

In socio-political life as in personal and communal life, *paṭiccasamuppāda* holds. In ignorance (*avijjā*) we grasp (*upādāna*) at certainty, denying the ambiguity that we are only to be reconstituted (*bhava, jāti*) as an ambiguous tension in denial of its ambiguity (*marāṇa* cycled back to *avijjā*). The Buddhist, growing in the acceptance of the ambiguity of being and non-being, freedom and dependence, will more and more express freedom (as well as dependence), very possibly in opposition to the state.

*Conclusion*

The Buddha recognized human existence as the rare state in which freedom could be maximized, as the state in which we could progress toward enlightenment. When he urged us to respect others, however, it was not in terms of their supreme potential, but in terms of their ordinariness: the other is one like me, subject to fear, pain, joy, etc. (*Dhammapada* 129). It is in ordinariness that we too have found a basis for "human rights." In the karma-rebirth mythology we discovered not inviolability, indeed, but irrepressibility. Not that human beings *should* be free, but that they *are*, and that the state would be wise to accommodate that freedom, while managing it for the common good. Since the mythology implies both the freedom and the effectiveness of each act, I might say that freedom is what I am, hence, to abdicate freedom to the state e.g. by remaining silent in the face of a known injustice, is to be in denial, or in Buddhist terms, ignorance, *avijjā*.

Examining the deeper Buddhist analysis of the human condition reinforces and deepens these conclusions. Instead of saying "freedom is what I am," we assert that "I am a response to you." More than free and contingent, individual human-reality is at once creature and creator of community, society and world. If the ruler claims the relativity or "emptiness" of the individual, we cannot argue, *anattā* holds. But if he extends this to expendability, in effect taking the position that "I am real and you are not," we must say, first, that the same logic justifies assassination, since the ruler is "empty" as well. More than that, we must say that his reality is dependent on the subject's: as soon as one enters into relationship with any other, the other ceases to be expendable because human-reality is radically dependent, each on the other.

Here is a kind of inviolability. Not that there is a "dignity" resident somehow in every human breast, but that such a dignity, as it were, appears along with the relation between persons: I *am* for you, and you for me, and as soon as I enter into a relationship with you, you become necessary to my being. This "dignity," is inescapable *because* ephemeral, *my* lack of self corresponds to *yours*. If I order your execution, I *am* that death. As a *subject* if I fail to resist known injustice, I am complicit, because "resignation" is a choice. We may say further, that since the world is what appears to human eyes, when I order an execution, I destroy a world: human death is an unutterable tragedy. Analysis along these lines will yield a Buddhist anthropology and theory of human rights serviceable in the modern world.

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## NOTES

1. All *Dhammapada* quotes are from Nārada.
2. Keown: 5.
3. Keown: 16, 18.
4. Human Rights Watch: xix).
5. Keown: 5.
6. Aung San Suu Kyi: 167-179.

7. Rahula: 3-7.
8. Nhat Hahn: 83ff.
9. Rahula: 21, 22.
10. Conze: 307.
11. These opinions were expressed in private conversions. I have no idea what proportion of each group shares these feelings, but they are not unusual.
12. Rahula: 134-136.
13. Amnesty International: 265-268.
14. Keown: 6.
15. See, for example, *Aṅguttara Nikāya* VI, 63, or *Aṅguttara Nikāya* II, 61.
16. In the language of *Abhidhamma*, *cetanā* is universally present in consciousness. See, for example, Nārada 1979: 77.
17. This analysis may have to be revised for fully enlightened beings. Our concern, however, is with the ordinary person.
18. For example in the *Mahāmaṅgalasutta*, *Sutta Nipāta* and in the *Vyagghapajjasutta*, *Aṅguttara Nikāya*.
19. *Bhavataṇhā* and *vibhavataṇhā* are also interpreted as lust for certain mystical experiences, but these are not relevant to our purposes.
20. Compare these to the heresies leading to inaction, for example, *Aṅguttara* II, 61.
21. Narada 1979: 354. The translation of several of these terms is controversial and published translations are generally skewed to support the translator's interpretation. A fairly literal translation would be:  
 ignorance conditions formations [mental? karmic?],  
 formations condition consciousness, consciousness conditions  
 nameshape, nameshape conditions the six fields [of  
 perception], the six fields condition contact, contact  
 conditions feeling, feeling conditions grasping, grasping  
 conditions becoming, becoming conditions birth, birth  
 conditions decay, death, sorrow, etc.
22. See, for example, *Aṅguttara* VI, 63 where the subject seems to dominate and II, 68 where the object seems more important.
23. The concept of an "other" need not lead to a metaphysical dualism, we are in the realm of phenomenology here, and the Buddha of the Pali Canon did not even address such speculative issues.
24. *Aṅguttara* IV, 45; Nyanaponika 1981: 85.
25. See, for example, *Aṅguttara* IV, 246.
26. The following analyses are not meant to be universally applicable, but to suggest possible modes of being a ruler or subject.
27. I certainly do not intend to romanticize traditional communities. They have their own problems, different from those of modern societies.

## SOCIALLY ENGAGED BUDDHISM'S CONTRIBUTION TO THE TRANSFORMATION OF CATHOLIC SOCIAL TEACHINGS ON HUMAN RIGHTS

**Charles R. Strain**

The morning's paper in late August, 1995 brings the news that the Chinese American human rights activist Harry Wu has been released from a Chinese prison, that Hillary Rodham Clinton will lead the American delegation to the United Nations Women's Conference in Beijing this September despite objections that the very site of the conference undermines its potential to promote the rights of women across the globe, that the Vatican has appointed Mary Ann Glendon, a Harvard law professor who is severely critical of "rights talk" as the sole currency of contemporary public ethical discourse, to head its delegation to Beijing, and that Catholics for a Free Choice, a Washington based advocacy group, has decried this choice as inconsistent with the goals of the conference. What are we to make of the controversies that these news items herald? Is "rights talk," as in the African American folktale, a tar baby to which and with which we are stuck in a blind struggle for power?

Step back just two years. Today's controversies reflect a turning point that was reached at the United Nations Conference on Human Rights held in Vienna in June, 1993. Vienna witnessed the coming to prominence of non-governmental organizations (NGOs) as the vocal leaders in the global struggle for human rights. Their leadership contrasted sharply with the visible stalemate among nation states as they jockeyed to define the outcome of the conference in ways which would reinforce their respective status quos.

Particularly dangerous to the moral claims of human rights advocates was the cooptation at the Vienna conference of the arguments of moral and cultural relativists by a number of nations with poor records in the area of civil liberties. The reality of cultural diversity and the particularity of traditions shaping the worldviews and values of peoples became the rationale for denying the universality of human rights. According to an official Chinese representative to the conference, "The concept of human rights is a product of historical development. . . One should not and cannot think of the human rights standards and model of certain countries as the only proper ones and demand all other countries comply with them."<sup>1</sup> Particularly pernicious in this

argument was the confinement of the boundaries of moral discourse to the borders of nation states.

Standing serenely at the heart of the controversy was the world's foremost Buddhist leader, the Dalai Lama. The Chinese delegations argued vociferously against allowing the exiled leader of Tibet to enter the conference site. His words to a gathering of NGOs transcended political debates and offered a direct challenge not only to those who assert the supremacy of the nation state but also to those of us whose commitment to religious and cultural diversity turns moral relativism into a dangerously attractive option. "Recently some Asian governments," the Dalai Lama argued,

have contended that human rights. . .cannot be applied to Asia and other parts of the Third World because of differences in culture and in social and economic development. . .I do not share this view and I am convinced that the majority of Asian people do not share this view either. . .Diversity and traditions can never justify the violation of human rights The deeper human nature needs to breathe the precious air of liberty. . .<sup>2</sup>

This unqualified affirmation of the universality of human rights by an Asian Buddhist is one of the signs of our times. Like the concept of liberation, the language of rights, despite its Western origins, is a "bridge concept" linking religious traditions in a common cause that is central to their separate identities. But what sort of universality are we speaking of? Do our diverse traditions — rich in mythical and metaphysical descriptions of human persons, unique in the skillful means they employ to transform them — add nothing to our understanding of human rights?

In our own society a new coalition of moral philosophers who decry radically individualistic interpretations of rights has added a new twist to arguments about human rights. The problem with Western liberalism's interpretation of human rights, argues Amitai Etzioni, is that it couples "a strong sense of entitlement. . .with a rather weak sense of obligation to the local and national community." The balance between the claims of the individual and the sense of social responsibility has been lost. In this context rights language is increasingly used to defend an escalating litany of wants which ignore the need to provide for the common good. Increasingly, also, rights language polarizes public debate in ways that make any form of political compromise appear to be morally corrupt. Offering a "communitarian agenda" to right the balance, Etzioni and others have called for a "moratorium on the minting of most. . .new rights" during which we could restore a sense of social cooperation and the need for social virtues.<sup>3</sup>



This diagnosis of the malaise of the Western rights tradition grounded in liberal individualism is yet another sign of the times. But how do we square it with the Dalai Lama and the international network of human rights NGOs' affirmation of the universality of human rights and with their uncompromising insistence on the centrality of rights guarantees for the protection of individuals and peoples against the overwhelming power of nation states?

I believe that many religious traditions provide both frameworks for comprehending these signs of the times and practical ways for moving beyond the impasse that these controversies produce. Religious traditions provide an important corrective to the Western liberal interpretation of human rights by situating rights within a larger understanding of the common good and of ultimate purpose. They supplement rights language with other forms of moral discourse that express their more comprehensive worldviews. They, like the communitarian philosophers, question unbridled individualism but they have carved out a middle path between that individualism and various forms of collective control. More importantly, they provide communal matrices that can sustain human rights advocacy over a very long haul.

In turning to religious traditions, however, I presuppose (a) that dialogue among religious traditions can and must lead to mutual transformation, (b) that, at the level of moral discourse, mutual transformation means the creation of a *dialectical universality* in our understanding of human rights which can persuasively answer the challenge of moral relativists and (c) that dialectical solidarity among religious traditions in advocating human rights is essential to human survival. Rather than pursuing these questions in the abstract, I will examine the specific understanding of human rights in Catholic social teachings and in socially engaged Buddhism. My aim is to see how engaged Buddhism might transform Catholic social teachings in ways that would strengthen Catholicism's recent advocacy of human rights.

Before addressing the specific issue of human rights from the perspectives of these two traditions, let me clarify my presuppositions. Like John Cobb, I see mutual transformation as the goal of genuine religious dialogue.<sup>4</sup> In dark times, the call for mutual transformation takes on added urgency. To struggle for human rights at all is to acknowledge the radical insufficiency of the skillful means we employ to embody the truths that we teach. Indeed, if our teachings themselves are skillful means, our inadequacies at the level of praxis commit us to a dialectical transformation at the level of theory. Stated more positively, the commitment which we share to liberate those who suffer encourages us to draw upon the distinctive strengths of our several traditions without worrying overly much about maintaining doctrinal purity.

Mutual transformation will occur, I have intimated, with the aid of certain "bridge concepts" — even, as in the case of human rights, concepts which were initially alien to both of the traditions undergoing transformation. The bridge concepts that I have in mind are ones that have de facto become the focii of engagement for multiple religious and cultural traditions. Such concepts by no means constitute a "political Esperanto."<sup>5</sup> Rather, a concept becomes a bridge concept when it is translated into and grounded in the idioms of particular traditions and only then arcs towards a potential unification of meaning and purpose. In her discussion of Buddhism and feminism, Rita Gross argues persuasively that the impetus to translate a potential bridge concept into one's own idiom derives from an inescapable commitment to two forms of practice.<sup>6</sup> In the case that we are examining, millions of Buddhists and Christians as Buddhists and as Christians cannot but struggle for human rights. All of my reflections derive from that fact. As we struggle together perhaps we will realize that the arc of our efforts is grounded in the visions of others as well as in that of our own. In this fashion we may move towards what David Hollenbach calls a "dialogically universalist ethic."<sup>7</sup>

#### *Catholic Social Teachings and Human Rights*

From its inception in the writings of Leo XIII, particularly *Rerum Novarum* to its latest expression in John Paul II's 1991 commemorative encyclical *Centesimus Annus*, Catholic social teachings have developed into a complex tradition which altered an initial opposition to the very concept of rights as an expression of an alien liberal individualism to an unequivocal support of the universality of human rights. The Catholic theory of human rights is grounded, first, in the principle of human dignity. Human beings, created in the image and likeness of God, are the bearers of an intrinsic, indissoluble and sacred worth. "Any human society," argued John XXIII in *Pacem in Terris*,

if it is to be well ordered and productive, must lay down as a foundation this principle, namely, that every human being is a person, that is, his nature is endowed with intelligence and free will. Indeed, precisely because he is a person he has rights and obligations flowing directly and simultaneously from his very nature. And as these rights are universal and inviolable so they cannot in any way be surrendered.<sup>8</sup>

From their beginnings Catholic social teachings have also stressed that the human person exists only in community with others. While the

concept of dignity resists any reduction of the person to a mere product of society, determined by its relative customs, values and norms, Catholicism's sacramental conception of human life has led to its affirmation of human solidarity. "[H]uman dignity is internally conditioned by human interdependence," argues David Hollenbach. "The rights which protect human dignity, therefore, are the rights of persons *in* community."<sup>9</sup> Human rights are also conditioned by social, structural realities. The actualization of intrinsic rights depends upon the communal creation of social conditions which enable individual persons to flourish.<sup>10</sup>

So, dignity and solidarity are the twin perceptions that have guided the evolution of Catholic social teachings and enabled this tradition to follow a middle path between the radically individualistic assumptions of *laissez faire* capitalist societies and "collectivist" interpretations of the human person grounded in the utopian speculations of social theorists. Following this middle path has entailed developing a set of human rights that exist in complex tension with one another. From Leo XIII forward, Catholic social teachings have insisted not only that civil rights but rights to secure one's life or so-called "basic rights" are inalienable. "It is a strict duty of justice and truth," insists John Paul II, "not to allow fundamental needs to remain unsatisfied and not to allow those burdened by such needs to perish."<sup>11</sup> The tradition's insistence on a right to work and a right to a living wage can be seen as steering a middle path between an acknowledgement of human autonomy and the right to private property on the one hand and on the other hand an acknowledgement of fundamental needs and the right to participate within the social structures designed to meet them.

In an earlier article I suggested a number of principles which lie at the heart of Catholic social teachings, which provide a framework for developing its understanding of human rights, and which represent a *possible* basis for consensus and elaboration with other Christian traditions.<sup>12</sup> Here I will briefly summarize *four* of those principles.

First, Catholic social teachings consist of a number of layers. It has taken a full century of evolution to reach this point of awareness which is articulated most strikingly in the pastoral letters of the American bishops on nuclear war and on economic justice. By recognizing that at each layer of social teaching the degree of moral certitude varies, the tradition has managed to transcend ethical absolutism although this has occurred only in fits and starts. On the first layer, composed of moral principles flowing from its theological vision, Catholicism speaks out of its core identity. Lest the principles remain abstract, religious social teaching must analyze at a second layer the historical and social context, relying upon empirical data and critical theories of society. This effort to read "the signs of the times" is clearly fallible. Still more fallible are the efforts at a third layer to suggest public

policies for transforming social conditions. Here John Paul II, clearly breaking with ethical absolutism, affirms that alternative social models cannot be deduced simply from the religious vision articulated at the first layer. "[M]odels that are real and truly effective can only arise within the framework of different historical situations through the efforts of all those who responsibly confront concrete problems in all their social, economic, political and cultural aspects as these interact with one another."<sup>13</sup> Ultimately Catholic social teachings arise out of the practical engagement of countless committed Christians.

As applied to the issue of human rights, the multilayered character of Catholic social teaching represents an important contribution to the contemporary debate. It is possible to affirm the universal *reality* of human rights while developing a variety of strategies for securing them within different social contexts. The reality of human rights is not a meaningless abstraction to which societies may pay pious deference while acting as they please. Human dignity and solidarity give rise to specific *inherent* rights which lay claims upon societies to invent the social conditions and instrumentalities for actualizing them. So, a right to the securing of one's basic needs is an inherent right while the right to a living wage is an instrumental right.<sup>14</sup> The former is universal in scope, while the latter is relative to those societies whose economies make wage work the principal means for securing a livelihood. In this paper I wish to suggest that even at the first layer where theological vision generates moral principles Catholic social teachings can and should remain open to transformation by other traditions which in their own ways affirm the twin principles of dignity and solidarity.

Second, Catholic social teachings operate with a concept of the kingdom of God that is critical of every social order. John Paul II states this principle categorically: "[N]o political society. . . can ever be confused with the kingdom of God."<sup>15</sup> This "sacred discontent" with every social order can be an important resource for religious communities which involve themselves in the human rights movement. It chastens the arrogance and triumphalism often characteristic of Western liberal societies that all too often assume that they have already secured basic human rights for their citizens. If religions are to gather in common cause to support human rights, we need to share with one another the different visions which each provide a locus of communal identity that transcends the nation state. For Western Christians the kingdom of God is such a vision.

Third, Catholic social teachings have consistently rejected social contract theories which juxtapose the individual to the state. These theories present neither empirically accurate nor normatively sound understandings of human community. Solidarity, rather, expresses itself through a welter of

"intermediary groups." That power should be decentralized through the full range of these groups is the intent of the *principle of subsidiarity*. "A community of a higher order should not interfere in the internal life of a community of a lower order, depriving the latter of its functions, but rather should support it in case of need and help to coordinate its activity with the activities of the rest of society. . ."16

Catholic social teachings about subsidiarity have, I believe, gradually evolved into what I call a theory of *expanded federalism*. In this reading the principle of subsidiarity seeks to create checks and balances, a system of countervailing powers, within the social order as a whole and not merely within the political order. The strengthening of intermediate communities is the means to prevent individuals from being "suffocated between two poles represented by the state and the marketplace."<sup>17</sup> Understood in this fashion, the principle represents the consistent application *to all social institutions* of a theory of limited power implicit in Catholic social teachings' understanding of the kingdom of God. It replaces a sentimental and utopian understanding of solidarity with a more realistic sense of both the possibilities and limits of group loyalties. It gives us a more complex understanding of the instrumentalities through which basic rights are to be secured than theories which rely only upon the judicial system. Paradoxically the power to effect change is not always directly proportional to the size of the community. All too often when nation states pay deference to the claims of other nation states to the sovereign control of their subjects, it is the NGOs, including religious communities, that provide a countervailing thrust by rejecting the principle of national sovereignty as the practical criterion for defining human rights.

Fourth and finally, under pressure from Catholics engaged in the struggle for social justice in the Third World, Catholic social teachings about human rights have come to terms with what has been called the "preferential option for the poor." If rights are trump, as some social philosophers have suggested, not all trump cards carry the same value. Rights frequently conflict with one another. The preferential option for the poor as a principle of social justice enables Catholic social teaching to adjudicate conflicts among various moral claims cast in the language of rights. According to David Hollenbach, "three strategic moral priorities" enable us to resolve such conflicts:

- (1) The needs of the poor take priority over the wants of the rich.
- (2) The freedom of the dominated takes priority over the liberty of the powerful.
- (3) The participation of marginalized groups takes priority over the preservation of an order which excludes them.<sup>18</sup>

In this communitarian vision, dignity does not rest upon the abstract equality of individuals and solidarity is impossible without social transformation. Rights are not so many chess pieces which individuals play over against all other individuals; they define the minimal conditions for mutual liberation.

In Hollenbach's formulation of ethical criteria we can see a dialectic internal to Catholic social teachings at work. Latin American liberation theology's concept of solidarity with the oppressed and Catholic social teachings' understanding of human rights have met and fused. [19] Dialectic, both within and among traditions, is central to a "dialogically universalist ethic." So, having glimpsed a dialectic internal to Catholic social teachings, let me consider the possibilities for transforming Catholic social teachings via an encounter with socially engaged Buddhism.

### *Socially Engaged Buddhism and the Rights of Sentient Beings*

Socially engaged Buddhism's stance toward the concept of human rights and toward the human rights movement is paradoxical. The Dalai Lama's declaration in Vienna exemplifies the unequivocal commitment of engaged Buddhists to the practice of securing human rights. Yet Buddhist scholars find the concept troublesome and appropriate it only with some difficulty. These same religious thinkers, however, recognize the urgency of the task of recasting human rights language within a Buddhist idiom so that the commitments of socially engaged Buddhists can be ideologically undergirded.<sup>20</sup>

Among the concerns expressed by these Buddhist thinkers are, first and foremost, the anthropocentric quality of the exclusive attention to *human* rights. Second, lurking within this anthropocentric view is an understanding of human rights as entitlements which is a form of egocentrism that is more virulent precisely because it is disguised by its commitment to a higher law or universal moral principle.<sup>21</sup> In contrast, the doctrine of dependent co-arising (*paṭicca-samuppāda*) and its corollary teaching of the not-self (*anattā*) are designed to break all egocentric self-enclosures, and "to open up the individual locus of existence so as to involve other loci of existence. . . In this way we are able to appreciate the greater extensive realm of existence in which we . . . live and thrive."<sup>22</sup>

Third, the human rights tradition is frequently seen by these Buddhist thinkers as part of the "adversarial legacy of the West" and as such contrasts sharply with the consensual models of society that prevailed in premodern society influenced by classic Buddhism. These consensual models emphasize duty and gratitude as the essential social virtues. Indeed, discussion of rights produces a certain anxiety among engaged Buddhists and "quickly passes over into talk of responsibilities."<sup>23</sup> Yet these same thinkers

recognize that, despite Buddhism's unequivocal sense of human equality and its basic thrust toward liberation, it did not fundamentally challenge the hierarchical structures of the societies in which it was embedded in premodern times. Contemporary engaged Buddhists like Rita Gross speak powerfully about Buddhists needing to assume a prophetic voice. That prophetic voice, they insist, must be directed toward the structural transformation of human institutions including Buddhist institutions.<sup>24</sup> The combination of criticism directed toward the worldview underlying the language of human rights and whole hearted commitment to the human rights movement, and, secondly the fusion of the desire to appropriate Buddhist understandings as an alternative to the Western interpretation of rights and self criticism of Buddhism's historical accommodation to hierarchical structures of authority represent powerful dialectics internal to engaged Buddhism.

Let me state forthrightly that there is something profoundly healthy about these dialectics of thought and action. Those of us who root ourselves in Catholic social teachings find common ground with engaged Buddhists in a fundamental distrust of the individualistic assumptions underlying the Western, liberal tradition which spawned the struggle for human rights. Both groups share an instinctive sense, however, that the human rights tradition resonates with something absolutely fundamental in our religious commitments, something, moreover, that remained buried and, perhaps, even betrayed over long periods of our respective histories. Yet, both communities can also point to courageous examples from within our own ranks of commitment to the human rights struggle. Finally, both of us acknowledge with increasing frankness that our commitment to human rights is a litmus test of the ethical viability of our communities. We know with chilling certitude that failure to defend human rights would be proof positive that our salt has lost its savor.

So, each of us tries to recast human rights discourse within our own idiom. True to the meaning of their tradition, engaged Buddhists will seek a middle path between Western social models built on greed, insatiable desire and hatred and the repressive models of State socialism. Likewise, each of us creates distinctive forms of practice for engaging in the struggle for human rights. For engaged Buddhists, following a middle path to secure basic rights will require a mindful awareness that resists the inclination to find solutions either in social engineering or in individual conversion. Mindfulness, in fact, is at the core of a "socially engaged spirituality" which sets us "free to do just what the situation demands of us."<sup>25</sup>

We could explore each of these forms of commonality at length but I am particularly interested in what Catholics can learn from the ways in which engaged Buddhists are situating the concept of human rights within

their own framework and thereby recasting it. For a Westerner like myself (or, I might add, John Paul II) there are dozens of ways to get off to a false start in grasping Buddhism's distinctive contribution to an understanding of human rights. The question, "how can a tradition that preaches the doctrine of the not-self or of Buddha nature have any concept of human rights at all," I have learned, represents one such false start. Particularly helpful to me are those thinkers who restore the teaching of the not-self to its pragmatic, soteriological context. The truth of the not-self is a skillful means for healing what ails our very lives rather than an absolute metaphysical category to which we might cling. As a soteriological concept in the Theravāda tradition, *anattā* charts a middle path between the roles of avidity and despair generated by eternalist and nihilist concepts of the self. In the Mahāyāna tradition Buddha Nature functions equally as a soteriological concept referring to the radical capacity for liberation and simultaneously the inner reality of and the basic thrust to self realization.<sup>26</sup> Am I wrong in glimpsing in these interpretations a connection between a Buddhist concept of truth as *upāya* and a modern Western understanding of praxis? I would very much like to hear Buddhist thinkers comment on this relationship for it seems to me to represent a crucial epistemological component in a search for a "dialogically universalist ethic" of human rights.

Just as Christian teaching situates all ethical discourse about the self within the broader understanding of the kingdom of God, so many engaged Buddhists resort to the teaching of dependent co-arising as providing the broadest context within which ethical issues can be framed. As I understand the matter, while engaged Buddhists acknowledge the power of the concept of dependent co-arising to take apart our substantialist notions of the self, they are more apt to stress the interdependence, utter relationality and co-implication of all events, including those events to which I attach the label of self. More precisely, the awareness of the co-arising and co-ceasing of all phenomena removes blinders which substantialist notions of self impose and enables me to glimpse a greater reality in which I and all other sentient beings are not circumscribed doers but interactive doings. "Within [this] perception of reality, one is not an autonomous being nor are the institutions of society. They are mutable and they mirror our greed. . . Co-arising with our actions, they, like we, can be changed by our actions."<sup>27</sup> "Indra's Net" in which each node is a multifaceted jewel reflecting the infinite whole is one metaphor (both descriptive and prescriptive) for this fluctuating relational reality. Each node is fully itself, a unique instance of the whole which is nonetheless co-implicated with the whole and empty of any "own being." This suchness of all sentient beings more than expresses, it is their infinite worth.<sup>28</sup> Kenneth Inada suggests that genuine relationality manifests itself with the ideal traits of mutuality, holism and emptiness.<sup>29</sup> The last trait is



particularly important because it precludes a quasi-substantialist interpretation of the whole which, it seems to me, leads to the foggiest of ethical reflections.

To an outsider the appeal by engaged Buddhists and scholars alike to the concept of dependent co-arising as a framework for a Buddhist social ethic appears as something more than an analytic move. It manifests itself as a rallying cry in ways that are analogous to how the Christian social gospel has appealed to the concept of the kingdom of God. I hasten to add that not all engaged Buddhists make this appeal. Sulak Sivaraksa in *Seeds of Peace*, for example, relies much more heavily upon an application of Buddhist notions of the "three poisons" and of Buddhist precepts to the critique of a capitalist global economy. Damien Keown's recent critique of this approach for developing a Buddhist understanding of human rights deserves serious consideration. According to Keown,

[T]he source of human dignity should be sought not in the analysis of the human condition provided by the first and second noble truths. . .but in the evaluation of human good provided by the third and fourth. Human rights cannot be derived from any factual non-evaluative analysis of human nature, whether in terms of its psycho-physical constitution . . . its biological nature. . .or the deep structure of interdependency (*paṭicca-samuppāda*). Instead, the most promising approach will be one which locates human rights and dignity within a comprehensive account of human goodness. . .This is because the source of human dignity in Buddhism lies nowhere else than in the literally infinite capacity of human nature for participation in goodness.<sup>30</sup>

As an outsider, I await the reflections of engaged Buddhists and scholars on Keown's argument. It does seem to me that these thinkers have followed what Ernst Troeltsch earlier in the century delineated as the key steps of a critical hermeneutic. They have immersed themselves in the tradition using its fullness, including its present circumstances, to develop an "immanent critique" of its central teachings. Whatever the thrust of "classical" Buddhism, engaged Buddhists orient the meaning of dependent co-arising away from a simple analysis of the human condition and towards an evocative presentation of the human good. In Troeltsch's understanding, such historically informed reformulations, geared towards praxis, represent the critical heart of a genuine hermeneutic.<sup>31</sup> Straining the limits of an outsider, I would mention that Catholicism in focusing upon human dignity and solidarity as the principles upon which to build its teachings about human

rights deliberately chose terms that might work as bridge concepts to other communities rather than the more specifically theological concepts (e.g., *imago Dei*) that undergird its interpretation. My sense is that dependent co-arising, despite its initial esoteric ring in the ears of outsiders, might work better as a bridge concept than concepts like Buddha Nature that resonate more exclusively within the Buddhist community itself.

Masao Abe argues that such a concept of dependent co-arising allows Buddhism to speak of human rights within a cosmological rather than an anthropocentric framework. Placing the doctrine of rights in this most expansive context removes the duality of self and other that infects the concept of rights as entitlements. It is within this context of the utter interfusion of all relative beings that the absolute worth and equality of all sentient beings and, therefore, the universal and inalienable character of rights can be affirmed.<sup>32</sup> Such an interpretation, argues Taitetsu Unno, also reinstates a dynamic relationship between rights and responsibilities.

[R]espect for the individual and the recognition of rights is not a static but a dynamic fact which makes it imperative that as we affirm our own individual rights we must also be willing to give up ourselves in order to affirm the rights of others. When, however, we affirm only our own rights at the expense of the rights of other — including the rights of humanity over nature, one nation or one race over another, one belief or view over others — we became tyrannical and oppressive. The proper understanding of interdependence, as the elemental form of relationship, would exclude such self-righteousness and would create a truly global society of equals.<sup>33</sup>

To state matters bluntly, it is not the illusion of autonomy that declarations of rights enshrine and protect but the co-agency and co-determination of all sentient beings. Rights language acknowledges the necessity of structures and actions which preserve Indra's Net, and which simultaneously condition the flourishing of each of its individual nodes.

To assert the universality of rights is one thing, to enable individuals and peoples to realize them is another. Again, like Catholicism, Buddhism seeks strategies beyond those of judicial authority to bring this about. Robert Thurman, for example, views the historical Sangha as having effectively created "a free space beyond role requirements and social obligations" where self realization within Indra's Net became possible.<sup>34</sup> Am I amiss in linking this understanding of the Buddhist community as "free space" to Catholic social teachings' insistence on the importance of intermediate communities,

lest we, in John Paul II's terminology, be suffocated by the overwhelming power of the state *and* the market?

Thich Nhat Hanh enlarged this concept of the engaged Buddhist community still further when he and other Vietnamese Buddhists during the Vietnam War founded a group of committed activists called the "Order of Interbeing." [35] Beyond functioning as a free space, the Order of Interbeing acts as a critical wedge inserting itself between conflicting ideologies, warring factions and all closed, oppositional systems that deny our interdependence. The fourteen precepts that all who join the Order of Interbeing vow to observe incorporate not only a commitment to positive action to create a free space but also a call to mindfully resist anything that destroys interbeing. This can be illustrated by the twelfth and thirteenth precepts in particular.

Do not kill. Do not let others kill. Find whatever means possible to protect life and to prevent war.

Possess nothing that should belong to others. Respect the property of others but prevent others from enriching themselves from human suffering or the suffering of other beings.<sup>36</sup>

Social engagement is simultaneously a skillful means for becoming aware oneself and for bringing others to awareness. In its most extensive meaning the Order is comprised of all those who act mindfully on their awareness that "we inter-are." Mindful action, as Unno and Thich Nhat Hanh note, is never self-righteous. Those who act out of ignorance do not cease to be part of Indra's Net. Resistance can and must be a form of mutual liberation.

Above all, the Buddhist commitment to the rights of sentient beings flows from compassion. "Do not avoid contact with suffering or close your eyes before suffering," is the fourth precept of the Order of Interbeing. With alarming simplicity, we are brought back to the Four Noble Truths of Buddhism. "America," Thich Nhat Hanh suggests, "is somehow a closed society." Walled off from the sufferings of others, we lose our sense of reality.<sup>37</sup> In this light it is possible to understand how rights language becomes twisted into the language of entitlements. We need to resist the imposition of suffering on ourselves and others, but even "righteous, legitimate indignation is not enough." A vivid awareness of the co-arising and co-ceasing of suffering is the condition for the compassionate protection of the rights of all sentient beings.<sup>38</sup>

*Catholic Social Teachings Learning from Engaged Buddhism*

I wish to return to Catholic social teachings and ask how they might be transformed in dialogue with engaged Buddhism. I will focus specifically on the *four* principles of Catholic social teachings previously discussed that enable it to flesh out its commitment to human dignity and solidarity, that is, Catholic social teachings are: (1) multilayered teachings which (2) operate within a specific understanding of the kingdom of God as the ultimate context of our endeavors and (3) employ the principle of subsidiarity to understand the complexities of the human community and (4) commit us to a preferential option for the poor to develop our social priorities.

I have focused on the uppermost layer of Catholic social teachings on human rights for two reasons. First, I have yet to see engaged Buddhists (with the exception, perhaps, of Rita Gross in her work on Buddhism and feminism) work as carefully and thoroughly on the second and third layers as they have on the first.<sup>39</sup> More importantly, Catholicism needs dialectical transformation even on its first layer if it is to make its deepest contribution to a "dialogically universalist ethic" of rights. To begin with, I note that the first three precepts of the Order of Interbeing have to do with non-attachment to the truth that one perceives. "Do not think that the knowledge you presently possess is changeless, absolute truth . . . All systems of thought are guiding means. . . [T]hrough compassionate dialogue, help others renounce fanaticism and narrowness."<sup>40</sup> Catholics have a long way to go to begin to see our truth as *upāya*. Likewise, the West has a sorry history of triumphalism to renounce when it comes to the issue of human rights.

Specifically I would like to see the Buddhist notion of dependent co-arising applied to the Catholic doctrines of the Trinity and the Incarnation which provide key struts of the traditional theological framework for Catholic social teachings. Conceiving God's trinitarian presence in the world in light of the dependent co-arising's qualities of mutuality, holism and emptiness might lead to a fluid, relational sense of cosmic co-creation. Likewise, it is no longer radical to suggest that Catholicism's sacramental sense, co-arising with its vision of the Incarnation, has been ill served by its interpretation through the Western metaphysics of individual substances. More pragmatically, dependent co-arising and the notion of suchness can only help Catholics to envision the mutual development of dignity and solidarity. The image of Indra's Net, I believe, is one that all Catholic Christians can affirm.

Many Christian theologians have already insisted that the Christian tradition must leave behind anthropocentrism as a betrayal of its deepest understanding of divine creation and compassion. How this effort to reconstruct Christian self-understanding can be applied to the transformation of human rights into the rights of sentient beings is an important issue. The

work of David Hollenbach, among others, in dealing with conflicting rights claims and in developing criteria for setting priorities among those claims is a resource that Catholics and others can use in making this transition. Again, to resort to the image favored by legal philosophers, all trump cards do not have the same face value. We need to determine which rights carry more weight in different circumstances. This weighting of *instrumental* rights may strike Buddhists as overly adversarial. I see no way to avoid it. However, a compassionate sense of dependent co-arising would encourage mindfulness of the relative inadequacy of our institutional arrangements for juggling seemingly conflicting rights. Such arrangements never adequately reflect the interdependency of *inherent* rights.

Second, I see the Catholic model of a transcendent kingdom of God which creates a sacred discontent with all existing social institutions and the engaged Buddhist model of an immanent Order of Interbeing grounded in compassion as complementary models. I mean that in the strict sense that they are individually insufficient, equally necessary and mutually correcting. Both models, working in tandem, create religious loyalties which transcend the boundaries of the nation state and the limits of the human species.

Catholic social teachings, I believe, must stick with the principle of subsidiarity. We have only begun to explore its possible non-hierarchical, non-authoritarian meanings. If we interpret it, as I have suggested, along the lines of an expanded federalism of countervailing communities which check and balance one another, we will develop a tough edged social theory which accords with our sense of social evil. It is mindfully realistic not cynical, for example, for me to suggest that in the area of human rights the NGOs, not the nation states, will make the theoretical and practical breakthroughs in the perilous times that lie ahead. Religious communities need to strengthen their partnerships with these international communities of resistance and advocacy.

But Catholics can learn from Thurman's notion of the Sangha as a "free space" about the need to create havens where rights are acknowledged and protected and about the importance of celebrating human freedom and flourishing within our own communities. Although expressions of Catholic social teachings, like the American bishop's pastoral letter "Economic Justice for All," have stipulated in theory this need for attention to our own institution as a first step, we have a long, long way to go in practice to even begin to address this issue. Is it even conceivable that American Catholic bishops floundering in their efforts to address the issue of sexual abuse within the Church, for example, would sit down to talk with Buddhist women and men who have had to struggle painfully with the same issue within the American Sangha?<sup>41</sup>

Thich Nhat Hanh's Order of Interbeing seems to me to be a particularly productive communal embodiment of the principle of

subsidiarity. Its communitarian agenda foresees neither one big happy family nor endless sectarian struggle. The Order is both a community of resistance and a community which holds itself open in compassion to those whom it resists. Here the acknowledgement that my presumed adversary's actions dependently co-arise with my actions or inaction lays the groundwork for forms of resistance detached from the self righteousness that frequently infects human rights advocacy.<sup>42</sup>

Finally, what can we learn from engaged Buddhists regarding the "preferential option for the poor?" That teaching has been condemned by some Christian theologians as implying that God loves some more than others, that God takes sides in our ideological (and real) battles. The teachings of engaged Buddhism can help correct this misimpression. It seems to me that a corollary to the fourth precept of the Order of Interbeing (Do not avoid contact with suffering. . .) is the realization that while all life is suffering, not all suffer alike. Moreover, imposed suffering, oppression, is never equally distributed. If our task is to liberate all sentient beings, we must act mindfully, interceding directly for those most in need in ways proportioned to the need.

The concept of dependent co-arising can help Catholics in their attempt to act on David Hollenbach's "three strategic moral priorities" in the area of human rights. The trick is to discern when the protection of my rights fosters the co-arising of the rights of others and when it fosters the co-ceasing of the rights of others. When do my wants, my liberty, my need for order dependently co-arise with the impoverishment, the domination and the marginalization of others? It is, I believe, inaccurate and self-destructive to answer this question, "always." That would truly be a dog-eat-dog world. Buddhism offers instead the middle path in which mutual flourishing dependently co-arises as the way between self-abnegation and the oppression of others. Hollenbach's moral priorities are criteria necessary to find that middle path as the preferential option for the poor is meant to blaze that same path.

We have been reflecting all along at the first layer of a multilayered theory of human rights, the layer that presents a religious vision, ethical criteria and images of transformation. I hope that I have shown what might be entailed to move towards a "dialogically universalist ethic" at this level. Creating dialogical reformulations on the second layer of critical social analysis and the third layer of alternative social models and policy suggestions would be equally demanding. Whether they follow the path of the bodhisattva or of the prophet, engaged Buddhists and Christians will surely move forward, juryrigging social theories and forms of engagement, forming coalitions and acting, with or without those of us who seek to clarify the bases for religious praxis. Given the religious urgency generated by the

sufferings of humans and other sentient beings, these engaged persons cannot do otherwise. Given all that we have said about the problems of formulating the concept of human rights within both the Buddhist and the Catholic traditions, it still remains a major bridge concept linking many who struggle for a transformed global community. Both traditions have much to contribute to the design and construction of this bridge. We would do well to work together.

#### NOTES

1. Jonathan Kaufman, "UN Conference Highlights Human Rights Rift," *The Boston Globe*, 20 June 1993. Portions of this paper in an earlier version were presented at the Parliament of the World's Religions in Chicago, August, 1993.
2. The Dalai Lama as cited in Jan Krcmar, "Dalai Lama Scores Small Triumph Over China at Rights Conference," *The Reuter Library Report*, 15 June 1993.
3. Amitai Etzioni, *The Spirit of Community* (New York: Crown Publishers, 1993): 3-7.
4. John Cobb, *Beyond Dialogue: Toward a Mutual Transformation of Buddhism and Christianity* (Philadelphia: Fortress Press, 1982).
5. Cf. Mary Ann Glendon, *Rights Talk: The Impoverishment of Political Discourse* (New York: the Free Press, 1991): xii. I am indebted to my colleague Frida Kerner Furman for the notion of a bridge concept. See Frida Kerner Furman, "The Prophetic Tradition and Social Transformation," in Charles R. Strain (ed.), *Prophetic Visions and Economic Realities: Protestants, Catholics and Jews Confront the Bishops' Letter on the Economy* (Grand Rapids, MI: Wm. B. Eerdmans Publishing Co.): 103-104.
6. Rita Gross, "Buddhism and Feminism: Toward Their Mutual Transformation, Part I," *Eastern Buddhist* 19, 1 (1986): 44; "Part II," *Eastern Buddhist* 19, 2 (1986): 74.
7. David Hollenbach, *Claims in Conflict: Retrieving and Renewing the Catholic Human Rights Tradition* (New York: Paulist Press, 1979): 131.
8. John XXIII, *Pacem in Terris, Renewing the Earth: Catholic Documents on Peace, Justice and Liberation*, edited by David O'Brien and Thomas Shannon (Garden City, NY: Doubleday, 1977): #9.
9. Hollenbach: 65.
10. Hollenbach: 64.
11. John Paul II, *Centesimus Annus, Origins* 21 (May 16, 1991): #34. On the concept of basic rights, see Henry Shue, *Basic Rights* (Princeton: Princeton University Press, 1980).
12. Charles R. Strain, "Concerning New Things and Old: A Reading of *Centesimus Annus*," *Word and World* 12 (Fall, 1992): 360-69.

13. John Paul II: #43.
14. Hollenbach: 94-99.
15. John Paul II: #25.
16. John Paul II: #48.
17. John Paul II: #49.
18. Hollenbach: 204.
19. See Alfred Hennelly, S. J., and John Langan, S. J. (eds.), *Human Rights in the Americas: The Struggle for Consensus* (Washington, D. C.: Georgetown University Press, 1982).
20. Masao Abe, "Religious Tolerance and Human Rights: A Buddhist Perspective," in Leonard Swidler (ed.), *Religious Liberty and Human Rights in Nations and Religions* (Philadelphia: Ecumenical Press, 1986): 193. For a history of socially engaged Buddhism, see Ken Jones, *The Social Face of Buddhism* (London: Wisdom Publications, 1989).
21. Abe: 202-204; Taitetsu Unno, "Personal Rights in Contemporary Buddhism," in Leroy S. Rouner (ed.), *Human Rights and the World's Religions* (Notre Dame, IN: University of Notre Dame Press, 1988): 143-45.
22. Kenneth Inada, "The Buddhist Perspective on Human Rights," in Arlene Swidler (ed.), *Human Rights and Religious Traditions* (New York: The Pilgrim Press, 1982): 73; Unno: 143-45.
23. Unno: 129; Robert A. F. Thurman, "Social and Cultural Rights in Buddhism," in Leroy S. Rouner (ed.), *Human Rights and The World's Religions*: 153. Cf. James C. Hsiung (ed.), "Introduction," *Human Rights in East Asia* (New York: Paragon House Publishers, 1985): 3-29.
24. Thurman: 155-56; Rita Gross, *Buddhism After Patriarchy* (Albany: State University of New York Press, 1993): 134.
25. Sulak Sivaraksa, "Human Rights in the Context of Global Problem Solving: A Buddhist Perspective," in Hans Küng and Jürgen Moltmann (eds.), *The Ethics of World Religions and Human Rights* (Philadelphia: Trinity Press International, 1990): 87-88.
26. Steven Collins, *Selfless Persons* (New York: Cambridge University Press, 1982): 12, 34-35, 76, 104-105; Sallie King, *Buddha Nature* (Albany, NY: State University of New York Press, 1991): 32, 68, 84-85.
27. Joanna Rogers Macy, "Dependent Co-Arising: The Distinctiveness of Buddhist Ethics," *Journal of Religious Ethics* 7, 1 (1979): 39, 42, 44, 49.
28. Jones: 136-45; Unno: 138-39; Abe: 196-97.
29. Kenneth Inada, "A Buddhist Response to the Nature of Human Rights," in Claude E. Welch, Jr. and Virginia A. Leary (eds.), *Asian Perspectives on Human Rights* (Boulder, CO: Westview Press, 1990): 98-102.
30. Damien Keown, "Are There 'Human Rights' in Buddhism," *Journal of Buddhist Ethics* 2 (1995): 16.



31. For a presentation of Troeltsch's critical hermeneutics specifically geared towards praxis, see Dennis P. McCann and Charles R. Strain, *Polity and Praxis: A Program for American Practical Theology* (Minneapolis: Winston Press, 1985; Reprint Edition, Lanham, MD: University Press of America, 1990): 74-80. I am suggesting, I hope with the requisite diffidence of an outsider, that the reliance on the teaching of dependent co-arising to begin the task of framing a social ethic does not strike me as a "conjuring trick" which elides the distinction of fact and value. Cf. Keown: 14. In both Catholicism and Buddhism are we not in reality (*imago Dei* or Buddha Nature) what we are to become in practice? It is precisely the virtue of both traditions that by placing the concept of human rights within a more comprehensive understanding of the human good they also raise basic questions about the fact/value distinction as it is formulated in philosophical ethics.

32. Abe: 202-205.

33. Unno: 140.

34. Thurman: 150.

35. Thich Nhat Hanh, *Being Peace* (Berkeley, CA: Parallax Press, 1987): 85-102.

36. Nhat Hanh, *Being Peace*: 98-99.

37. Nhat Hanh, *Being Peace*: 91-92.

38. Thich Nhat Hanh, *Peace is Every Step* (New York: Bantam Books, 1991): 120-21.

39. It is clearly the case that engaged Buddhists use empirical data in attempting to read the "signs of the times." Sulak Sivaraksa's *Seeds of Peace* (Berkeley, CA: Parallax Press, 1992) is a wonderful example of such astute interpretation and, in this sense, engaged Buddhists *are* working on level two. What I miss is the presence of some systemic and critical social theory which mediates between the "signs of the times" and the worldview and ethical principles that are articulated on the first layer. Instead there frequently seems to be an unmediated application of Buddhists ideals and virtues to the social situation, implicitly reducing all problems of alienation or oppression to matters of personal morality and spiritual malaise. Joanna Macy argues for the affinity of Buddhist concepts of dependent co-arising and general systems theory in developing a metaphysics of causality *Mutual Causality in Buddhism and General Systems Theory* (Albany: State University of New York Press, 1991). What critical *social* theories would be equally compatible with this core teaching? On the interaction of religious worldviews and religiously grounded social ethics, see McCann and Strain, *Polity and Praxis*, Chapter 6.

40. Nhat Hanh, *Being Peace*: 89-91.

41. See "Economic Justice for All: Catholic Social Teaching and the U.S. Economy," *Origins* 16 (27 November, 1986): #s 347-57; see also Sandy Boucher,

*Turning the Wheel: American Women Creating the New Buddhism* (Boston: Beacon Press, 1993): 210-56.

42. Nhat Hanh, *Being Peace*: 61-74.

## HUMAN RIGHTS AND CULTURAL VALUES: THE POLITICAL PHILOSOPHIES OF THE DALAI LAMA AND THE PEOPLE'S REPUBLIC OF CHINA

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The preamble of the United Nations' "Universal Declaration of Human Rights" claims that its provisions constitute "a common standard of achievement for all peoples and all nations," and since its ratification in 1948 it has in fact served as a general standard by which the conduct of nations is judged in international forums. Recently, however, some states have publicly questioned the universality of the rights outlined in the Universal Declaration, claiming that its provisions are based on Western concepts of government and human nature, that it is a tool of Western cultural hegemony imposed on non-Western countries, and that it ignores the distinctive cultural values of non-Western peoples.

Although the Universal Declaration is held by its proponents to be a neutral document that applies to all human beings and takes no position regarding what type of government or social order societies should adopt, representatives of third world countries have criticized the Declaration on the grounds that its framers were all from Western countries and that no Africans or Asians, for example, participated in the process. They further claim that the vision of rights contained in the document is slanted toward the West and that it is biased in favor of Western individualistic conceptions of human rights while ignoring the values of communalism and social harmony cherished in many non-Western societies.

The most prominent critic of this document in recent years has been the government of the People's Republic of China, which is frequently castigated by international organizations and in the press for violations of human rights. China is often cited as one of the leading abusers of human rights along with such nations as Iran and Iraq, and human rights monitoring agencies like Human Rights Watch and Amnesty International regularly release reports indicating that China is one of the worst transgressors of human rights standards.<sup>1</sup> For many years the Chinese government insisted that it was in full compliance with these standards and that attacks on its human rights record were politically motivated slander perpetrated by its enemies. However, in the face of overwhelming documentary evidence contradicting these assertions, China was regularly denounced by

international organizations like the United Nations for its treatment of its own citizens and of conquered minority populations in Tibet, Mongolia, and Manchuria.<sup>2</sup>

In recent years, the Chinese authorities have altered their official position significantly. They now proclaim that the principles outlined in the Universal Declaration and similar documents are inapplicable in an Asian context and that the basic duty of a government is to provide economic security for its people and to ensure that their basic needs are met. The government's primary goals should be harmony, economic opportunity, and protection from foreign aggression. Moreover, according to a recent statement by Wu Jianmin, China and Western countries "have different conceptions of human rights," and Asians are concerned not with "the privileges of the few, but with the rights of the many."<sup>3</sup> Interestingly, this contention has had some effect on Western leaders, and when asked for his position on Chinese human rights practices, President Clinton declared that China and other Asian countries are entitled to their own definition of human rights, and he added that, "we see in the culture of China, and in many other Asian societies, a desire to preserve order in the interests of the group, often at the expense of the individual."<sup>4</sup>

The major human rights organizations have rejected this position as being merely a self-serving attempt to obfuscate China's abysmal human rights record, but their statements are dismissed by Chinese authorities as interference in China's internal affairs that serves the interests of Western imperialists. In a recent statement in response to an Asia Watch report on China's human rights record in 1993, for example, a Chinese official stated that "Asia Watch is highly prejudiced against China and therefore cannot truly understand the human rights situation in China. It is with ulterior motives and irresponsible for Asia Watch to publish its human rights report, which makes accusations against China."<sup>5</sup>

While the Chinese position has been supported by some nations (generally countries whose human rights records are also under attack), it has been rejected by other Asian governments and organizations, which contend that the rights outlined in the Universal Declaration are in fact universal and apply to all peoples at all times and in all cultures. One of the most prominent Asian voices favoring this position is the Dalai Lama, the exiled Tibetan leader who won the Nobel Peace Prize in 1989 for his efforts in pursuit of global peace.

This paper will examine the philosophical differences between the Chinese government and the Dalai Lama, focusing on the relation between differing cultural values and the modern movement toward common and universally binding human rights standards. As we will see, the positions of all parties in the dispute reflect cultural, religious, and political assumptions

that derive from differing conceptions of human nature and proper government. A central question will be whether the Chinese claims to a special status can be supported in light of Chinese cultural norms. Are human rights morally and legally binding for all people and governments, or are they instead arbitrary or culturally determined? Can nations that violate these principles legitimately be judged by standards that they reject, or are human rights issues best left to individual governments? In examining these questions, this paper will selectively highlight aspects of the backgrounds of some important players in the current dispute.

### *What Are Human Rights?*

Although the term "human rights" is common in international forums, there is little consensus on what it actually means. As used in international organizations and documents, it refers to claims that every individual has (or should have) on his or her society, claims that apply to all people and governments regardless of race, gender, religion, economic status, ideology, or occupation. They are held to accrue to all people by virtue of their humanity, and as such are inalienable. They cannot legitimately be abrogated, nor can they be removed. Even if they are suspended by individual governments or leaders, they remain universal and binding, no matter how long they are denied.<sup>6</sup>

Because they are rights, individuals do not possess them due to the charity of their governments, and they need not be earned (although some, such as freedom of movement, may be suspended as a result of a serious crime). Rather, they are basic entitlements common to all human beings, and they are not to be suspended arbitrarily, or even as a means to achieving some societal goals. Human rights represent claims that the individual has upon society and the government, and it is the duty of governments to ensure that these are not violated by individuals or by organs of government. These rights both limit what the government may legitimately do to the individual and outline what society is obligated to do for the individual. When described in international human rights documents such as the Universal Declaration, they are not vague or abstract principles, but rather specific precepts for respecting human dignity, individual autonomy, and application of laws based on a common sense of justice.

Commonly accepted rights include religious freedom and general freedom of belief; freedom of assembly; freedom from cruel and unusual punishment; equality of opportunity; and freedom from discrimination based on race, gender, or economic status. Human rights include negative prohibitions preventing governments from unreasonable intrusion in the private lives of their citizens, as well as positive rights guaranteeing the right

to retain legally obtained property, right to due process, and equal protection under the law. International rights covenants also assume a basic right of peoples to determine their own governments and to have a voice in electing their leaders.

It should also be noted, however, that these rights are not absolute. The Universal Declaration, for example, states that "in the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society."<sup>7</sup> Thus, the rights outlined in the Universal Declaration may be abrogated or limited in specific situations subject to the rule of law. The right to life guaranteed in the Universal Declaration does not prevent governments from punishing some particularly heinous crimes by capital punishment, nor does freedom of movement prevent the imprisonment of criminals. Freedom of speech is subject to limitations dictated by national security, commonly accepted standards of morality, public health concerns, or the need to maintain public order. Rights may be limited in times of national emergency, but they cannot legitimately be eliminated. They are morally binding, and those states that choose to limit or suspend them are subject to international scrutiny, and their rights practices may be judged by impartial international bodies. Some rights, however, are considered inviolable even in cases of national emergency, such as the right to freedom from torture, freedom from racial or gender discrimination, and freedom of conscience.

These ideas are commonly accepted in Western-style democratic countries, and so it is not surprising to find that the development of human rights standards has been profoundly influenced by Western ideas and governments. The history of the human rights movement reflects this Western heritage. In modern times, some of the more influential human rights documents include the American Declaration of Independence, the United States Constitution, French Declaration of the Rights of Man and of the Citizen, the Universal Declaration, the Helsinki Resolutions, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights, all of which were wholly or primarily authored by Western writers, and all of which are strongly influenced by Western thinking and values. In addition, human rights thought in the West is commonly traced back to the political philosophies of Aristotle and Cicero, and more recently to seventeenth-century theorists like Sir Edward Coke, Thomas Hooker, John Milton, and especially John Locke and Jean Jacques Rousseau.

Early American rights documents were influenced by ideas popularized by thinkers of the Continental Enlightenment, who believed that there are universal standards and values that are discernible by rational beings and that these are inherent to the human condition. Such ideas came to be generally referred to as "natural law" and were central to the philosophy of the Declaration of Independence and the U.S. Constitution. The Declaration of Independence, for example, claims that people are endowed with unalienable rights "to which the laws of nature and nature's God entitle them." It further declares that such rights as life, liberty, and the pursuit of happiness are "self-evident," i.e., that they are universal and valid for all times and all peoples.

Locke and Rousseau, in common with the framers of the Declaration of Independence and the U.S. Constitution, conceived of society as a community that people join voluntarily, by a social contract, and together the members of a society constitute "the people," who possess certain inalienable rights, including the right to choose representatives and the form of government that can best serve their needs. They determine the extent of the authority of their representatives, and all authority not expressly granted to them remains with "the people." These ideas reflect a particular conception of a good society, which is a liberal, free, and democratic society governed by rule of law and administered by a government whose influence on the lives of the people is restricted by constitutional guarantees of freedom.

Similar ideas underlie the U.S. Constitution, which contains a catalogue of rights that are also declared to be universally binding and that the document's authors believed derived from the Creator of the natural order. They are part of our nature as human beings. Humans are viewed as autonomous and private, which reflects both American Protestant understandings of human nature and the American frontier experience, in which self-sufficiency and independence were valued. The framers of the Constitution wanted to design a state founded on their commonly held Christian principles, combined with an emphasis on the rule of law, respect for individual liberties, and minimal governmental intrusion in the lives of the people. As Justice William O. Douglas explains:

The natural rights have a broad base in morality and religion to protect man, his individuality, and his conscience against direct and indirect interference by government. The penumbra of the Bill of Rights reflects human rights which, though not explicit, are implied from the very nature of man as a child of God. These human rights were the product both of political thinking and of moral and religious influences. Man, as a citizen, had known oppressive laws from time out

of mind and was in revolt. Man, as a child of God, insisted he was accountable not to the state but to his own conscience and to his God. Man's moral and spiritual appetite, as well as his political ideals, demanded that he have freedom. Liberty was to be the way of life — inalienable, and safe from intrusion of government.<sup>8</sup>

This passage outlines a number of ideas that are typical of Western rights thinking, beginning with the concept of natural law as a creation of God. This God is clearly the creator and law-giver of the Judaeo-Christian tradition, an omnipotent, omniscient, and omnibenevolent being whose mandates are universally binding. Such a concept has no parallel in either classical Chinese thought or in Tibetan Buddhism. The Confucian tradition, it should be noted, asserted the existence of Heaven (*Tien*), which oversees human affairs and confers a mandate to rule on the Emperor, but Heaven is neither omniscient nor omnipotent, and is more concerned with promoting harmony and stability than with enforcing universal rules. Moreover, Heaven is more concerned with the personal integrity of rulers than with specific laws. Rulers are judged on the basis of their conduct and are expected to embody the Confucian ideals of human-heartedness (*ren*) and righteousness (*li*) to a high degree, but their actual practice of these ideas may take a wide variety of forms. Moreover, it is far more important that rulers have good hearts than that they strictly adhere to abstract norms, since the goodness of rulers positively affects their subjects, who are inspired to follow the examples of upright rulers.<sup>9</sup>

The concept of God is also foreign to the contemporary leadership of China, which is officially Marxist and atheistic. Tibetan Buddhism similarly rejects the Western concept of God, following the Buddha's assertion that the existence or non-existence of a creator God is irrelevant to the present situation and that speculation on such matters tends to distract people from truly important concerns, such as the nature and alleviation of human suffering.<sup>10</sup>

Another distinctively Western assumption found in the Bill of Rights and in contemporary rights documents like the Universal Declaration is the belief that people need to be protected from their governments. The Bill of Rights is designed to limit the power of the state to interfere in people's lives, an idea that is reflected in Article 30 of the Universal Declaration, which declares that nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.



Underlying this provision is a belief that government must be restrained from tendencies toward despotism and that unless restraints are imposed on their powers rulers will tend to engage in activities that interfere with the liberties of their people. As we will see in the following sections, these suspicions were not a part of political thought in classical China and Tibet, which tended to focus on the importance of good will and cultivation of morality by rulers, rather on the necessity of limiting their power by law.

### *Human Rights in Classical China*

Contrary to the assertions of some Western commentators, there is ample evidence that modern human rights concepts are compatible with certain traditional Chinese ethical tenets. For example, in traditional Chinese cosmology although the power of the emperor was theoretically absolute, he was also subject to the dictates of Heaven, and its mandate was conditional upon his adherence to certain moral precepts. The most important of these was *ren*, human-heartedness, which would automatically constrain his actions. His chief concern should be the happiness of the people, and his actions should reflect a profoundly moral nature that was evident in his personal rectitude and an unwavering moral compass. Such a ruler would put his people first and would not overstep the legitimate bounds of his authority. If he did, the mandate of Heaven would be withdrawn and, according to Mencius and other Confucian thinkers, the people could legitimately remove him from power. If the people were unwilling or unable to accomplish this, Heaven itself would ensure his downfall.<sup>11</sup>

From the time that Confucianism became the dominant ideology in China in the second century B.C., its moral code became accepted as a standard for both rulers and subjects. Reinforced by tradition and social pressure, it constituted a common standard for moral activity. Long before the concept of the need for limitations on the power of rulers became generally accepted in the West, Confucian thought asserted that the power of the ruler was limited by universal standards of conduct and that there would be automatic punishment for anyone who transgressed these standards.

It should also be noted that in traditional China the actual power of the government was limited by its comparatively small size and by the fact that the central government's influence became progressively weaker as one moved from the central provinces. In the areas near the capital its ability to influence people's lives was greater than in outlying areas. In theory, the emperor was all-powerful, but in practice his power was limited by geographical obstacles, the relatively small size of the government in comparison to the large areas it claimed, and by the pervasive influence of

Confucian ideology, which was believed to supersede the authority of any particular ruler.

Although some Confucian principles are clearly concordant with contemporary ideas of human rights, there were also significant differences between traditional Chinese society and the modern democratic states that have been at the forefront of the human rights movement. For example, in traditional China there was no concept of individual human rights, and membership in the society was not voluntary. The individual was not central in China, but rather was conceived as part of a group which had certain claims on the individual's allegiance and actions.<sup>12</sup> In addition, the legitimacy of the emperor did not depend on his receiving the consent of the governed: he was said to be the "Son of Heaven," a semi-divine figure specifically appointed by Heaven to manage affairs in China. His authority could only be questioned in cases in which the mandate of Heaven had been withdrawn, which was evidenced by natural calamities, internal troubles, or severe economic or military difficulties.<sup>13</sup> In addition, the society was arranged in hierarchical sets, such as ruler-subject, husband-wife, and so forth, with one person or group having authority over the other. The interactions between the parties in these relationships were conceived in terms of duties and obligations, rather than rights and liberties.

In classical China the ideal was order and harmony rather than equality and individual liberty. Society depended on selfless cooperation and adherence to duty rather than individual independence and freedom of conscience. The individual was conceived as part of a group whose success required subservience to group ideals and individual cultivation of ethical behaviors that would contribute to the good of the collective. Both rights and duties were not absolute, but were seen as negotiable and as subject to the current needs of society. Maintaining the harmony of the hierarchical order was more important than promoting individual liberty, and people were expected to forgo their own selfish desires for the betterment of society.

Concepts of justice and jurisprudence were also variable, and legal norms and practices were adapted to changing circumstances in order to promote social harmony. In theory at least, the prevailing judicial philosophy was dictated by the emperor and carried out by the governmental bureaucracy. The primary function of the legal system was punishment of those who disturbed social harmony or who threatened the hierarchical order. Private disputes were commonly settled by mediation or local custom, and so ordinary Chinese citizens did not look to the legal system for redress of grievances against the state or for purposes other than promoting the order of the country.<sup>14</sup>

*Human Rights in the People's Republic of China*

When the Communist party came to power in 1949, it repudiated much of traditional Confucian ideology, most significantly the aspects of the Confucian system that placed ethical restraints on the power of government. The Marxist-Leninist system it adopted conceived of society as being composed of mutually antagonistic classes. Class struggle was basic to Communist ideology, and in this conception some had a superior claim to the protection and resources of the state. The state and its legal system were designed to suppress the aristocracy and land holding classes, while assuring the ascendancy of the proletariat. Moreover, the party was envisioned as an instrument of the wishes of the proletariat, and it was said to be ruled by people whose understanding of the principles of class struggle made them uniquely fit to lead. It would be absurd in this system to call for leadership of the masses, including peasants and uneducated workers, because they have little or no understanding of the principles of socialism and thus would be incapable of making informed decisions. The revolutionary class, because of its understanding of history and its grounding in Marxist-Leninist ideology, is able to make decisions that benefit society in the long term, and it represents the true interests of the people. Thus, the 1982 Chinese Constitution declares that all power belongs to the people, and that the people exercise power through the National People's Congress and the local people's congresses. These bodies represent the true will of the people (Article 2). The constitution also outlines the rights and duties of the people, the most important being the right to live in a socialist society and duties related to its support and furtherance of its goals. The state owns all land and is responsible for planning the economy, and no organization or individual may disrupt its plans (Article 15).

Chapter two of the constitution contains a list of rights, including equality before the law, the right to vote, freedom of speech, press, assembly, association, and demonstration, freedom of religious belief and practice, and prohibition of unlawful detention or torture. As several commentators have pointed out, however, the constitution is not a contract between the people and the state that outlines the conditions under which they agree to be governed, but rather a manifesto by the leaders to the people outlining both the current state of the society and its aspirations for the future, and so the constitution appears not to prescribe the rights that government must observe, but rather sets forth the rights which the government claims to be providing and promises to provide. Political organs interpret what the constitution means and can amend it formally when desired. No independent judiciary or other body exists to insist on an interpretation of the constitution different from that desired by the political organs, or to enforce it against

high political authority. In China the constitution is what the political leaders say it is.<sup>15</sup>

There are no guarantees that any of the specific rights outlined in the constitution will be observed in fact, and recent reports from human rights monitoring organizations indicate that the stipulations regarding freedom of religion, for example, are virtually meaningless, as are prohibitions against cruel and unusual punishment.<sup>16</sup> Since the state grants rights to citizens, it is free to rescind them in accordance with changing policies and goals. The state has full power to limit or abrogate any of the rights described in its constitutions, provided that it does so in accordance with law. This is not, however, a real restriction, since the state also controls the legal apparatus.<sup>17</sup>

Chinese society under Marxism-Leninism is said to be ruled by a "dictatorship of the proletariat," which is clearly incompatible with Western concepts of democracy and protection of the individual's rights under the law. It also breaks with Chinese tradition, since class struggle replaces the earlier emphasis on harmony, while "historical necessity" and the laws of "historical development" govern human relations and the legal system. The necessary transformation of society is spearheaded by professional revolutionaries, the "vanguard of the proletariat," whose will corresponds with the aspirations and interests of the revolutionary class.<sup>18</sup> Class struggle and class differences require the suppression of the old ruling classes and justify violations of human rights for the purpose of promoting socialist revolution.

In socialistic societies, the individual is not the foundation of society, although the individual benefits from membership in the society. The purpose of the society is to promote the ideals of socialism through central control of the principal means of production, as well as communication and transportation. In the conceptions of Marx, Lenin, and Mao, there was no place for notions of individual rights. They viewed such ideas as products of bourgeois Western capitalist society and contended that in such societies "individual rights" were illusions, since workers were inevitably exploited and alienated by the economic system and the conditions of their employment. Only socialist societies are truly capable of implementing meaningful human rights, but even in such countries rights enshrined in constitutions may not be enjoyed in fact, but may be mentioned in constitutions as desirable outcomes that the state would like to provide in the future. As Politburo member Peng Zhen declared in his report on the draft version of the 1982 constitution:

In the history of the world there have never been any absolute rights and freedoms not subject to any limitations. We are a socialist country, in which the interests of the state

and society are basically identical to the interests of the individual. Only when the democratic rights and basic interests of the vast masses of the people are guaranteed and developed will it be possible for the freedoms and rights of individual citizens to be completely guaranteed and fully realized.<sup>19</sup>

Both Marx and Lenin believed that promotion of rights for the proletariat constituted an important step on the road to socialism, but in building socialism individualism is an obstacle that blocks the establishment of the dictatorship of the proletariat. Even the idea that individuals have legitimate claims against the society is contrary to the need to foster a sense of community in socialist societies. Only in such societies are human rights truly observed, because only socialism promotes productive work for all, and the workers equally enjoy the benefits of living in a socialist community. In the future, when the state has disappeared, the very concept of human rights will be archaic, since all members of society will live together in a free and mutually supportive collective.

According to the new rulers of China, Confucian humanism was to be rejected because it was "feudalistic," and Western concepts of human rights and democracy were said to reflect the inequalities of capitalistic society and to be products of outdated, "bourgeois," and "imperialistic" thinking.<sup>20</sup> Instead of human rights, conceived in terms of claims of the individual upon society, Chinese communism aims at transformation of society as a whole through class struggle. In order to achieve this, the interests of the state should be paramount, and individuals should subvert their interests to those of the state and submit to the guidance of the party, which is the sole legitimate arbiter of policy. This tendency reached its apogee with Mao, who regarded law as an instrument for promoting party policy, and who believed that the party should speak with a single voice, one that reflected his programs for the transformation and revolutionization of Chinese society. He regarded any form of judicial review as an unwarranted restraint on party power, and this idea has also dominated legal thinking during the tenure of Deng Xiaoping, who has abandoned Mao's program of organizing mass "campaigns" to revolutionize society but has retained control over the legal system, which is still an instrument for punishing dissident elements and for promoting party policies.

During the 1990s, the legal system has increasingly been characterized by extreme use of force to control a restive population. Human rights groups estimate that as many as six million prisoners are in the *laogai* ("reeducation through labor") system, and according to Amnesty International torture is "endemic" today in Chinese prisons.<sup>21</sup> Dissidents, particularly minorities, are

punished harshly, and in Tibet, for example, calls for independence commonly lead to sentences of between eight and twenty years. Tibetans who are detained by Chinese police or incarcerated are routinely subjected to torture, and human rights groups report that religious figures and women are singled out for especially brutal treatment.<sup>22</sup>

In the face of mounting criticism from international human rights monitoring organizations and other governments, China at first asserted that its human rights record is unimpeachable and fully in accord with international norms. As recently as 1990, the Chinese representative to the United Nations told the U.N. Committee Against Torture that as a member of the U.N. China is bound by its covenants, even those which it has not officially signed: When China acceded to any convention, it became binding as soon as it entered into force. China then fulfilled all its obligations, and it was not necessary to draft special laws to ensure conformity. If an international instrument was inconsistent with domestic law, the latter was brought into line with the former. Where subtle differences remained, international instruments took precedence over domestic law.<sup>23</sup>

Despite this claim, however, actual adherence to international rights conventions has been sporadic in China, and although Chinese authorities often pay lip service to the provisions in the Universal Declaration and similar documents, in practice they see them as primarily inspirational ideals that "must in practice be subject to national historical, social, economic, and cultural conditions."<sup>24</sup>

The leadership of China is particularly sensitive to criticisms of its rights record, and it rejects the legitimacy of other governments or international organizations who attempt to make it an issue. When, for instance, President Jimmy Carter proclaimed in December 1978 that concern for human rights was "the soul" of U.S. foreign policy, Chinese leaders characterized his professed interest as a "hypocritical farce." Attempts by Western governments to pressure China to respect international standards of human rights have been denounced as unwarranted interference in China's "internal affairs" and as thinly-disguised efforts to impose Western cultural hegemony on an Asian nation.

Recently, however, China's human rights record has been forcefully criticized by other Asian countries and by religious and political leaders around the world. A recent conference held in New Delhi from March 18-20, 1994 discussed China's occupation of Tibet. The All-Party Parliamentary Forum on Tibet reiterated that Tibet had been independent prior to the invasion,<sup>25</sup> that China is engaged in widespread human rights violations that amount to a program of genocide, and it referred to United Nations GA Resolution 1723 (XVI) of 1961, which condemned such practices and called for withdrawal of Chinese forces from occupied Tibet. This conference was

embarrassing to China because it was held in an Asian capital of an officially non-aligned country, and the signatories included a cross-section of Asian and third world countries, all of whom agreed that international human rights monitoring organizations were correct in confirming "the continued abuse of Tibetan human rights and the denial of fundamental freedoms by the Chinese authorities."<sup>26</sup> The Japanese representative, Takashi Yonezawa, declared, "We are very concerned that Tibet is in a situation that is against the will of the Tibetans. This meeting is also very important for the peace and stability in Asia as well as the world."

Such statements were particularly galling to the Chinese government, which aspires to leadership in Asia and the third world. Moreover, it indicated the hollowness of its assertions that its human rights record should be judged by the standards of Asian societies, and not those of the West. In this forum, a number of Asian leaders indicated that China's actions in Tibet violate the standards of all civilized nations and highlighted the falseness of official Chinese claims that Tibetans today enjoy a higher standard of living and greater freedom than in the past. China's displeasure with the forum is indicated by the virulence of the government's official response:

This resolution distorts the real situation in Tibet and violates the principle of non-interference in each other's internal affairs. Early this year, a small number of Indian politicians initiated in India the so-called "All-Party Parliamentary Forum for Tibet" and launched against China a campaign of defamation under the pretext of so-called "human rights," and population and environment problems in Tibet. We are indignant and sternly condemn these clamors and activities aimed at splitting China and intervening in the internal affairs of China.<sup>27</sup>

At the same time as it is being condemned for its genocide in Tibet, China proclaims that it is in fact promoting economic development and that its efforts are enthusiastically supported by the Tibetan people.<sup>28</sup> On August 6, 1994 the People's Broadcasting Station in Lhasa stated:

Based on the need to expedite the nation's economic and social development and strengthen China's national coherence, the central authorities have formulated the policy that the whole nation should support Tibet and be Tibet's strong backing. The policy of mustering national efforts to support Tibet is a major policy for expediting Tibet's development. The support will be a long term one, and

people of all nationalities in Tibet feel the warmth of the motherland and the superiority of the socialist system.<sup>29</sup>

The official Chinese position on Tibet holds that traditional Tibetan government was autocratic and despotic and that the Tibetan "serfs" were freed from the tyranny of their leaders by their Chinese "big brothers," who brought with them a new era of peace and prosperity. Criticisms of its policies in Tibet are politically motivated, and even Asian governments who denounce Chinese human rights practices in Tibet are really tools of Western imperialists. According to a recent editorial carried on Xizang Ribao:

The root causes of the problem are as follows: "The Western hostile forces do not want to see a powerful and prosperous China and have been trying in all ways to contain and sabotage China's development, striving to create a split within our country. The Tibet issue is one of the cards they use to sabotage our development. The separatist elements in and outside this region are precisely a force used by Western hostile forces to sabotage the great cause of development."<sup>30</sup>

In recent years, one of the most prominent critics of China's policies in Tibet has been the Dalai Lama, characterized by Chinese authorities as a "splittist" intent on separating Tibet from the "motherland" of China. He is regularly and forcefully denounced by Chinese authorities as a despotic ruler who presided over the "cruellest serfdom" in the history of the world, a monster who delighted in torture and exploitation of the Tibetan people. Such views are taught in Tibetan schools and regularly proclaimed on official radio and television programs. Remarkably, however, after almost four decades of vigorous propaganda, by all accounts the loyalty of most Tibetans to the Dalai Lama and the system he represents remains strong, and Chinese authorities often express surprise that they are still widely resented by the Tibetan people despite bringing modern industry, hospitals, roads, and schools to the region.<sup>31</sup>

### *Democracy, Human Rights, and Changing Political Realities in Tibet*

Prior the Chinese invasion, most of the power in Tibet lay in the hands of Buddhist teachers called lamas (*bla ma*). Some were either born into the position as *tulkus* (*sprul sku*, "emanation bodies"), believed to be physical manifestations of buddhas or reincarnations of eminent teachers. Others distinguished themselves through their scholarship or meditative attainments. The spiritual and temporal leader of Tibet was the Dalai Lama, a *tulku* who



according to tradition was an incarnation of the Buddha Avalokiteśvara, the embodiment of compassion. Many principalities in Tibet also were governed by *tulkus*, and they and other lamas constituted the power elite in most of Tibet.

According to Tibetan tradition, Avalokiteśvara had taken a special interest in Tibet and personally oversaw the dissemination of Buddhism into the country. Through his human incarnations like the Dalai Lama, he provided benevolent guidance superior to any human leadership. As a buddha, he was fully omniscient and compassionate, completely above partisanship and pettiness of any kind, and impartial in his concern for the people of the country. This was also held to be true of the thousands of other *tulkus* in Tibet and neighboring regions, whose wisdom was thought to surpass that of ordinary mortals. As Cassinelli and Ekvall note, great *tulkus* like the Throne Holder (*khri chen*) of Sa skya were widely viewed as living beings who had taken rebirth in Tibet in order to benefit others, and the populace looked to them for guidance in both religious and temporal matters. They had the power to aid ordinary mortals in the long progress toward liberation; they were worshipped, their advice was sought, and offerings were presented to them.<sup>32</sup>

From the time of the "Religious Kings" (*chos rgyal*),<sup>33</sup> most Tibetans saw religious practices and figures as being intimately connected with the governance of the country, and because of their exalted status the *tulkus* enjoyed widespread popular support and respect. The common people of Tibet assumed that these enlightened beings were better suited to making decisions than they were, and it was rare for ordinary Tibetans to openly question the decisions and policies of a great *tulku* like the Dalai Lama.<sup>34</sup>

Thus in theory the *tulkus* enjoyed great power, although in practice the power of the government was quite limited. The locus of power was Lhasa, the capital city, and in the central agricultural provinces of Dbu and Ctsang the government was in charge of political affairs. In the outlying provinces, however, its power was greatly diminished, and many of the remote provinces at most paid lip service to the hegemony of the central government.<sup>35</sup>

By all accounts, the Tibetan government had little interest in controlling the lives of the Tibetan people, and its primary concern was propagating Buddhism. Tibet had no real army — only small, poorly trained and poorly armed local militias — and no effective police force. In addition, the government was a cumbersome bureaucracy composed of agencies with overlapping responsibilities and limited power.<sup>36</sup> All temporal authority theoretically rested in the hands of the Dalai Lama, but in practice his power was limited by the relative weakness of the central government and by a general unwillingness on the part of Tibet's rulers to exercise much control

over the population. The restrictions on the power of the Throne Holder of Sa skya described by Cassinelli and Ekvall also pertain to the situation of the Dalai Lama and the central government: "The power of the Khri Chen was subject to a number of severe limitations. He was limited by the primitive state of Tibetan technology and by the absence of sophisticated forms of human organization. A Khri Chen could not, for example, mobilize his people for a 'great leap forward', nor could he maintain a constant check on their activities and attitudes."<sup>37</sup>

The Dalai Lama was similarly limited in power, and his actual control over the people was also constricted by tradition and religious ideas. Because of the long-standing policy of general non-intervention in the lives of the populace, Tibetans would not accept a marked departure from previous practice. In addition, the religious duties of the Dalai Lama and other major *tulkus* were very time-consuming, and they were expected to spend long periods in meditation. The Dalai Lama was as much a religious as a political figure, and he was expected to adhere to long-established customs regarding the conduct and exercise of power by Dalai Lamas. As a *tulku*, his primary function was to aid sentient beings to attain liberation and to give them advice on practical affairs. As the embodiment of compassion, any tendencies toward despotism would be viewed as being out of character, and Dalai Lamas were trained in proper conduct from a very young age.<sup>38</sup> He was expected to make decisions that benefited the people and that promoted harmony and social stability. It was generally assumed that a peaceful and stable society was most conducive to the practice of Buddhism, and so the powerful and conservative monastic institutions tended to effectively veto any attempts at radical change.<sup>39</sup> According to the present Dalai Lama, Tibetan civilization is very much a product of the socially transformative power of Buddhism:

After a few centuries, Tibetans had become so fond of the Buddha Dharma that they made great efforts to make it the center of their lives, even without the support of a royal dynasty. Finally, after one thousand years, Tibetans succeeded in expressing Buddhist ideals in the national government itself, established as the integration of the sacred and the secular by the Fifth Dalai Lama. We believed that the Buddha's teaching was the indispensable key to achieving national as well as individual happiness. So our whole social system — our culture, arts and life style was centered on people's spiritual development according to the Dharma.<sup>40</sup>

The pervasiveness of Buddhist ideology in Tibet also served as an effective counteragent to arbitrary exercise of power. According to Tibetan Buddhism, worldly existence is unreal, and worldly power is a trap in which the unwary enmesh themselves. All of existence is viewed as cyclical, and even the most powerful and wealthy beings inevitably lose what they have gained, and then must pay for their misdeeds in future lives. Moreover, Buddhist texts stress the meaninglessness of pursuing worldly goals, and Tibetan children grow up with tales of the folly of harming others in order to achieve one's own ends. Thus, although in theory the Dalai Lama had absolute authority, in fact his power was constrained by the geographical conditions in Tibet, the small size and military weakness of the government, by his training, and by ideology.

Because the major powers in Tibet were Buddhist monks whose primary concern was the propagation of Buddhism, the people were by and large left alone if they did not interfere with this goal, although they were also expected to contribute to Buddhist monasteries and practitioners. In addition, many regions in Tibet enjoyed virtual autonomy, and as Geoffrey Samuel has observed, "the Dalai Lama's regime at Lhasa was only one, if in recent years the largest, of a variety of state formations within the Tibetan region."<sup>41</sup>

X This situation changed completely with the Chinese invasion. After annexing Tibet, China began a program of transforming it into a socialist province. As a result of its program of subduing the population, an estimated 1.2 million people were killed, either by Chinese troops or by enforced starvation. Millions more were forcibly put into communes, and the property of the aristocracy was taken away and administered by the central government. In an attempt to weaken the people's attachment to religion, Chinese troops and cadres destroyed thousands of monasteries and religious structures and publicly humiliated religious figures.<sup>42</sup> In recent years, the government has continued to use torture and lengthy prison sentences to subdue attempts to agitate for Tibetan independence, or even calls for respect for internationally recognized standards of human rights. The cornerstone of the current Chinese policy to subdue Tibet is a massive population transfer, which has reduced the Tibetan people to being a minority in their own country.<sup>43</sup> In addition, the government is systematically destroying old Tibetan buildings and neighborhoods and replacing them with Chinese settlers and large concrete structures.

(In 1959, after Chinese troops captured Lhasa, the Dalai Lama fled into exile in India, where he set up a new government in the former British hill station of Dharamsala. The Tibetan government in exile was initially modeled on the central government of Lhasa, with the Dalai Lama as the head of state and a National Assembly (*Kashag*) whose role was primarily advisory.) In

recent years, however, the Tibetan exile government has undergone drastic changes. In 1962 the Dalai Lama declared that the old autocratic system had been an impediment to Tibet's development and contributed to its military weakness. He initiated the drafting of a new constitution, which was to be a blueprint for independent Tibet when and if the Tibetan people gain effective control over their internal affairs. This draft constitution stressed democratic principles and declared that in the future Tibet the people would democratically elect their leaders, that Tibet would become completely demilitarized and be designated as a "zone of peace," and that it would renounce all forms of military aggression.<sup>44</sup> As the Dalai Lama envisions the future of Tibet, Tibet will be a neutral, demilitarised sanctuary where weapons are forbidden and the people live in harmony with nature: "I have called this a Zone of Ahimsa or non-violence. This is not merely a dream — it is precisely the way Tibetans tried to live for over a thousand years before our country was tragically invaded. In Tibet, wildlife was protected in accordance with Buddhist principles. We enacted decrees to protect the environment, but it was mainly protected by the beliefs which were instilled in us as children."<sup>45</sup>

Although the new constitution enshrined democratic principles and contained provisions that accord with contemporary international rights standards, the Tibetan people have experienced conceptual difficulties in the practical implementation of the constitution. After centuries of rule by lamas believed to be manifestations of buddhas, the proposal to grant effective power to merely human representatives struck many Tibetans as a misguided idea, since ordinary beings could be expected to pursue petty goals, engage in political maneuvering for themselves and their associates, and sometimes to put their own welfare ahead of that of the people. Many Tibetans were especially reluctant to endorse a provision which stipulated that in independent Tibet the Dalai Lama would be simply a religious leader, would not be able to hold public office, and could be impeached by a two-thirds vote of the *Kashag*. Many protested this provision, which proposed to treat an incarnation of Avalokitesvara as an ordinary mortal. Interestingly, the Dalai Lama himself insisted on this provision, recognizing that in a modern democracy no one should be above the law. The people's resistance to his initiative indicates how foreign democratic principles remain to many Tibetans.<sup>46</sup>

In order to counteract this lack of understanding, Tibetan exile schools now require that students take classes on democratic theory and practice, in the hope that the next generation of Tibetans will understand and embrace democracy. The Tibetan exile government also sponsors an annual holiday called "Democracy Day," in which schoolchildren are released from classes to participate in a celebration of the democratic principles and respect

for international human rights standards enshrined in the draft constitution.<sup>47</sup>

While in Dharamsala in 1988, I witnessed this holiday which was attended by hundreds of schoolchildren who gathered in an open courtyard separating the government's offices and the Library of Tibetan Works and Archives. It was a mixture of historical speeches about the former government of Tibet, the emerging democracy being built in exile, and attempts to link the emergence of democracy with traditional Buddhist principles. There were speeches by religious and political leaders extolling the benefits of democracy and respect for human rights conventions, talks from people who had recently escaped from occupied Tibet about the current conditions there, and attempts to educate those present in how to effectively participate in a democracy. The most moving moment came at the end, when the children, monks, nuns, and lay people joined together in a song combining democracy, human rights concerns, and Buddhist principles. It extolled the right of all peoples to determine their own destiny and be free from coercion, the importance of developing respect for all life and an understanding of the interconnectedness of all things, and a final prayer for the Chinese soldiers who through their negative actions are bringing harm to themselves.

Despite ongoing efforts to educate the populace, however, many Tibetans — particularly those who fled Tibet in the aftermath of the Chinese invasion — still long for the old system, but the Dalai Lama has categorically stated on a number of occasions that the move toward democracy is irrevocable. In a recent open letter to Deng Xiaoping, for example, he stated that:

Since my youth, I was aware of the many faults of the existing system in Tibet and wanted to improve it. At that time I started the process of reform in Tibet. Soon after our flight to India we introduced democracy in our exiled community, step by step. I repeatedly urged my people to follow this path. As a result, our exiled community now implements a system in full accordance with universal democratic principles. It is impossible for Tibet to ever revert to the old system of government. Whether my efforts for the Tibetan cause are as charged by the Chinese for my personal position and benefit or not is clear from my repeated statements that in a future Tibet, I will not assume any governmental responsibility or hold any political position. Furthermore, this is reflected clearly in the Charter which governs the Tibetan Administration in Exile and in the

"Guidelines for Future Tibet's Polity and the Basic Features of Its Constitution."<sup>48</sup>

Despite these efforts, actual implementation of democratic principles has proceeded slowly. Although the *Kashag* was elected democratically following the ratification of the draft constitution, its members still clung to pre-diaspora traditions and in practice deferred to the Dalai Lama on important decisions. After decades of unsuccessful attempts to encourage the *Kashag* to accept additional responsibilities and become a truly representative body, on May 1990 the Dalai Lama officially disbanded the old *Kashag* and opened its membership to general, open elections. In his final autocratic decision, he told the members of the *Kashag*:

Regarding the Assembly of [Tibetan] People's Deputies, so far I had the ultimate authority of selecting its members. Although elected by the people, the final selections were done by me. This practice has to change now. From now on, the people's decision will be final. I feel that the Dalai Lama should have no role here. The future Assembly will be entrusted with the power of appointing the *kalons*. The present Assembly, which has come up through the old procedure, stands dissolved from today.<sup>49</sup>

The present *Kashag* consists of 46 members, most of whom are elected by the Tibetan exile community in India, with the others representing Tibetans in Europe and North America. The Dalai Lama has spearheaded the movement toward adoption of democratic principles and practices, but he recognizes that in order for his people to fully embrace these ideas, they must be translated into language derived from their own culture. In public talks and in a number of essays, he has expressed a belief that respect for human rights and democracy go together, and that it is possible to arrive at the same standards set forth in the Universal Declaration and similar documents by way of Buddhist thought and practice. He rejects the PRC claim that human rights and democracy are foreign to Asian culture and contends that the pan-Asian tradition of Buddhism provides ample support for all the important stipulations found in the Universal Declaration. In reference to the Chinese claims that Asians have no concept of human rights, he stated:

Respect for fundamental human rights is as important to the people of Africa and Asia as it is to those in Europe or the Americas. All human beings, whatever their cultural or historical background, suffer when they are intimidated,

imprisoned or tortured. We must, therefore, insist on a global consensus not only on the need to respect human rights worldwide, but also on the definition of these rights. Some governments have contended that the standards of human rights laid down in the Universal Declaration of Human Rights are those advocated by the West and cannot be applied to Asia and other parts of the Third World because of differences in culture and differences in social and economic development. I do not share this view, and I am convinced that the majority of Asian people do not support this view either, for it is the inherent nature of all human beings to yearn for freedom, equality and dignity, and they have an equal right to achieve that. The rich diversity of cultures and religions should help to strengthen the fundamental human rights in all communities. Underlying this diversity are fundamental human principles that bind us all as members of the same human family. Diversity and traditions can never justify violations of human rights. Thus discrimination of persons from a different race, of women, and of weaker sections of the society may be traditional in some regions, but if they are inconsistent with universally recognized human rights, these forms of behavior should change.<sup>50</sup>

In his public statements and writings on political philosophy, the Dalai Lama emphasizes the Buddhist idea of interdependence as a basis for a global ethic of caring and respect for human rights. According to Buddhist philosophy, all life is bound together through relations of mutual causality, and all actions have ripple effects that reach beyond the individuals who commit them. In addition, the Buddhist understanding of karma holds that every volitional action inevitably rebounds on the person who committed it, and so everyone experiences effects directly concordant with the initial action. For these reasons, it is prudent to treat others as one would want to be treated oneself and to avoid engaging in actions that bring suffering to others. Hatred, anger, and greed simply produce uneasiness and always more dissatisfaction. Even nations need to control and minimize anger and hatred; it is the only way they can avoid suffering and bring their people happiness. Goodness is finally the most practical, the most realistic solution.<sup>51</sup> According to the Dalai Lama, all human beings are linked by a common humanity, and the actions of any person or nation affect the entire human family. In addition, he contends that all people instinctively understand suffering and seek to avoid it for themselves. We all equally desire happiness and seek to

avoid suffering, but when we do so at the expense of others our actions inevitably rebound on us. Moreover, if we take a global view, we will realize that everyone equally wishes to avoid suffering and to find happiness, and no one person or group has a greater claim to these than any other. As far as the feeling of wanting happiness and not wanting suffering, the two sides are equal, absolutely the same. However, no matter how important the selfishly motivated person is, he or she is only one single person. No matter how poor the others are, they are limitless, infinite. The unbiased person naturally can see that the many are more important than the one.<sup>52</sup>

A rational person should conclude that we should all contribute to the common good, and in international politics this includes respect for human rights and the right to self-determination for all peoples.

### *Conclusion*

The Dalai Lama claims that "ancient Buddhist philosophy recognizes the inherent interdependence of all life on the planet and teaches us that our actions resonate far beyond our immediate surroundings."<sup>53</sup> His social philosophy draws on a variety of Buddhist sources to demonstrate how current human rights covenants accord with Buddhist ideals and practices. This is important for the present analysis, because Buddhism is one of the two most pervasive pan-Asian philosophies, along with Confucianism. As we saw earlier, many of the ideals of classical Confucianism and pre-Communist political practices were concordant with contemporary human rights thinking. There were, of course, despotic regimes throughout Chinese history, but the practices of these regimes violated Confucian norms and pre-Confucian ideals regarding the proper conduct of rulers. It is also true, as the PRC government claims, that classical Chinese thought tended to value communalism over individualism, but there is no reason to suppose that this emphasis necessarily leads to a diminished capacity to embrace the human rights principles outlined in the Universal Declaration. ✓✓

If the Dalai Lama is correct in his assertions that Buddhism is also concordant with human rights thinking and that Buddhist notions of karma and interdependence inevitably lead to conclusions congruent with those found in the Universal Declaration and similar documents, this would indicate that although the history of human rights thought is strongly linked with Western thinkers and nations it is also compatible with at least two important Asian traditions that have profoundly influenced Asian thought and society. This undermines the PRC contention that human rights are a Western creation that is inapplicable in an Asian context and that is rejected by Asian peoples.



But the fact remains that current Chinese practice and social theory are at odds with both the human rights movement and the current global trend toward democracy. The PRC government keeps all real power in its hands, and elections are sham affairs in which unopposed party candidates win by overwhelming margins. Dissidents are regularly tortured, and minority populations like the Tibetans are subjected to brutal punishment for even minor offenses as part of a campaign to suppress any movement toward self-determination.

The PRC government's policies and practices are concordant with its Marxist ideology, which emphasizes social stability and condones abrogation of rights — even those enshrined in the constitutions — for the purpose of maintaining social order. The constitutions themselves are not inviolable, but rather change over time. They are subject to reinterpretation in accordance with current Party goals and policies.

These patterns are also common to other Marxist states, but this is clearly not attributable to Asian ideals and traditions. Marxism is an importation from Europe, and although the PRC government claims to be creating "socialism with Chinese characteristics," the governments it most closely resembles are other Marxist-Leninist states in Eastern Europe. The current PRC leadership has officially repudiated both Confucianism and Buddhism, claiming that they are remnants of a "feudal" past. But the current Marxist-Leninist state is a new phenomenon in Asia, whose ideology represents a major break with Asian tradition. It accords with neither Confucian nor Buddhist thought, and is in fact an importation from Europe. In terms of the size of the government and the military and their pervasive control of the lives of the Chinese people — and in the extent and brutality of oppression they use to maintain their hold on power — they closely resemble the totalitarian and authoritarian regimes of Eastern European communist states, but have little in common with Asian traditions or practices.

#### NOTES

1. See, for instance, Philip Baker, "China: Human Rights and the Law," *The Pacific Review* 6, 3 (1993): 239-240; and Asia Watch, *Merciless Repression: Human Rights in Tibet* (New York: Asia Watch 1990).

2. In February of 1993, Asia Watch released a 664 page report on violations of the rights of minority people in Tibet, entitled *Detained in China and Tibet*, which claimed that "political repression is increasing and it extends to virtually every province in China and throughout the Tibetan plateau" (Reuter, February 20, 1994). On May 13, 1994, Robin Moore, Hong Kong director of Asia Watch, stated that China has enacted provisions giving police

greater powers to detain and restrict the activities of ethnic minorities, as well as democracy and labor groups (UPI, May 13; reported in the *Washington Post*).

3. *Capital Times*, Weekender, Nov. 20-21, 1994.
4. *U.S. News and World Report*, June 6, 1994.
5. Reported in Reuter, February 22, 1994.
6. See R. Randle Edwards, "Preface," in R. Randle Edwards (et al), *Human Rights in Contemporary China* (New York: Columbia University Press, 1986): 1.
7. Universal Declaration of Human Rights, Article 29.2.
8. William O. Douglas, "The Right to Be Left Alone," quoted in Milton Meltzer, *The Bill of Rights* (New York: Thomas Y. Crowell, 1990): 154.
9. Benjamin Schwartz, *The World of Thought in Ancient China* (Cambridge: Harvard University Press, 1985): 153.
10. See, for example, *Aṅguttara-nikāya* V.113.
11. See John F. Copper, "Defining Human Rights in the People's Republic of China," in Yuan-li Wu (et al), *Human Rights in the People's Republic of China* (Boulder, CO: Westview Press 1988): 9.
12. Derk Bodde, *China's Cultural Tradition: What and Whither?* (New York: Holt, Rinehart and Winston 1966): 66.
13. Benjamin Schwartz, *The World of Thought in Ancient China*: 76-77.
14. According to Margaret K. Woo, informal procedures are still the most common forum for redressing grievances; see "Courts, Justice, and Human Rights," in William A. Joseph (ed.), *China Briefing 1992* (Boulder, CO: Westview Press 1993): 91-92.
15. Louis Henkin, "The Human Rights Idea in China": 27. Specific abuses are catalogued in the 42-page April 21, 1994 report of the International Campaign for Tibet, and Asia Watch, *Evading Scrutiny: Violations of Human Rights after the Closing of Tibet* (New York: Asia Watch, July 1988).
16. See Philip Baker, "China: Human Rights and the Law": 239.
17. R. Randle Edwards, "Civil and Social Rights: Theory and Practice in Chinese Law Today," in *Human Rights in Contemporary China*: 44-70; and Richard W. Wilson, "Rights in the People's Republic of China," in James C. Hsiung (ed.), *Human Rights in East Asia: A Cultural Perspective* (New York: Paragon House 1985): 123-125.
18. An article in *Red Flag* summarized this idea in 1983: "The destiny of the motherland and the destiny of an individual are as inseparable as flesh and blood. One loses one's family if one's country is destroyed. If the motherland is not prosperous and developed, individuals cannot find outlets for their abilities" (*Red Flag* 4, February 16, 1983).
19. Address to in the Fifth Session of the Fifth National People's Congress, November 26, 1982; reported in *Fazhi bao*, December 10, 1982: 1.

20. See R. Randle Edwards, "Civil and Social Rights:" 51-2; Shen Baoxiang, Wang Chengquan, and Li Zenrui, "On the Question of Human Rights in the International Realm," *Beijing Review* 25, 30 (1982): 13-17; and John F. Copper, "Defining Human Rights in the People's Republic of China": 10-11.

21. See Amnesty International, *China — Torture and Ill-Treatment of Prisoners* (London: Amnesty International 1987; Asia Watch, "Torture in China" (April 1990); Asia Watch, "Economic Reform, Political Repression: Arrests of Dissidents in China since Mid-1992" (2 March 1993); Steven Mosher, "Chinese Prison Labor," *Society* 29 (1991): 49-59; and Philip Baker, "China: Human Rights and the Law," *The Pacific Review* 6, 3 (1993): 241.

22. Asia Watch, "Merciless Repression": 3.

23. U.N. Committee Against Torture, Fourth Session, Geneva, 27 April, 1990; quoted in Ann Kent, "Waiting for Rights: China's Human Rights and China's Constitutions, 1949-1989," *Human Rights Quarterly* 13: 192.

24. Lisa B. Gregory, "Examining the Economic Component of China's One-Child Family Policy Under International Law: Your Money or Your Life," *Journal of Chinese Law* 6 (1957): 62.

25. The parliamentarians cited the report of the International Commission of Jurists had been a fully independent state prior to the Chinese invasion of 1951.

26. Reported in *Tibetan Bulletin*, March, 1994. Countries represented included Costa Rica, the Republic of Korea, Argentina, Australia, the Republic of Botswana, Germany, Kenya, the Republic of Cyprus, Hong Kong, Taiwan, Iceland, Ireland, Japan, Malawi, the Netherlands, Namibia, United Arab Emirates, Switzerland, Great Britain, Sweden, U.S.A., Philippines, Singapore, and Brazil.

27. *World Tibet News*, August 27, 1994; report of Jiaozi, March 3, 1994.

28. The official Chinese position is that the old Tibetan government was corrupt and despotic, and that, Tibet has, since the 13th century, always been an inseparable part of China, and is today one of the five National Autonomous Regions in China. Only China and the Tibetans living on the Chinese land know best both the past and the present of Tibet. After the founding of the People's Republic of China, especially after the democratic reform which took place in 1959 in Tibet, the long standing serfdom, a system even darker than the middle Ages in Europe, was abolished. This was an action of great importance aimed at protecting human rights and at promoting social progress in Tibet. Since then, Tibet has entered a completely new period of development. The Tibetans fully enjoy democracy, freedom and human rights as stipulated in the State Constitution, the Law on National Regional Autonomy and other relevant laws" (Jiaozi, March 3, 1994).

This passage, however, contains a serious lapse of logic: if Tibet has been an inalienable part of China, it would be difficult to explain how

Tibetans could have run their own affairs and created the sort of autonomous order described above. Moreover, the article goes on to paint a glowing picture of the present economic and political situation in Tibet, claiming that Tibetans today enjoy unlimited economic opportunities and freedom, and that they eagerly embrace the policies of the Chinese leadership, which contradicts the fact that Tibetans by the thousands escape the country every year and that even Tibetan cadres often send their children to school in India so that they may learn about their culture.

29. Xizang Ribao, August 6, 1994; reported by the British Broadcasting Corporation, August 11, 1994.

30. Xizang Ribao, December 8, 1993.

31. An example was the response of Tibetans to fact-finding missions sent by the Dalai Lama during the 1970s. These are described in *In Exile from the Land of Snows*: 303ff.

32. C.W. Cassinelli and Robert B. Ekvall, *A Tibetan Principality: The Political System of Sa sKya* (Ithaca, NY: Cornell University Press 1969): 187. This idea is also expressed by Hugh Richardson, a British official who was stationed in Tibet prior to the Chinese invasion. According to Richardson, in the minds of Tibetans, the Dalai Lama, being deemed the reincarnation of an aspect of the Buddha "has an aura of divinity; but the awe and religious devotion in which he is held are given warmth by the complete loyalty and affection of his people;" see *Tibet and Its History* (Boston: Shambhala 1984): 19-20.

33. The first of the Religious Kings was Srong brtsan sgam po (ca. 618-650), believed to be responsible for introducing Tibetans to Buddhism. He was succeeded by Khri song lde brtsan (ca. 740-798) and Ral pa can (799-815). See John Powers, *Introduction to Tibetan Buddhism* (Ithaca, NY: Snow Lion 1994): 126ff.

34. As Ajit Bhattacharjea describes the pre-invasion Tibetan situation, "The entire set-up was dominated by the Dalai Lama, not because his people were afraid of him, but because of their spiritual faith in his person and because he had guided their destinies with care and dignity. He made all major appointments: all significant decisions were made or cleared by him" (*The Pioneer*, April 30, 1994).

35. Geoffrey Samuel, *Civilized Shamans: Buddhism in Tibetan Societies* (Washington: Smithsonian Institution Press 1993): 4-106.

36. For a description of the various bodies composing the Tibetan administration, see Hugh Richardson, *Tibet and Its History*: 16-27.

37. Cassinelli and Ekvall: 188.

38. According to Hugh Richardson, A Dalai Lama is, in theory, absolute; but in practice certain checks have ensured that he shall conform to the ancient customs of the country. In the first place, although he is the apex and the glory of the religious system, it is to the system that he owes his position. A

Dalai Lama is brought up exclusively by learned and influential monks and Lamas, and the weight of monastic opinion was so powerful that no Dalai Lama would risk alienating it too deeply and driving it to finding the means, which it undoubtedly could have found, of stultifying his designs (*Tibet and Its History*: 20).

39. A good example of the actual limitations on the Dalai Lama's power can be seen in the results of the program by the thirteenth Dalai Lama to modernize Tibet's educational system and military. Despite his theoretically absolute power, his reform measures were effectively scuttled by the monastic institutions in the vicinity of Lhasa. See Melvyn Goldstein, *A History of Modern Tibet, 1913-1951* (Berkeley: University of California Press 1989): 89ff.

40. Tenzin Gyatso, Dalai Lama XIV, *Snow Lion Newsletter*, Spring, 1993.

41. *Civilized Shamans*: 39.

42. See Christoph von Furer-Haimendorf, *The Renaissance of Tibetan Civilization* (Oracle, AZ: Synergetic Press 1990): 31-34 and David Patt, *A Strange Liberation: Tibetan Lives in Chinese Hands* (Ithaca, NY: Snow Lion, 1992): 17-130.

43. The Chinese government denies that a population transfer is in fact taking place, but human rights organizations such as Amnesty International and Asia Watch estimate that Chinese in Tibet today outnumber ethnic Tibetans by several million. This parallels the population transfer that has already taken place in Manchuria, where native Manchurians now number two million, while Han Chinese are estimated to number twenty-five million, in Eastern Turkestan, where the native population is estimated at 7.5 million to 15 million Han Chinese. According to the PRC's Central Institute of Nationalities, the government's official policy is that eventually "minorities will amalgamate and disappear." See John Powers, *Introduction to Tibetan Buddhism*: 184-185.

Despite overwhelming evidence to the contrary, Chinese authorities continue to proclaim that only a few thousand Chinese with specialized backgrounds have come to Tibet, and as recently as May 18 an editorial in *Xinhua* asserted that "there is no such thing as population transfer in Tibet" (reported in UPI, May 18, 1994).

44. At the European Parliament in Strasbourg on June 15, 1988, the Dalai Lama proposed a five-point peace plan as a basis for further negotiations with the PRC government on the future of Tibet. The five points were:

1. Transformation of the whole of Tibet into a zone of peace.
2. Abandonment of China's population transfer policy which threatens the very existence of the Tibetans as a people;
3. Respect for the Tibetan people's fundamental human rights and democratic freedoms;
4. Restoration and protection of Tibet's natural environment;

5. Commencement of earnest negotiations on the future status and relations between the Tibetan and the Chinese peoples.

Although these proposals have met with approval from other governments and political leaders, the PRC government has to date not made any concrete response to the proposal, and has simply stated that it represents "an attempt to split the motherland" and interfere with China's internal affairs.

45. H.H. the Dalai Lama, *Tibetan Bulletin*, May-June, 1994.

46. See H.H. the Dalai Lama, *Freedom in Exile* (New York: Harper Collins 1990): 169-170.

47. In order to promote awareness of human rights among Tibetans, the exile government recently declared December 10 an annual Tibetan holiday commemorating International Human Rights Day, which is also the day on which the Dalai Lama received the Nobel Peace Prize in 1989 (from WTN News, December 9, 1994).

48. H.H. the Dalai Lama, letter to Deng Xiaoping dated March 23, 1981; reported in *Tibetan Bulletin*, September-October, 1993.

49. Statement by H.H. the Dalai Lama, May, 1990.

50. H.H. the Dalai Lama, speech delivered to New York Lawyers Alliance for World Security and the Council on Foreign Relations, New York City, April 27, 1994.

51. H.H. the Dalai Lama, *Snow Lion Catalogue*, Spring, 1993.

52. H.H. the Dalai Lama, "Religious Values and Human Society," *Kindness, Clarity, and Insight* (Ithaca, NY: Snow Lion 1984): 11-12.

53. Interview in *The Montreal Gazette*, Friday, November 19, 1993.

## BUDDHIST ETHICS AND BUSINESS STRATEGY MAKING

**David Bubna-Litic**

We are in an era in which "business" organizations pervade almost every aspect of our lives. The ubiquity of modern business activities in providing products, services and information for almost everything we do has impacted on the deepest level of our thinking. Decisions made by business executives affect almost every aspect of contemporary living. It would be very difficult to set up an autonomous community in the West which did not have some contact with the business community, as cash and products would be required for maintenance and taxes. The rise of the business organization is not the result of a striving for religious union, but rather an organic evolution of a mechanism for distributing the wealth of society. Commercial activities have undergone tremendous changes reflecting technological advances which began in the seventeenth century. These advances which began in Europe now affect all nations in the world. The power of the business community has increased exponentially. Even so business organizations have a political stance on ethical and human rights issues. The role of business has been dominated by the ideology of economic rationalism which depicts firms as neutral mechanisms for wealth generation.

Mahāyāna Buddhism challenges many of the fundamental assumptions of economic rationalism. The Buddhist ideal for compassionate action in the world based on an experiential understanding of the Dharma set a radically different agenda. The idea of work as a means to an end reflects a base alienation from realized action. When Yun Men's instructs us through his famous *kōan* statement "Every day is a good day!"<sup>1</sup> he is not suggesting this is contingent on material accumulation or success at work. Rather, he is stating the possibilities of Buddhist practice. Joanna Macy (1991) understands that this involves "waking up" to a new vision of human potential based on an understanding of interdependence and oneness. The complicity of modern business organizations in human rights abuses runs counter to this perspective.

### *Zen Buddhist Ethics*

Buddhism, as it developed through Mahāyāna schools of Ch'an and Zen, has evolved a particular interpretation of Buddhist ethics characterized by a

concern for all beings, not just humans. From a Mahāyāna perspective, human rights are best seen in the context of this compassion for all beings. Beings are phenomenal manifestations of the Dharma that not only include animals and plants, but also material objects such as clouds, as well as ideas, feelings and dreams.<sup>2</sup> This is not to assume that there is no hierarchy in nature, but rather an unfathomable and complex set of interrelationships. These relationships interpenetrate both at a spiritual level and at the level of the psyche because images, dreams and archetypal symbols affect how we behave. The power and connection of nature to human images is evident in polytheistic religions in which many gods are embodiments of natural forces. Jungian and archetypal psychology have explored the ways in which these images affect and can transform the psyche and behaviour of people. Thich Nhat Hanh has coined the term "inter-being" to describe his experience of this intimacy of all things. Understanding human rights from a Mahāyāna perspective requires a deep appreciation of the oneness of all beings.

Human rights have historically been conceived of as legal rights, but as Nino (1991:10) points out "when reference to human rights has radical importance in evaluating laws, institutions, measures, or actions, these rights are not identified with norms of positive law, indeed such legal rights are created as a result of the recognition of rights which are logically independent of the legal system." Human rights are thus pragmatically driven from a set of moral principles. Buddhism like other religions has a highly developed set of moral principles. Although these principles have their roots in the entire thrust of the religion they are formally expressed in the "precepts" or general rules that govern the Sangha.<sup>3</sup> In Mahayana Buddhism these are derived from the rules for monastic life set out in the Vinaya, collated some 500 years after Śākyamuni Buddha's death.

Although the various strands in Mahāyāna Buddhism have different variations on the precepts, the "Three Vows of Refuge" are central to almost all:

I take refuge in the Buddha;  
 I take refuge in the Dharma;  
 I take refuge in the Sangha.

This simple set of vows is repeated in initiation ceremonies and in daily *sūtra* recitations. They are a signification of trust in the realization experience of the Buddha, the truth of the Dharma and the importance of harmony in relationships within the Sangha. They also simply set out the essential aspects of the Buddhist experience: the attainment of insight through practice, the expression of insight into the Dharma, and, in context of these, relationship to other beings. In Mahayana schools these are elaborated at length through



further monastic vows or precepts. Fundamentally, however, the emphasis on ethics in Mahayana schools has been an organic approach. As an understanding of the Dharma develops through practice, this insight naturally transforms the practitioner to an unaffected compassion beyond any mechanistic (religious) following of a set of rules of conduct (precepts).

Feminist critiques of Buddhist history, however, have highlighted how religious insight is interpreted by the teachers and scholars in the context of their time and experience. Codes of conduct were written by Dōgen Kigen Zenji and Bodhidharma. These were usually studied on a one to one basis with the *rōshi*, the teacher, without public discussion or commentary. Robert Aitken (1984) suggested that this public silence could be explained by fears of misunderstanding because insight needs to be interpreted and developed. A further reason could be that in the context of monastic life behaviour was highly ritualized and ethically "right conduct" was either implicit in almost every activity or otherwise self-evident.

Life in monasteries was also able to provide significant protection from the confusing seductions of secular society. It was such protection that Śākyamuni Buddha sought when, after his enlightenment, he chose to maintain his practice through teaching others in a relatively isolated community or Sangha. In such a small group, Buddhist values could take root against the prevalent values and beliefs of the time. Ultimately, it was Śākyamuni's alienation from these societal values that became the source of Śākyamuni's discontentment and eventually his search for enlightenment.

The genesis of Buddhist practice from small, relatively self-contained, monastic communities has had a powerful influence on the practice of Buddhism throughout its history. Separated from secular life these communities developed strict codes of conduct, with powerful sanctions that could be ultimately backed up by loss of membership. Most monasteries were hierarchical and authority was based on the Weberian traditional ideal, where the title of Abbotship was handed down from Abbot to a leading disciple.<sup>4</sup> A key challenge to contemporary Buddhists lies in preserving the essential elements of Buddhist practice whilst transplanting them into secular life.

To understand Buddhism as it was practiced in this context it must be recognized that monasteries are essentially organized communities. Implicit in organization and what separates it from just a random collection of people is the existence of some form of social contract. Social contracts include both the formal and informal codes of conduct that set out what behaviours are sanctioned and what are not. The formal social contract which characterized early Buddhist communities was generally derived from the Vinaya which, as stated above, was a set of rules attributed to the Buddha setting out the rights and obligations of members in a monastic community. These rules prescribed a very simple and restricted life with a collective aim of

understanding the Dharma. The social contract which characterizes a community, however goes beyond mere codification and can be found, informally, in the web of understandings and commitments that develop over time between the members of the community. These understandings and commitments and their symbolic manifestation in the architecture, art, literature and ritual of Buddhist monastic life incorporate, to a large degree, the technology of Buddhist practice and ultimately express the Dharma.

The intertwining of compassion and insight are the key to understanding Mahāyāna Buddhist practice. This relationship is expressed in the archetype of the Bodhisattva.<sup>5</sup> A Bodhisattva is a being who is an enlightened, compassionate guide to all beings, yet is still on the path of enlightenment. This paradox is important to the understanding of Mahāyāna practice. As Robert Aitken (1984) points out: "learning to accept the role of the Bodhisattva is the nature of Buddhist practice." One of the most popular archetypal Bodhisattvas is Kuan Yin, the Bodhisattva of compassion. Kuan Yin is the Chinese name for Avalokiteśvara: "The One Who Perceives the Sounds of the World". She/he represents the experience of *Prajñāpāramitā* (*Perfection of Wisdom*). In this state, according to the *Prajñāpāramitā Heart Sūtra*, "all five *skandhas* are empty,"<sup>6</sup> which "transforms anguish and distress". It is a state that is free of self-preoccupation which brings awareness of the suffering of other creatures. In this state we understand the interpenetration of things as Robert Aitken (1984) points out: "if you can see that all phenomena are transparent, ephemeral, and indeed altogether void, then the thrush will sing in your heart, and you can show compassion. . ."

Aitken (1984) discusses at length contemporary applications of the "Sixteen Bodhisattva Precepts" that are a set of vows that are studied and followed as part of Zen Buddhist practice. These sixteen precepts consist of the "Three Vows of Refuge" discussed above, the "Three Pure Precepts" and the "Ten Grave Precepts." The "Three Pure Precepts" are an adaptation from the *Dhammapada*:

Renounce all evil;  
Practice all good;  
Save the many beings.

The "Ten Grave Precepts" include: (1) Not Killing, (2) Not Stealing, (3) Not Misusing Sex, (4) Not Lying, (5) Not Giving or Taking Drugs, (6) Not Discussing the Faults of Others, (7) Not Praising Yourself While Abusing Others, (8) Not Sparing the Dharma Assets, (9) Not Indulging in Anger, and (10) Not Defaming the Three Treasures. Aitken (1984) stresses the importance of these precepts as a vehicle to make Buddhism a daily practice and the central work of our lives as opposed to a "hobby."

As the central role of monastic life declines, the issue of earning an income is becoming increasingly important to Buddhist practice. It is not surprising that contemporary lay students find work is a major aspect of their lives. As Buddhist practitioners seek work in the secular society they are brought, inevitably, into contact with the ubiquitous modern business corporation. Even should they seek to avoid them, as part of their practice Buddhists can not ignore the pervasive influence of business organizations on the world. Especially, the negative effects of many modern business activities on the societies in which they operate, not to mention the ecology of the world. Many business activities are deeply in conflict with Buddhist values.

Buddhist ethics apply to two distinct categories of strategic business decisions. Strategic business decisions are those which could significantly impact on the long-term survival of the business. Research into strategic decisions has tended to separate into two categories. The first category relates to decisions that specify what is decided, for example, should a business make cars, ice-cream or torture equipment. This category deals essentially with the "content" of decisions. The second category of research has investigated the "process" through which such decisions are made, essentially how such decisions are reached at an organizational level. Although, the distinction is useful, recent research has emphasized (not surprisingly) how the two categories are inter-linked, and that how one goes about making strategic decisions affects the type of decisions that are made. From an ethical perspective Buddhism has much to say on both because many business decisions clearly lack integrity and any sense of compassion. Furthermore, the process by which they are taken exacerbates the lack of concern for others and often contradicts or negates the personal values and ethical stance of the decision makers.

#### *The Content of Strategic Decisions*

The vast majority of research conducted on the content of strategic decisions has focused on the factors in the environment of an organization which impact on its economic performance. Performance has commonly been measured by traditional accounting-based measures of return such as profit, return on investment, growth, and market share. More recently economists, such as Michael Porter (1980, 1985), have advocated the concept of a sustainable competitive advantage which is perceived to be the causal basis of outstanding economic performance. Recently the *Strategic Management Journal* has run a series of articles which have advocated optimization of economic rent on the assets deployed in the firm as the key basis for economic performance

These economic views of the ultimate purpose of a firm have been questioned by Buddhist writers. According to Christopher Titmus (1995), "views which reduce economics to market values reveal our deranged thinking." Paul Hawken (1993) shows that "commerce [as it is currently practiced] and sustainability [are] antithetical by design." Thich Nhat Hanh (1994) reminds us that millions of people do not practice right livelihood because they are involved either directly or indirectly with the manufacture of arms. Christopher Titmus (1995) reveals that "the world's poorest billion inhabitants receive 1.4% of all global income while the world's richest billion receive 83%." The actions of commercial organizations around the world are constantly breaking Buddhist precepts described above and fail to nurture the Dharma of individuals or the natural world with compassion. Stephen Batchelor (1990) argues that, from a Buddhist perspective, traditional economics has, at its very core, dualistic assumptions about mind and nature. From a Buddhist perspective, to use the words of Torei Zenji, all things are ". . . sacred forms of the Tathagata's never-failing essence." Dualistic assumptions encourage egoism as opposed to altruism, individuality over community, humans over animals and hedonism over spirituality.

The accounting practices legally specified in commerce are based around a fundamental assumption of independence. Gain or profit can only occur in the context of an independent entity, otherwise it would be like selling things to yourself, since you pay for the profit you make, it is a zero sum game. From a Buddhist point of view, all things are manifestations of the Dharma, and this was the experience of the Buddha sitting under the Bodhi tree. Robert Aitken (1990) points out, however, "It was not until he arose and sought out his former disciples that he began to turn the Wheel of the Dharma." If everything is equal then there is also nothing. To actively engage in the world is to also appreciate the world of phenomena. This is the world of the *nirmanakaya* in which there is uniqueness and inequality and business. Buddhism places us in the paradoxical world of differences and oneness at the same time. The *Prajñāpāramitā Heart Sūtra* states there is ". . . no old age and death and also no ending of old age and death." There is loss and gain in nature and at the same time no loss and no gain. To engage in the world we cannot ignore profit. Accounting systems that do not treat firms as separate entities would be unviable. From a Buddhist perspective, however, our sense of profit and how it is obtained are in important ways different.

When there is inequality, as the defenders of the market system point out, there is trading and commerce. The idea of a market is ultimately an abstraction which downplays that most real markets are made up of transactions and relationships between people. Profit<sup>7</sup> in a market transaction is made by selling something (either a service or product) for more than its cost. The market price of a good or service is determined by a complex set of

factors. There are three that are usually considered as most important. The first is the degree of information and knowledge the buyers have about the market, that is if the buyers know the prices of other sellers. The second is the availability of alternative sellers, or the amount of competition in the market. The final one is the value that the buyer places on the product.

Buddhism is not fundamentally against the market as a mechanism for exchange (see Rahula, 1959). Rather its concern is about the unethical behavior that can occur in market relationships. Taking advantage of lack of market information for one's own advantage would contradict Buddhist ethics. Historically, markets in many countries have operated on assumptions that buyers beware. This is encouraged by the impersonal and distant relationship firms create to deal with the mass society in which they operate. Axelrod (1980) found that opportunistic behaviour is related to likelihood of further interaction. When we do business through telephone and the operator does not disclose their full name, as is the practice in the United States,<sup>8</sup> the intimacy of all things is affronted. Even if you were to meet the operator again it would be impossible to recognize them. Gary Synder (1995) sees this estrangement as a fundamental problem that not only applies to each other, but also to place.

From a Zen perspective we are not really there. Fundamentally, a market exchange is a cooperative relationship. It is when such a relationship is abused for "excessive" profit that problems arise. Some recent studies have suggested a new importance and value of relationship and trust in market relationships. Such theories are suggesting that more cooperative approaches may be more efficient economic mechanisms (see Bubna-Litic, 1995). Interestingly trust comes out of honesty and open communication which are Buddhist precepts.

Trust and relationship also allow for different kinds of economic relationships such as partnerships, networks, alliances and joint ventures. Other cooperative relationships in which sellers join with each other or suppliers or buyers and sellers work together are possible. An increasing number of firms are finding that collaborative strategies and joint ventures can unlock new resources. These are allowing for faster product development, better quality, and improved distribution (see Lorange and Roos, 1992). The conception that simple competition leads to economic efficiency has to be questioned.

The value that buyers place on products is another source of Buddhist concern. We are now in a symbolic economy. What people buy is less of a construction of manufacturing technology, than it is of marketing technology. We are being sold dreams and ego extensions for use as props in the drama of life. The power of modern media to twist our perception of reality is (strangely) a little publicized topic. Anyone with children will know

how difficult it is for them to separate reality from the fiction that appears on the television screen. The contemporary parent is confronted with questions such as: "Dad, are you as strong as Batman?" Behind these dreams is the manufacture of a false consciousness in which happiness and freedom from suffering are obtainable through the purchase of material goods. This false consciousness pervades an entire spectrum of film and television drama that portray others with lives that are free from suffering or at least will end happily ever after. This is not wrong in itself, yet in the context of such powerful media and with little contradiction, many lose sight of the truth. We need to look at the real world to be confronted with the first noble truth, that life is suffering. This suffering goes beyond the barriers of class or material wealth. Material wealth did not shield Śākyamuni Buddha nor his family from suffering nor, on a contemporary level, Liz Taylor from the pain and suffering of yet another failed marriage.

Yet the assumption that drives our current economic system is that the accumulation of wealth brings about cessation of suffering. This is a contradiction of the fourth noble truth — that freedom from suffering is cultivated by practicing the Eightfold Path of the Middle Way.

In defense of the market Paul Hawken (1993) notes that whilst markets are efficient at setting prices they are incapable of recognizing costs. Paul Hawken (1993: xii) argues that markets could operate beneficially to humankind "when they reflect real costs [to the environment]." Gary Snyder (1995:76) eloquently points out how we are part of a food web where beings live by eating other beings. "Our bodies — or the energy they represent — are thus continually being passed around." Yet human consumption has increased astronomically in the last two hundred years. Individual consumption in western countries is currently over 100 times what it was 200 years ago. This combined with the world increase in population means that humans have radically altered their position in this food web. We are consuming the rest!

The costs of modern commerce are not only environmental. Ever since the beginning of industrialization the human costs of the mechanization of work and the mass market economy have been the subject of many writers. Human rights abuses are more common in poor and developing countries. Brazil, for example, is a country in which there are huge differences between the rich and the poor. The country has to serve more than \$100 billion in loans per year. According to Russel (1994), \$50 billion per annum leaves the country as "flight capital" to various foreign bank accounts — more than enough to substantially reduce its debt problem. The elite both internally and externally in economically powerful countries exacerbate the problems of the weak in the name of profit maximization. One does not have to dig deep to find some variant of Malthusian economics, concerning

helping third world countries. When political barriers to economic activities develop, politically independent firms are known to interfere with the political system, financing supportive regimes regardless of their human rights records.

The purpose of our economic system to maximize the accumulation of wealth is enshrined in legislation. Company and corporate directors have a legal duty in most countries to maximize the wealth of their shareholders. In most OECD countries, as Kenneth Galbraith (1967) observed, even the major shareholders have very little direct role in the day-to-day operation of corporations. Rather it is professional management who, in the role of agents of the shareholders, make the strategic decisions of the firm. There has been considerable debate as to in whose interests professional managers actually make decisions.

Shareholders are often unaware of the full extent of the operations of the business and even when they are, few mechanisms exist to facilitate collective action. Institutions make investment decisions on behalf of their depositors, or insurance policy holders of which these investors have no awareness. When we shop around for the best interest rate on our savings we may be providing capital to armament factories, abattoirs, feedlot farms and companies which support governments notorious for human rights abuses. Contrary to the popular image of shareholders, as being a monolithic bloc of like-minded people all holding similar values regarding what they want managers to do with their funds, they are highly heterogeneous. The imperative of optimization of shareholders' wealth seems to be greatly abstracted from what the actual people who supply the money really want. A fascinating example of this was the outrage of ordinary Exxon shareholders when they found out about the causal role Exxon had played in the Exxon Valdez oil spill disaster.

There are situations where the control of an organization lies with only one or two shareholders, without them having even a majority shareholding.<sup>9</sup> The ability of such shareholders to dominate a large corporation places tremendous power in few hands. These people often do not articulate the ethical values of the people whose money they use. Little work, however, has been done to explore mechanisms for creating open communication and verification of what the shareholders really want. Without such mechanisms, corporate management, by attribution and stereotyping, assume that shareholders are purely economic animals. These economic assumptions could be well informed by better mechanisms for articulating shareholders' opinions.

The fundamental assumptions about the world held by executives and other key stakeholders mediate a wide range of strategic decisions (see Johnson, 1987). These assumptions about the environment in which the firm

operates and ways in which the firm can be organized ultimately guide the types of strategic decisions that are made. New research reflecting a shift to a sociological perspective highlights how managers, like other people, construct their view of the world. The implications of this are, as Weick (1977: 288) points out, "people invent organizations and their environments and these inventions reside in ideas that participants have superimposed on any stream of experience." This process of construction is not a random or frivolous act, but is the result of one's lifetime cultural experience including the dominant ideas and explanations of reality prevailing in any society at one time.

If organizations are driven by what executives and others understand as reality, then the consensus reality of this era has also largely defined established institutional arrangements, codes of behaviour (laws), norms and practices. The questioning of the consensus reality of managers in this era from a Buddhist perspective has become important for two reasons. Firstly because of the pervasiveness of commerce into so many aspects of life. Secondly, because the prevailing order includes a pattern of shared meanings and ideas, especially economic and political ideas which are becoming less and less specific to one nation. It is an era in which the dominant ideas about how business should be conducted are based on a paradigm of rational economic assumptions. Underpinning such assumptions are, according to Harman and Hormann (1993), four persistent themes. First, is the supremacy of the scientific method as a mode of inquiry, which arguably negates the subjective wisdom of religious experience. The second theme is the assumption of unlimited material progress as a benefit of the advancement of scientific knowledge and a value in itself — ignoring the limits of the earth as a provider and intrinsic value of the natural world. Third, is the value of industrialization as a means to greater social good — ignoring the cost of pollution, alienation and human rights consequences. The fourth theme is the pragmatic values of self-interest, and the organic evolution of the consequences of market forces.

It is the great success of such assumptions that has resulted in world wide economic development. Economic development is not without merit, although it is frequently resisted by its recipients. As Rahula (1959) points out, Buddhism does recognize the necessity of certain minimum material conditions in order to maintain a successful spiritual practice. Furthermore, according to the *Cakkavatti-sihanāda-sutta*, poverty is a cause of immorality and many types of crime. However, such rapid and ubiquitous development has not been without cost. These manifest into three categories of systemic problems: global environmental destruction, marginalisation and exploitation of political subgroups, and widespread alienation.



It could be argued that Buddhism is fundamentally about the latter — alienation from our true nature. The distinctive contribution of Buddhism is that it identifies suffering as caused by our attachments to things rather than our lack of them. Freedom from suffering is therefore not obtained by trying to emulate heaven on earth through material accumulation, but rather in the practice of the eight-fold path which implicitly advocates moderation, spiritual reflection, morality, and finally meditative mindfulness.. This is a radically different position from the current economic ethos.

The economic retort to such fundamentally different claims is to point out that economics deals with the world as it is. Firms which are not driven to optimize economic rent simply do not survive in the long term. There are several key issues at stake here. First, the accumulation of wealth through profit provides the capital for investment. Second, growth is essential to obtain economies of scale. Firms which ignore economies of scale ultimately will not be able to compete. Third, many shareholders are institutions which obtain their funds through offering competitive rates of return and thus will take their funds elsewhere if returns are not high. Finally, the market will always provide situations for opportunism and windfall profit.

In answering this retort regarding economic realities, Buddhists are faced with the need to identify appropriate systemic changes as well as to recognize the need to make changes within the existing system. There is, however, significant room for change in current systems. Herman Hesse explored the tremendous potential of spiritual practice for business in *Siddhartha*. Many of the current assumptions about economic efficiency in organizations involve assumptions about organization which as Donaldson (1990) points out are underpinned by a narrow and negative model of human behaviour. The collective weight of literature on participation (Harman, 1994), openness (Argyris and Schon, 1978) and environmental responsibility (Porter, 1991) suggests that many Buddhist practices could be incorporated into business organizations with positive strategic outcomes. The success of mainstream companies in the US such as Esprit, Ben and Jerry's, Patagonia, Smith and Hawken and others add support to this view.

Many strategic decisions are taken which harm other beings such as feedlot farming because failure to incorporate them would result in competition making a business unviable. In such cases where collective cooperation is important government intervention is necessary. Many firms which have considerable resources to lobby governments and restrict such practices take the easy option and comply with industry norms.

Up to recently, human concerns in the corporate world have been perceived of as weakness, whereas the ability to command large returns on capital a mark of greatness. Until the simple accounting and economic criteria of organizational performance are questioned by both shareholders,

regulators and others it is likely that the content of strategic decisions will continue to maintain the pretense of being apolitical, yet the consequences of those decisions impact on the human rights of others.

Many strategic decisions which abuse human rights and break the precepts arise through a lack of concern rather than a lack of viable alternatives. It is during the early stages of strategy development that many organizations show a lack of integrity in neglecting to develop ethical strategic options. The inclusion of ethics and a concern for human rights is an important element of the early stages of the strategy process.

### *The Process of Strategic Decisions*

Strategic decision making is not, as it is widely believed, the sole domain of top management. Research is increasingly uncovering other layers of influence on the strategy formation process in which a wide range of stakeholders are seen to potentially affect the strategy of an organization. Strategy can be seen to be what emerges as the result of a weave of commitments and shared understandings between the various stakeholders both in and outside of a firm. As discussed above, the ultimate locus of strategic decisions lies in the frameworks of belief and understanding of reality that these stakeholders share. These beliefs, as Giddens (1976, 1979) has suggested, structure power relations and are in turn structured by them. The strategy creation process, as Mintzberg (1990, 1993) highlights, does not follow the traditional rational planning models: of setting goals; analysing internal resources and external opportunities and threats; developing a series of options; evaluating the best option, choosing and implementing this option; and finally, instituting a reliable control process. The reasons for this are manifold, but perhaps the most significant is that the future is unpredictable and so even the best laid plans go astray. It is too complex and time consuming to go through the strategic planning process every time unforeseen events or difficulties arise. Real-time strategic decisions responding to such situations inevitably result in an organic, evolutionary strategy that emerges independently of any one stakeholder or plan. Furthermore the difficulty of specifying in detail the implementation of plans means that strategy becomes distorted as it moves down the organization.

It is from the accumulation of myriads of minute decisions and incremental responses to the chaotic and surprise-ridden world of organizational life that what is called a strategy emerges. These can count as much as the big decisions made by a few at the top. From this perspective, blame for organizational evils such as the genocide of Jewish people by the Nazi bureaucracy can not be laid only at the feet of a few individuals at the top. Ethical dilemmas in organizational life arise at all levels. Salespeople

deceive others by failing to tell customers that they know the products they sell are defective or half as good as their competitor's for the same price. Marketing executives kill and trade in drugs when they target teenage girls for smoking advertising. These dilemmas vary in magnitude. Śakyamuni Buddha identified a few occupations that fundamentally work against compassion for all beings such as working in an ammunitions factory, butchering, bartending, guarding prisoners and pimping. Every job, however, will confront a person with ethical dilemmas.

It is through working with the difficulties of these ethical dilemmas<sup>10</sup> that Buddhists can influence the strategies of corporations. As Thich Nhat Hanh (1994) appreciates, the responsibility for human rights abuses lies with us all. Collectively we share responsibility through a whole range of actions, such as, choosing to not pay more for ethical produce, not challenging the consensus reality, not living simply, not working from our hearts and not encouraging others to jobs that are oriented towards peace and compassion.

It is also important not to underestimate the power of top management, who not only have formal power, but also have symbolic salience in the minds of other members of the organization. When the leadership has regard for ethical conduct this will have a strong impact on the actions of the rest. In the process of strategy formulation, decisions that abuse human rights can be made by a wide range of members of the organization. Management groups often develop powerful tools of rationalization and manipulate values to gain complicity. Without powerful rationalization how could the manufacture of cluster bombs, for example, be an honourable occupation? The world of business is full of attractive captivations, diversions and distortions of reality. History chronicles how easily people can become swayed and manipulated. Some of these date back thousands of years, such as Archilles' wish to die young and be remembered rather than live to an old age and be forgotten.<sup>11</sup> The precepts and the eight-fold noble path can serve as guards against seductive ideologies. As John Daido Looi (1994: 32) states, "the foundation of work practice is mindfulness:" in this state abuse of others is difficult to ignore. Through Buddhist practice we can open our hearts and in time we become Kuan Yin ourselves as, to use Thich Nhat Hanh's (1994: 246) words we recognize that "our whole life and our whole society are intimately involved". Yet it is this interdependence which rational economic assumptions ignore.

To bring about a social transformation we must begin with a change in the way we think about the economic process. The Buddha Dharma presents a coherent alternative way of thinking about how we go about the conduct of our lives. The strong orientation towards ethical behaviour as the manifestation of compassion developed as a result of practice, holds a more positive vision for the future of commerce. Strategic decisions reflect the

current *zeitgeist*, yet clearly there is a significant shift towards a deeper view, both on ecological issues that confront the world and on the inner life of the human population. These two go hand in hand. Buddhism can have an impact on strategists by raising their consciousness of the underlying assumptions that pervade rational economics and by confronting the negative consequences of such a way of thinking.

Furthermore, Zen Buddhism has a wealth of learning that can be taken from its monastic past and applied to business organizations. Life in a monastery has much in common with the modern corporation. There is a need for discipline, concentration, awareness and cooperation. There are other similarities too, for example Gibson Burrell (1989) notes the curious taboo around sexuality in organizations. These spiritual strengths can be both developed and utilised in a work situation. Buddhist organizations based on the ethical rules which governed monastic life would be less likely to contribute either directly or indirectly to the abuse of human rights.

Robert Aitken asks the question: "How does the tradition of work as the actualization of love bear fruit in our Western sangha?" Extending this question we can ask: How does the tradition of work as the actualization of love bear fruit in the modern corporation? Integral to this question is how can Buddhist ethics be applied to the modern corporation.

### *Conclusion*

How does the tradition of work as the actualization of love bear fruit in the modern business? Buddhists may encounter the modern business firm from a number of ways. As employees they are limited in their power to change the way an organization operates. However, strategic decisions are influenced by a range of stakeholders and employees are not insignificant. Buddhist employees can create change, introducing mindfulness and compassion into each moment of their working life. In this way they can lead without being leaders. As managers they may look at developing alternative ethical strategic options. For example, the product be made so that it has less packaging or the firm can use its technology for non-defense industry contracts. There is, however, a great opportunity for the ownership of businesses which can create strategies which support Buddhist practice thus meeting the Western desire for economic independence and including the benefits of community support found in monasteries. In such an organization the strengths and disciplines of spiritual practice could be combined with modern organizational practice to produce a compassionate and supportive base. Yet such an organization would still be embedded in a social context in which the dominant ethos is based on economic rationalism.

The abuse of human rights has its source in greed, hatred and ignorance. The current dominant paradigm of economic rationalism sanctifies greed as a fundamental good. This leads to great disparities in wealth and does little to reduce poverty. The results engender hatred and the extremes which result in basic human rights abuses. In many ways it is ignorance that underlies the current epoch of thinking. The seductive nature of materialism and the helter skelter life-style of modern employees caught up in a career spiral makes it easy to not notice the four noble truths. Few westerners have encountered first hand the joy which can be found in just chopping wood and carrying water. Yet we are relatively new to this way of life and the promises of modernism are relatively unexamined across generations. Perhaps the tide is turning.

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## NOTES

1. See Thomas Cleary and J.C. Cleary, *The Blue Cliff Record* (Boulder: Shambhala, 1977).
2. See Robert Aitken *The Mind of Clover*.
3. Sangha originally referred to the community of monks or nuns. Now it is used to include all the Buddhist population.
4. Monastic life also existed for women.
5. Bodhisattva comes from the Sanskrit word meaning "enlightenment being"
6. *Skandhas* are the factors which make up the human person.
7. Profit is, however, a particularly confusing concept mainly because it is relative, depending on the amount of money invested and the amount of risk involved. Many large corporations appear to make extremely large profits, yet when compared to the amount of money invested in the company the profit per dollar invested may be very low. Furthermore, profitability varies over time and some firms may make high profits in boom times and low profits in recessions. Average profitability is therefore a better indicator of performance. Profit may appear higher or lower depending on the accounting conventions used, it may also be invested in future profits. Risk is a further complication. For example, some firms, such as mineral exploration firms, operate in high risk areas in which failure is common. The high profitability of surviving companies is related to the high chance of failure.

8. This is probably so that individuals are not victimized by enraged customers.

9. Control is possible with as little as 15% of the voting shares. It is not uncommon for such a shareholding to be funded by borrowed money. One prominent Australian businessman through his control of public companies borrowed the equivalent of \$700 for every person in Australia.

10. Sometimes the stakes are high. I lost my job when I worked for a major international chartered accounting firm for my stance on ethical conduct.

11. I was recently talking to a Vietnam veteran who reiterated a similar wish that he had been told in the Marines. Better to live a life of danger and action in which death is not far than die enfeebled and scared in old age. The truth is that the choice is not black or white, but the former gets compliance.



# EPILOGUE

The Online Conference on "Buddhism and Human Rights" sponsored by the *Journal of Buddhist Ethics* has now concluded. The editorial staff of the journal would like to thank everyone who graciously supported the conference and contributed to its success by freely sharing their views, opinions, and comments.

As noted in the "Introduction," because of the grave importance of this year's topic, it has seemed appropriate to produce a "Declaration on Buddhism and Human Rights," developed from the formal papers, panelists' position statements, and subscribers' comments.

## DECLARATION OF INTERDEPENDENCE

### *Preamble*

Those who have the good fortune to have a "rare and precious human rebirth," with all its potential for awareness, sensitivity, and freedom, have a duty to not abuse the rights of others to partake of the possibilities of moral and spiritual flourishing offered by human existence. Such flourishing is only possible when certain conditions relating to physical existence and social freedom are maintained. Human beings, furthermore, have an obligation to treat other forms of life with the respect commensurate to their natures.

To repress our basic sympathy by abusing other sentient beings, human or otherwise, cripples our own potential, and increases the amount of suffering in the world for both others and ourselves. The doctrine of Conditioned Arising shows that our lives are intertwined, and abusing others can only be done when we are blind to this fact. As vulnerable beings in a conditioned world, our mutual dependency indicates that whatever can be done to reduce suffering in the world should be done.

The Buddhist teaching that we lack an inherently existing Self (*anātman*) shows that suffering does not really "belong" to anyone. It arises, in the life-stream of various sentient beings. To try and reduce it in "my" stream at the expense of increasing it in another life-stream is folly, both because this will in fact bring more suffering back to me (karma), and because it depends on the deluded notion that "I" am an inviolable entity that is not dependent and can treat others as if only they are limited and conditioned.

*Whereas in its teachings Buddhism recognizes:*

1. The interdependency of all forms of life and the reciprocal obligations which arise from it, such as the duty to repay the kindness of those who in previous lives may have been our parents, relatives and friends;

2. The need for universal compassion for sentient beings who are all alike in that they dislike pain and wish for happiness;

3. The inalienable dignity which living creatures possess by virtue of their capacity to achieve enlightenment in this life or in the future;

*The Conference affirms:*

1. Every human being should be treated humanely both by other individuals and governments in keeping with the Buddhist commitment to non-violence (*ahimsā*) and respect for life.

2. Every human being must be treated equally and without discrimination on grounds of race, nationality, religion, sex, color, age, mental ability, or political views.

3. Human beings have obligations to other sentient beings and to the environment that all depend on for life and flourishing, now and in the future. Accordingly, humans have an obligation to present and future generations to protect the environment they share with other sentient beings, and to avoid causing direct or indirect harm to other forms of sentient life.

Dated: 14 October 1995

# A BIBLIOGRAPHY ON BUDDHISM AND HUMAN RIGHTS<sup>1</sup>

**Damien Keown**

## *BUDDHISM AND HUMAN RIGHTS*

The subject of Buddhism and human rights can be approached in a variety of ways and through a number of academic disciplines. Issues of a philosophical, historical, legal, political, cultural, sociological, ethnographic, economic and even ecological nature can all be raised under this rubric. There is an expanding literature on women and human rights, and many case-studies of the treatment of minorities and indigenous populations in Buddhist countries. It will be noted that the majority of the available literature deals with contemporary aspects of the subject, and there is a noticeable absence of historical and philosophical studies on the connection between human rights and Buddhist doctrine and practice.

Many of the items listed below are taken from the excellent bibliography of Claude E. Welch, Jr. and Virginia A. Leary, *Asian Perspectives on Human Rights* (Westview Press, 1990), Part Four. This bibliography contains English language material published between 1976 and 1990, and readers are referred to this source for further particulars. Curiously, it contains next to nothing on Tibet, and I would welcome information about publications on this topic (or indeed on any of the sections below) for inclusion in updates to the present bibliography.

## *ONLINE RESOURCES ON HUMAN RIGHTS*

Project Diana is an online resource containing bibliographies on the Rights of Women and Indigenous Peoples at the University of Cincinnati College of Law (<http://www.law.uc.edu/Diana/bib/womensrights.html> and <http://www.law.uc.edu/Diana/bib/ipr.html>). Two other online bibliographies may be of interest, both of which are available from Coombs Computing Unit, Australian National University, which maintains the Clearinghouse for Social Sciences & Asian/Pacific Studies Subject Oriented Bibliographies (<http://coombs.anu.edu.au/CoombswebPages/BiblioClear.html>). The bibliographies are No. 39: feminism and world politics [S.Peterson & L.Gonick. 1993. 42Kb. E-Archive: Carnegie Mellon University, USA] and No. 97: women-and-buddhism-bibl.txt [W.Bodiford. 1995. 18Kb. E-Archive: Australian 9 National University, Australia].

*The Human Rights Brief* is a publication of the Center for Human Rights and Humanitarian Law in conjunction with the Washington College of Law at The American University:

(<http://sray.wcl.american.edu:80/pub/journals/hmnrghs.htm>).

#### ARRANGEMENT OF THIS BIBLIOGRAPHY

Due to the nature of the subject-matter a bibliography on human rights could be arranged in almost infinite ways, and in what follows the same item will often be found under more than one heading. The headings below have been chosen because they seem relevant to the needs of students approaching the subject of human rights from a Buddhist perspective. They are:

Human Rights and the West  
Human Rights and Other Cultures  
Human Rights and Religion  
Human Rights and Buddhist Teachings  
Women and Human Rights  
Burma  
Nepal  
Sri Lanka  
Thailand  
Vietnam

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NOTES

1. This third revised version is dated 24 August 1995. It was compiled by Damien Keown for the *Journal of Buddhist Ethics* (the original version was dated 15 March 1995). The latest version of this bibliography will always be available online from the journal's "Scholarly Resources" directory in the file rightbib.txt. Please send suggestions for inclusion to [d.keown@gold.ac.uk](mailto:d.keown@gold.ac.uk). This bibliography may be used freely for teaching and research purposes but please acknowledge the source.