Getting to the Core of the “Goodly Apple Rotten at the Heart” - Religion and Human Rights in Asia

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Getting to the Core of the “Goodly Apple Rotten at the Heart”:
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“The devil can cite Scripture for his purpose.
An evil soul producing holy witness
Is like a villain with a smiling cheek,
A goodly apple rotten at the heart.
O, what a goodly outside falsehood hath!”

1. INTRODUCTION

In the beginning, it was good. The Universal Declaration of Human Rights\(^2\) emerged as a celebrated and resounding trumpet-call condemnation of the Nazi Regime’s deadly discrimination.\(^3\) The arduous drafting process of this landmark HR instrument was however rocked\(^4\) with a delicate question that we too must answer: what is the role of religion in advancing the principle and project of universal human rights?\(^5\)

While some argue a religious HR foundation is old-fashioned or even idolatrous\(^6\), the reality is that a plethora of HR instruments, including Asian documents, rest on (at least on paper) some religious foundation, or recognize the vital role of religion in promoting HR (through juridification).\(^7\) Notwithstanding this, it is regrettable that religion has arguably acted like a “devil citing Scripture for its purposes”, inflicting in

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\(^1\) William Shakespeare, *The Merchant of Venice*, Act 1, Scene III
\(^2\) Hereinafter referred to as UDHR
\(^4\) Johannes Morsink, ‘Article 1, the Preamble, and the Enlightenment’ in Article I, the Preamble and the Enlightenment in *The Universal Declaration of Human Rights: Origins, Drafting and Intent* (United States: University of Pennsylvania Press, 1999) [Morsink on Article 1, UDHR]: “… Most of the drafters of the Universal Declaration did not share this Enlightenment belief in a single, transcendent source of value;” See generally the section titled “A Bargain About God and Nature”, and more specifically, the commentary on the Lebanon, Brazilian and Dutch delegates’ proposals in respect of Article 1; Cf. Mary Ann Glendon, *Knowing the Universal Declaration of Human Rights* (1997-1998) 73 Notre Dame L rev 1153 at 1166, commentary on Articles 18-21 noting Roosevelt, Malik and Cassin’s proposals on freedoms of religion and belief in the UDHR.
\(^5\) Hereinafter referred to as HR
\(^7\) *Universal Declaration of Human Rights by the World’s Religions* (January 2003); *ASEAN Inter-Parliamentary Organization Kuala Lumpur Declaration on Human Rights* (September 1993); *ASEAN Human Rights Declaration* (November 2012), paras 2 and 22; *Terms of Reference of ASEAN Intergovernmental Commission on Human Rights* (2009) at 2.1 (g); *Charter of the Association of Southeast Asian Nations* (2007), Article 2(l); *Beijing Declaration and Platform for Action, Fourth World Conference on Women* (15 Sept 1995, A/CONF.177/20 (1995)), para 12
some Asian states deep wounds of insufferable HR violations. Despite this, should religion be jettisoned completely from efforts of advancing the principle and project of universal HR in Asia?

While this paper admits the oppression of religion against HR in Asia, it ultimately argues that religion plays an integral role in positively advancing the principle and project of universal HR in Asia. Part II briefly inquires into the necessity for HR foundations and chiefly highlights the theoretical and practical problems with a religious HR foundation. In Part III, I will explore how religion “actually done something for human beings” by positively improving human welfare. Part IV wrestles with the notion that ultimately, the HR movement is a secular ‘religion’. Part V offers concluding observations and suggests the secular ‘religion of HR need not and should not evolve into ‘areligious’ secularism.

II. “IMAGINE THERE'S NO HEAVEN... NO HELL BELOW US”:8
‘ARELIGIOUS’, ANTI-FOUNDATIONALIST HUMAN RIGHTS

To claim that a religious HR foundation is outmoded arguably has some merits, which will be explored below. However, before embarking on that exercise, questions relating to the theoretical foundations of HR must first be answered before we can appreciate the relevance of religion as a HR foundation.

A. “Hearing Sad & Sentimental Stories:”9 the Redundancy of Foundations

Arguments proposing “to build support for HR on the basis of what such rights actually do for human beings”10 stem, in part, from an intellectual frustration with finding a universal HR foundation.11 Embarking on a quest for foundations, it has been said, is doomed to fail, as “differences between peoples may be so fundamental

8 John Lennon & Yoko Ono, ‘Imagine’ (11 October 1971)
10 Ignatieff on Human Rights as Politics & Idolatry at 54
11 Ibid at 86
“Foundational beliefs of all kinds have been a long-standing menace of the human rights of ordinary individuals;”
and so intractable that it would be better to simply stop trying to find any absolute common ground.” Instead, critics suggest we focus on “summarize[ing] our culturally influenced intuitions about the right thing to do in various situations” and advance HR culture by “hearing sad and sentimental stories.” “Foundational moralisms”, they say, merely function to further self-serving cultural interests.

Religion arguably exacerbates this problem because of the co-existence of multitudinous religions, which has traditionally precipitated endless dissensions between different camps since each appears to selfishly insist on its own interests. Consequently, one is perhaps justified in suggesting that promoting human welfare, as a more pragmatic basis, arguably better fits the mold of an appropriate foundation for universal HR. It shall now be explored if this is indeed the case, and whether there are other weightier reasons for rejecting a religious HR foundation.

B. Human Welfare & Poverty Eradication

The conception and operation of HR in Asia have inclined towards poverty eradication to improve human welfare. ASEAN, for example, “has consistently shown a commitment to alleviating poverty by means of a “basic needs” strategy”.

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13 Rorty on Human Rights at 171
14 Ibid at 172
15 Ibid at 171
16 Ignatieff, much like Baxi (cf. Upendra Baxi, Voices of Suffering and the Future of Human Rights (1998) 8 Transnational Law and Contemporary Problems 125), contemplates human suffering as a HR foundation; Ignatieff on Human Rights at 95:
   “What is pain and humiliation for you is bound to be pain and humiliation for me.”
17 Li-Ann Thio, 'Implementing Human Rights in ASEAN Countries: Promises to Keep and Miles to Go before I Sleep' (1999) 2 Yale Human Rights & Development L.J. 12 Thio on Human Rights in ASEAN at [39]:
   “This asserts that the entire spectrum of human rights can only be enjoyed after a certain level of socio-economic development is reached. [For] the attainment of economic development, civil and political rights must be subject to social order [suspended] in the name of development until the people are supplied with basic food, housing and jobs.” [Emphasis added]
18 Thio on Human Rights in ASEAN at [21]; Principle III of the Declaration of ASEAN Concord declared that a primary concern of ASEAN states was elimination of poverty, hunger, disease and illiteracy; Thio Li-Ann, Human Rights and the Charter of ASEAN (2007), 13 Asian Yearbook of International Law 285 at 287:
and continually aspires to this end. 19 ASEAN States have endeavored to enhance their economic and developmental frameworks to this end. 20 Singapore’s HR policy is also congruent with goal. 21 Other Asian States such as China and South Korea have stressed this objective too. 22

In light of the aforesaid, one might argue the improvement of human welfare as the true foundation for HR in Asia. Yet, why would religion – affirming the inherent dignity of all persons – be at odds with this? Is it just “goodly outside falsehood” with a merely romantic promise, ultimately contradicting the principle of HR and impeding its realization as a project?

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20 Thio on Human Rights in ASEAN at [16] “Economic growth was regarded as a way to promote national resilience. ASEAN governments believed that poverty and economic discontent could motivate internal communist insurgencies and that the best way of countering this was through economic development in close association with the West. This not only required internal political stability to build donor and investor confidence, but would also buttress stability.” [Emphasis added]

21 Thio Li-Ann, A Treatise on Singapore Constitutional Law (Singapore: Academy Publishing, 2012) [Thio, Treatise] at 11.049-52: “The core tenets of Singapore’s human rights policy are embodied in the ministerial statement delivered at the 1993 Vienna World Conference on Human Rights […] It emphasised that “poverty makes a mockery of all civil liberties” and underscored the importance of development to the advancement of human dignity. Development and good governance was mutually reinforcing and required a balance between individuals and the community, which would be struck differently in different countries at different points of their history.” [Emphasis added]

C. The Oppression of Religion

Unfortunately, the answer is that religion has proven itself to be “a goodly apple rotten at the heart.” The strongest justification for discarding a religious HR foundation lies in Asia’s regrettable experience of religion and HR.

What has immortalized the ceaseless discrimination of “broken, “untouchable” Dalits in India and perpetuated a Hindu social-order-cum-caste-system in blatant disregard of a 1950 legislative fiat abolishing the constitutionality of “untouchability”? Is it not religion? What motivated the Bruneian codification of Islamic criminal law, which unabashedly encroaches fundamental HR (e.g. right not to be tortured)?

Is it not religion? What has driven a government to arbitrarily dictate the words a particular religious group can or cannot use in Malaysia? What has accused the Malaysia Christian minority of sneakily “confusing and converting” the Muslim majority? What about religious freedom, typically safeguarded under the aegis of a State’s Constitution, which is inconsequential in Malaysia where apostasy is alleged? Is it not religion? What can be blamed for the plight of indigenous peoples in Asia or the honor killings in Pakistan under the guise (or disguise) of Islam – is it not religion?

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23 Donnelly on Human Rights at 62; Yasuaki Onuma, “Toward an Intercivilizational Approach to Human Rights” in Joanne R. Bauer & Daniel A. Bell, eds., The East Asian Challenge for Human Rights (CUP: 1999) 103: “… [P]redominant religions and cultures in many developing countries have been used to rationalize serious human rights violations…”

24 Stuart Grudgings, ‘Brunei adopts Sharia law; others in region consider it’ 29 April 2014, Reuters.com


27 Lina Joy v the Federal Territory Islamic Council and Ors [2007] 3 AMR 693; Daud bin Mamat v. Majlis Agama Islam, where exiting a religion was prohibited because it was “certainly not a religion” (Thio Li-Ann, Panacea, Placebo, or Pawn? The Teething Problems of the Human Rights Commission of Malaysia (Suhakam), 40 George Washington International Review 1271 at 1320)

28 Aamir Latif, 'Honor Killings Plague Pakistan' online: www.IslamOnline.net, 11 Jan 2007: “There is no mention of honor killing in the Qur’an or Hadiths […] Honor killing, in Islamic definitions, refers specifically to extra-legal punishment by the family against the woman and is forbidden by Shari’ah…Islam strictly prohibits murder and killing without legal justification…the so-called honor killing is based on ignorance and disregard of morals and laws.” [Emphasis added]

Indeed, religion has actually impeded the realization of the HR project in Asia substantially. Yet, these realities simply reveal that – as theory shapes practice – religion’s contradiction of the principle of universal HR manifests in actual HR violations. For instance, the underlying reason for the above-mentioned infringements of HR in Brunei and Malaysia rests in the ‘Islamic challenge to HR.’ Although Muslims believe in the equal dignity of equally created human beings, the individual is nonetheless strictly subordinate to the larger social good and imposed duties to ensure justice prevails in all human undertakings. If this is indeed the religious justification for the said infringements of HR – and we have not even critically considered other egregious wrongs such as Shari’a citizenship discrimination – then, with respect, a religious foundation for HR is most certainly (and quite understandably) repulsive.

Another (less distasteful) example of religion eroding the notion of universal HR is the Buddhist belief of dukkha\textsuperscript{31}, which discourages followers from believing and therefore claiming that he has any right to an adequate standard of living, security, or any right for that matter. Suffering is the reality, even imperative for the Buddhist.\textsuperscript{32} Also, where other more socially thorny HR issues are concerned, brazen religious oppression against various self-identifying minority groups continues today.\textsuperscript{33} In this regard, religion can be seen to contradict the bedrock principle of HR law that rights are inherent and unalienable.


\textsuperscript{31} Suffering associated with human life and the pervasive unsatisfactoriness of all existence

\textsuperscript{32} Peter Junger, Keown et al eds., 53 at pp.60-61 (Curzon Press, 1998) ‘Why the Buddha has no Rights’ in Buddhism and Human Rights:

“One should not cling to such aspirations, or to any other cause of suffering, including rights [which] seem more like an incitement to clinging than a cure for suffering.” [Emphasis added]

Imagine no religion…Imagine all the people living life in peace.”

Thus, in a world where only the religious are entrusted with the keys to the kingdom of HR, anti-foundationist and ‘areligious’ proponents are arguably justified in their reproval. Yet, should we veer to the other extreme by aspiring towards an entirely ‘areligious’ HR regime?

III. “A BROTHERHOOD OF MAN, IMAGINE ALL THE PEOPLE, SHARING ALL THE WORLD:”34 THE REDEMPTION OF RELIGION

While it is normatively acceptable that a universal morality speaking to all human beings possesses both legitimacy and moral enforceability in the world community, this may not be practically attainable.35 Yet, this has not subdued the argument that a HR foundation must pertain to “reasons as to why that personhood deserves to be protected from the unjust conduct of those in power” as opposed to, say, a more “pragmatic purpose of protecting human agency.”36

For the above reason, HR has been deemed ‘ineliminably religious’, which has in turn given proponents of a religious HR foundation “persuasive reason to believe that [people’s] dignity should be protected with rights.”37 Furthermore, that differing perspectives of the good life vary across religions is not necessarily preclusive of “a

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34 Supra note 8
35 For example, the Universal Declaration of Human Rights by the World’s Religions (January 2003) was formulated to succeed the 1948 UDHR primarily because the latter, for a large part of the 20th century, had received strong criticisms for being Western: “a criticism rooted in the feeling that when such efforts emanate from the West they are merely a further extension of the age of imperialism, a continuing effort on the part of the West to impose its own values on the rest of the world in the guise, or rather disguise, of universalism.” (Thio Li-Ann, Note on the Universal Declaration of Human Rights by the World’s Religions)
36 Abdukaçiz on The Clash of Universalisms; Cf. Universal Declaration of Human Rights by the World’s Religions (January 2003):
  “Whereas human beings are led to affirm that there is more to life than life itself by inspiration human and divine.”
37 Ignatieff on Human Rights:
  “It is unsurprising...that in the wake of the Holocaust human rights should face an enduring intellectual challenge from a range of religious sources, Catholic, Protestant, and Jewish, all of whom make the same essential point; that if the purpose of human rights is to restrain the human use of power, then the only authority capable of doing so must lie beyond humanity itself, in some religious source of authority.”
common moral terrain” or consensus on “a minimum [human] dignity”. This proposition is of especial importance to the present discussion concerning States, which comprise highly pluralistic societies with multifarious religious groups.

It also bears highlighting that for practicability’s sake, while anti-foundationalists champion the promotion of human welfare, the fact remains that “in order to assess what HR ‘do’ for people and in order to promote their protection, we need to have a sense of what humans are and what is good for them.”

A. Promoting Human Welfare & “Actually Doing Something”

While a religious HR foundation *divorced from active improvement of human welfare* is perhaps enervated of real effectiveness, religion cannot be criticizing as completely void of relevance or benefit to a HR regime. Consider for example religious ideology such as the Judeo-Christian concept of *Imago Dei*, which “imbues each one of us with profound dignity and worth.” Such a philosophy advances the HR regime a step forward by contesting the deplorable Weltanschauung underlying wrongs against humanity such as apartheid and discrimination.

Even if one were to speak in the anti-foundationalists’ language of human welfare, the role of religion is thoroughly harmonious with the “basis of what such rights actually do for human beings.” How so? This is because religion *actually does something for human beings.* For instance, International Justice Mission — a Christian

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38 Abdukaziz on The Clash of Universalisms:

“[C]onflicting religious conceptions of the good in the public sphere, however problematic, do not in any way diminish the role of public reason in building overlapping consensus in pluralistic societies. An appeal to a metaphysical foundation for human nature that leads to recognizing common moral terrain among divergent cultural groups may actually enhance the validity of a minimum dignity to which all humans are entitled by the simple fact of being created equal. Hence, diverse and sometimes divisive religious validation of what is good is not detrimental or obstructive to the search for a shared belief in what it is to be a human being and what norms can be identified in different faith communities that are compatible with the protection of human dignity and agency.” [Emphasis added]

39 Mooney on Human Rights at 21


41 David Cameron, Easter Message 2015:

“As Prime Minister, too, I’m a big believer in the power of faith to forge a better society. [The] Christian message is the bedrock of a good society. Whether or not we’re members of the Church of England, ‘Love thy neighbour’ is a doctrine we can all apply to our lives
organization – operates in South East Asian countries to identify weaknesses of local justice systems and strengthen them. Their ultimate goal is protecting the poor by preventing violence from even happening in the first place, and freeing victims from oppression in the forms of child prostitution and sex trafficking.43 Surely, this promotes human welfare?

B. The Inevitability of Religion

Furthermore, it is difficult to deny the inescapable reality of religion in HR law. As Michael Freeman has highlighted, the early Western approach to HR was inherently grounded in a prominently natural law conception44 and faintly Christian/Biblical language.45 Similarly, one might say Asia’s development of HR finds “its origin, not only in secular concerns with modern states and modern markets, but also with the problem of religious obligation in a world of religious diversity and political authoritarianism.”46 After all, religion in Asia has a greater sway on the HR movement, especially with increased religiosity in recent times.47 Consequently, there

[... ] Faith is a massive inspiration for millions of people to go out and make a positive difference. Across the country, we have tens of thousands of fantastic faith-based charities. *Every day they're performing minor miracles in local communities.* [... ] backing those who’ve fought foreign tyranny, helping parents and celebrating families, calling for more adoption of orphaned infants, bringing in a new bill to outlaw the appalling practice of modern slavery…” [Emphasis added]

42 ‘IJM’, https://www.ijm.org/

43 Their *modus operandi* comprises 4 main steps: (1) “Rescue Victims”; (2) “Restore Victims”; (3) “Restrain Criminals” and (4) “Represent Victims”. (https://www.ijm.org/how-we-work); Their Twitter updates on rescue missions and successful advocacy may be accessed here: https://twitter.com/IJM

44 Cf. John Locke, *Second Treatise* at [6]:

“For men being all the workmanship of one omnipotent and infinitely wise maker, all the servants of one sovereign master, sent into the world by his order and about his business, they are his property, whose workmanship they are, made to last during his, not one another's pleasure. [Emphasis added]


“Locke actually wrote that men were naturally in a state of perfect freedom to order their actions, and dispose of their possessions and persons as they thought fit, "within the bounds of the Law of Nature." This was also a state of equality, "there being nothing more evident" than that *creatures of the same species born to the same advantages of nature should be equal without subordination, "unless the Lord and Master of them all should, by any manifest declaration of his will, set one above another, and confer on him by an evident and clear appointment an undoubted right to dominion and sovereignty." [Emphasis added]

46 Freeman on Human Rights at 389

is some inevitability to the pervasiveness and influence of religion on the principle and project of HR.

**IV. A “PSYCHIC AMPLIFIER”**\(^48\): THE SECULAR ‘RELIGION’ OF HUMAN RIGHTS

Although much ink has been spilled by HR academics on the desirability of HR foundations (religious or not), some have trodden the road less travelled and correctly recognized that HR exists notionally and operatively as a ‘religion’ too.\(^49\) In fact, it has all the components necessary for a religion.\(^50\)

On principle, one would thus not unjustified in perceiving HR as a secular religion with Reason (instead of Nature) as its God.\(^51\) This is because Reason – as a non-

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“The central plot device of The Lord of the Rings is Dark Lord Sauron’s Ring of Power, which corrupts anyone who tries to use it, however good his or her intentions. The Ring [is] “a psychic amplifier,” which takes the heart’s fondest desires and magnifies them to idolatrous proportions. Some good characters in the book want to liberate slaves, or preserve their people’s land, or visit wrong-doers with just punishment. These are all good objectives. But the Ring makes them willing to do anything to achieve them, anything at all. It turns the good thing into an absolute that overturns every other allegiance or value. […] We must have it, and therefore it drives us to break rules we once honored, to harm others and even ourselves in order to get it.” [Emphasis added]

\(^{49}\) Henri Feron, ‘Human Rights and Faith: A ‘world-wide secular religion’’ (2014) 7(4) Ethics and Global Politics 181:

“In what sense are human rights a religion, beyond their appeal to faith? … [It does] not mean religion in the sense of a ‘belief in spiritual beings’…The point is that human rights are supposed to be untouchable, inviolable, endowed with an authority that transcends the temporal. Consequently, when we compare human rights to religion here, it is […] a unified system of beliefs and practices relative to sacred things—things ‘set apart and forbidden’—which unite into one single moral community all those who adhere to them;” [Emphasis added]


\(^{50}\) (1) The Text: the UDHR, generally speaking, and other instruments for specific regions/States;
(2) The Adherents & Propagators: human rights bodies or, in a more localized fashion, human rights activists;
(3) The Temple: human rights courts and tribunals, or (in the author’s humble opinion) even self-claimed mechanisms e.g. Maruah Singapore;
(4) Invisible Friend: the international human rights community/ratifiers of human rights instruments;
(5) Priesthood: human rights commissions and bodies

\(^{51}\) Morsink on Article 1, UDHR:

“One of the advantages of looking at human rights as natural rights given to us by either Nature or Nature’s God is that it makes it fairly easy to see them as universal and hence possessed by all people. […] Even when that God…is made interchangeable with Nature or Reason, the argument remains roughly the same […] Since all people were thought to equally partake of this Nature or Reason, they were all thought to have an equal measure of the rights that spell out the details of this participation. [Emphasis added]
celestial yet ‘divine’ source – operates similarly to a Natural Law HR foundation by undergirding “languages of HR [and seeking] to supplant all other ethical languages.” Naturally, this secular ‘religion’ of HR sees its own versions of controversies and conflicts that are prevalent in the world of passionate inter-religious conflicts.

Accordingly, some have warned that if the secular ‘religion’ of HR does indeed selfishly and sacrilegiously revolutionize and trump all other moral orders (including religion itself), the assertions of HR fanatics should be taken with a large pinch of salt; after all, not all HR propositions are unquestionably desirable. Blind devotion that “fetishizes” HR to the point it “eschews the rigours of intellectual inquiry and

53 Or arguably human-rightsism; Cf. Alain Pellet, “Human rightism” and International Law, Gilberto Amado Memorial Lecture, 18 July 2000:
”... [H]uman rightism may be defined as the "stance" that consists in being absolutely determined to confer a form of autonomy (it does not possess) on a "discipline" (which does not exist as such): the protection of human rights. … A broader definition of human rightism...[could] include human rights activism.” [Emphasis added]
54 Walter Woon, Speech at the Launch of the Law Society Public and International Law Committee (29 May 2008):
“Human rights is now a religion among some – the ones who have lost their faith in God... You have like in other religions the fanatics and you have all the hypocrisy and fanaticism of zealots who cannot accept that there may be alternative views of what is acceptable of what is possible or what is not possible, what is legal and what is not legal.” [Emphasis added]
55 Marta Cartabia, The Age of "New Rights", Straus Institute Working paper 03/10 (online: http://www.nyustraus.org/pubs/0910/docs/Cartabia.pdf);
“Following Weiler, the purpose of human rights has always been to put the individual at the center, but unfortunately, the result is a society of self-centered individuals. […] The result is the advance of “personal materialism, self-centeredness, Sartre style ennui and narcissism in a society which genuinely and laudably values liberty and human rights.” [Emphasis added]
“Our reading of the UDHR has shown that from the beginning the tendency has been to turn "human rights" from a few universally-acceptable principles that forbid gross evils like enslavement, torture and genocide into a comprehensive code for ordering world society. [However], the problem […] that it can't be based on the experience and outlook of any particular society. When it goes beyond the most limited and abstract principles – as it must to be usable – all it can reflect is the private perspective of those drawing it up, and that of their friends, associates and allies.” [Emphasis added]
57 Walter Woon, TODAY, “No One Solution” (9 June 2008) in response to Siew Kum Hong, “Keep Our Doors Open to Ideas” (6 June 2008) who had expressed disappointment in Woon’s label of HR as “fanaticism”:
“Human rights fanatics think that their opinion is the standard to which the rest of humanity must conform to and that they are entitled to issue reports criticising those who hold a different view. These are people who evidently believe that they and their values represent the apex of human moral development.” [Emphasis added]
distorts the vehicle of HR into an “object of devotion rather than calculation.” In other words, HR has the potential to operate as a “psychic amplifier”, an overzealous glorification of which perverts any inherently good cause into an unshackled absolute that tramples over other rights or interests.

Notwithstanding the above criticism, the might of a secular HR ‘religion’ is not necessarily unwelcome, as the function of “interrogating the barbarism of power” may perhaps be fulfilled only by a muscular moral order such as HR.

At this juncture, one question remains: where does religion (in the spiritual sense) fit into this domain of HR as a secular ‘religion’?

V. CONCLUSION: “I HOPE SOMEDAY YOU’LL JOIN US”

The answer lies in adopting a balanced view rather than an absolutist extreme in advancing the principle and project of HR in Asia. A secular ‘religion’ of HR is undesirable if it involves trumping religion as a moral foundation. As illustrated in

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58 David Kinley, Human Rights Fundamentalisms [2007] Sydney Law Review 545:

“‘[B]ad’ fundamentalism...where the object is too readily revered. The object here is human rights and the fundamentalism comprises a fetishization of human rights within certain circles of rights advocacy... a tendency towards human rights evangelicalism where human rights are touted as a panacea for many or all social, political, legal and economic ills [and considered] beyond ... critique [and] eschews the rigours of intellectual inquiry and challenge. ... [There are] claims that human rights now provide ‘values in a Godless age’, though in sailing so close to the winds of theocracy others have warned that human rights might be in danger of adopting the ‘sentimental vocabulary of devotion.” [Emphasis added]


60 Supra note 48

61 Jeremy Waldron, 'Nonsense Upon Stilts': Bentham, Burke, and Marx on the Rights of Man (United States: Princeton University Press, 1996) at 196:

“Human rights breeds a culture where ‘self-respect and human dignity really depend upon being in position to make strident querulous, adversarial claims against other people...that my fulfillment, my freedom and self-realization depend on my muscular and self-assertive capacity to place limits on yours.”

62 Supra note 8


“A pragmatic approach to human rights is one that tries to consolidate what common ground we can agree on, while agreeing to disagree if we must. More effort should be devoted to clinically identifying the specific rights that we can all agree on now, and which others must await further discussion before we reach consensus. This will be a more productive approach than one ground in self-righteousness.” [Emphasis added]
this paper, HR, no matter how secular, cannot be *stricto sensu* secular or completely ‘areligious’. The reasons, discussed below in conclusion, are largely similar to the impracticability of an anti-foundationist approach to HR.

As argued above, an anti-foundationalist approach to HR is not only theoretically untenable\(^\text{64}\), but also practically unworkable and oblivious to the realities of religion’s ubiquitous influence in Asia. HR foundations then, – and especially religious foundations in Asia’s context – do matter.\(^\text{65}\) Further, as Michael Perry suggests, accepting a religious foundation for HR “*does not necessarily require a commitment to any particular religion.*”\(^\text{66}\) In today’s context then, a religious HR foundation cannot hence be considered obsolete or obsolescent. In any case, even if the *promotion of human welfare* a priority for Asia, religion has proven itself willing and capable of achieving this end.

That said, a solely religious HR foundation is not entirely ideal. A *purely religious* HR foundation would most certainly be anathema, as evident both in the experiences of victims of religious oppression and also to the non-religious who crave an alternative, basis for universal HR.

In the final analysis, the Asian experience has illuminated the need for a balanced approach to conceiving HR foundations. As such, it would be specious to build a HR regime *solely* on the rock of “what HR actually do for human beings” or human welfare. Admittedly, human welfare and “the goal of making real gain” are

\(^{64}\) Mooney on Human Rights at 19:

> “[Various sources of human rights] all are foundational in that they rely on a value, or set of values, that are either defended or presented as self-evident. This is not problematic, *as human rights cannot do without some kind of foundation*. If the crisis of authority that human rights faces is to be solved, an argument is required. *As all arguments rest on something, foundations are unavoidable.*”


> “Foundations matter; they are not just nailed on to the underside of a theory or a body of law as an after-thought. [They] make a difference to what it is that we believe about rights. *This is particularly true if we say we are looking for religious foundations. It is not their function simply to reassure us... in our preexisting convictions... [I]f we build a conception of human rights on the basis that humans are created in the image of God, we must expect to find some differences between our conception and conceptions erected on other foundations or conceptions arrived at pragmatically with no foundations at all.*”

\(^{66}\) Orentlicher on Relativism and Religion at 156
pragmatic. Yet, it is probably only attainable through a HR regime rooted on a principally sound and a ‘civilizational-ly’ transcendental basis; pragmatism in improving human welfare cannot be divorced from a HR infrastructure that facilitates this very purpose. Accordingly, it is suggested that this ‘intercivilisational approach’ towards religion vis-à-vis the principle and project of universal HR in Asia must “engage disparate perspectives.” This avoids the danger of unfettered absolutism that militates against the principle and project of a universal HR regime.

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69 Eric A Posner, "Human Welfare, not Human Rights" (2008) 108 Colum. L. Rev. 1758: “… [V]irtually all governments concede that they have a “universal” obligation to advance the welfare of their populations, but, given local conditions and traditions, they cannot advance the welfare of their populations if they are constrained by the human rights treaties. The treaties do not allow governments to make the tradeoffs they need to make in order to advance the public interest.” [Emphasis added]

70 Onuma Yasuaki, Toward a More Inclusive Human Rights Regime, in Joanne R. Bauer & Daniel A. Bell, eds., The East Asian Challenge for Human Rights (CUP: 1999) [Yasuaki on Human Rights] at 118-9: “… A perspective that enables us to evaluate human rights in the long history of humanity, to judge its proper range and applicability and to compare it with other mechanisms pursuing spiritual and material well-being of humanity. […] This approach requires us to see the mechanism of human rights not merely within the West-centric modern civilization where it was born and raised, but from other civilizational perspectives as well.” [Emphasis added]

71 Diane Orentlicher, 'Relativism & Religion' in Michael Ignatieff, Human Rights as Politics & Idolatry (Princeton University Press, 1999) [Orentlicher on Relativism & Religion] at 156: “To be willing genuinely to engage disparate perspectives should not be confused with undertaking to find a common consensus on the metaphysics of rights at the end of the dialogue. Rather, [we should] “respect the reasoned commitments of others,” to commit ourselves "to remain in the same room" when confronted with "claims one doesn't like to hear." Nor is it apparent why a more skeptical approach might be warranted when the "claims one doesn't like to hear" are religious.” [Emphasis added]

72 Orentlicher on Relativism & Religion at 157: “Indeed, greater engagement of... plural religious perspectives... human rights advocates would... enhance the type of cross-cultural dialogue that [checks] absolutism. More importantly, such engagement may be necessary if the idea of human rights is to take root within the deepest commitments of individuals across diverse systems of belief, tradition, and culture;”

Joseph Raz, 'Human Rights in the Emerging World Order' (2010) 1 Transnational Legal Theory 31-47: “Finally, contrary to much current rhetoric, human rights are not absolute... their just interpretation and implementation require sensitivity to cultural diversity and to the validity of other ends;” [Emphasis added]

Mary Ann Glendon, Rights Talk: The Impoverishment of Political Discourse (Free Press, 1993) at 45-46:
It remains to add that the conceptualization and implementation of universal HR in Asia must be a *united exercise and an exercise in unity between various groups of differing religious, cultural and national interests*. Ultimately, it would be harsh to criticize religion as a “*villain with a smiling cheek*” that engineers more harm than good. Instead, not only is religion inevitable, it *is* – and *has proven itself to be* – also imperative and instrumental in advancing the principle and project of universal HR in Asia.

“Absoluteness is an illusion and hardly a harmless one. When we assert […] rights in an absolute form, however, we are expressing infinite and impossible desires – to be completely free, to possess things totally, to be captain of our fate, and masters of our souls. There is a pathos as well as a bravado in these attempts to deny the fragility and the contingency of human existence, personal freedom, and the possession of worldly goods.”

*Yasuaki on Human Rights* at 122:

“… Taken as a whole, international human rights instruments can no longer be characterized as products of the West. They are the products of long discussions, controversies, and negotiations *among various nations with diverse civilizational backgrounds.*” [Emphasis added]