

**Andrew Khoo, Malaysia**

**“RELIGIOUS AND PHILOSOPHICAL BASES OF HUMAN RIGHTS”**

At the outset, I would like to thank the organisers for inviting me to participate in this Symposium, and to speak at this plenary session. As a lawyer, I must also at the start declare that while I am associated with several organisations, the remarks that I am making are entirely my own, and should not be assumed to represent the views of those organisations.

It is a truism that we are all the products of our upbringing, and so my views are very much shaped by my personal experiences growing up as a member of the Chinese ethnic minority in a Malay/Muslim-majority Malaysia, and as a practicing advocate and solicitor (as attorneys are known in Malaysia) for 18½ years. For the last 12 of those years I have also had the honour to be Chancellor of the Diocese of West Malaysia, serving as legal advisor to the Anglican Bishop of West Malaysia, and more recently since February 2012 concurrently as Chancellor of the Province of South East Asia, serving as legal advisor to the Anglican Archbishop of South East Asia. And for the last 7 years I have been at the frontline of the human rights-related advocacy work at Bar Council Malaysia, the professional body for advocates and solicitors in peninsular Malaysia. So I come to this topic very much more as a practitioner rather than an academic, and apologise for the limitations of my views.

Because of the way in which human rights is respected in Malaysia, more in the breach rather than in the observance, I have to say that it would not be appropriate for human rights to locate its basis on organised religion. Max Stackhouse, in his essay

“Human Rights and Public Theology: The Basic Validation of Human Rights”, observed that, “various social and economic and political forces, recognizing the power and influence of theology, have used it as an ideological weapon to secure the legitimacy of their status or group...by combining particular traditions with this or that militant national or class loyalty and posing them against all outside institutions or dissenting people or alternative faiths.” Although Stackhouse was describing Europe’s plunge into the Second World War, he could just as easily described the situation currently obtaining in Malaysia. Even those who, like myself, come from or have adopted as our own, a long and deep religious tradition, instinctively desire to do so, we hesitate to locate the basis for human rights in organised religion generally because we have experienced specifically the manner in which Islam has been practiced in Malaysia, the way in which a skewed and self-serving interpretation of the principles and teachings of Islam has been used to justify and maintain a framework of religious superiority by the majoritarian religion in our country over all others, to the extent that the freedom of all other religions has to be defined and constrained by reference to the demands and strictures of that majoritarian religion.

David Little has quoted from the work of Johannes Morsink and Mary Ann Glendon, and in particular to the idea of a “thin approach” versus a “thick approach” to a government’s role in dealing with comprehensive doctrines as contained in international human rights instruments such as the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). They describe the “thick approach” where a government takes “responsibility for the delivery and maintenance of a special cultural, religious, or linguistic tradition”. The Malaysian Federal Constitution, drafted after the UDHR but

before the ICCPR, exemplifies that “thick approach”. It entrenches exclusive and unquestionable provisions in relation to a particular ethnicity (which is defined by, inter alia, membership of the majoritarian religion), religious primacy of that majoritarian religion, and special economic, educational and linguistic rights of that particular ethnic community. In the years since Malaysia’s independence as Malaya in 1957 and then enlargement into Malaysia in 1963, these provisions have been continually re-read and re-interpreted to constitute the foundation for an ever-widening circle of exclusive rights of the majority at the cost and expense of the minority. By an artful application of the exceptions provided in the UDHR, it has sought to limit the full availability and exercise of fundamental rights and freedoms by minority groups on the basis of national security, *ordre public* and morality. Some of you may be aware of the current legal controversy in Malaysia surrounding the use by the Roman Catholic Church of the term “Allah” to refer to God, and how the Malaysian Government has taken the position that such a term is reserved specifically for the religion of Islam and cannot be used by any other religion. It is no wonder that until today, Malaysia has not found herself able to accede to the ICCPR.

In June 2010, Malaysia’s former Prime Minister Abdullah Ahmad Badawi, speaking at a seminar on religion and human rights organised by the Malaysian Institute of Islamic Understanding, a state-funded and government-supported organisation which he chairs, said, “Many do not realise that the concept and practice of human rights movement based on the philosophy of humanism, secularism and hedonism is the enemy of all religions.” He added, “In my opinion, human rightism stems from ancient Greece, where the scholar Protagoras suggested a beautiful but poisonous statement – ‘man is the measure of all things’. It means that man is free to decide and

do anything for their importance and pleasure. From this, secularism was born, in turn promoting a hedonistic culture.” He went on to say that the difference between secular human rights as derived from Western countries and Islam was that Islam promotes the freedom of doing what is beneficial to humanity. “Hence, the real freedom is freedom to decide and do something that brings benefits to each individual and those around, not the opposite.”

Who then decides what is “something that brings benefits to each individual and those around”? Such determinations by the courts in Malaysia, in deference to the Malaysian Government, have resulted in denial or circumscription of rights and freedoms of, and discrimination against, members of religious minorities and, in terms of morally-associated activities and behaviour, sexual orientation and gender identity.

The alternative must therefore be a basis for human rights located in some form of philosophical foundation. As Stackhouse again notes: “The rejection of theology as a decisive influence in civil society and in the development of constitutional democracy and human rights, and the attempt to keep the fruit while rejecting the root and vine, has led to great difficulties.”

I have the privilege of working each and every day with many people from civil society and non-governmental organisations active in the area of human rights advocacy, education, promotion and defence. Interestingly, many of them do not subscribe to any organised religion, and instead hold to the view that the dignity of the individual based on the respect for human life per se is a sufficient basis for

human rights. People of faith will ask from where that human life originates, and of course this is where the question that is before us comes full circle. Religion points to a “Creator”, whereas non-religionists will simply point to the fact of creation and origin of life without ascribing to it a divine purpose or theological thesis.

In conclusion, my personal experience is that religion as the basis for human rights is far too risky as a basis, allowing as it does subservience to religious doctrines and dogmas. A non-religious basis at the very least allows for an intellectual justification that is not subject to intermediate interpretation of the tenets of any one particular faith which can be subjective and selective.

Andrew Khoo

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