

## Introduction

### Human Dignity, Human Rights, and Cultural Change in Asia

*Jimmy Chia-Shin Hsu*<sup>\*</sup>

#### 1 CONSENSUS AND DIVERGENCE OF HUMAN DIGNITY IN THE POSTWAR ERA

The concept of human dignity, as one commentator observes, is “here, there, and everywhere”<sup>1</sup> in contemporary human rights discourse. Its prominence, however, has generated ever more controversies in recent years. The contemporary debate is driven by the paradoxical prominence and elusiveness of this concept in judicial interpretation. Its meaning is notoriously hard to pin down, as manifested in the easy appropriation by both sides of such controversies as abortion, euthanasia, same-sex marriage, and other heated issues in bioethics. Some have argued that the elusiveness of the concept of human dignity should raise no more concern than other seriously contested normative concepts such as liberty, justice, and equality.<sup>2</sup> Others have considered it especially troubling.<sup>3</sup>

It is generally agreed that, when this concept was adopted in the United Nations Charter and the Universal Declaration of Human Rights, it served as a placeholder to allow countries of widely divergent cultures to agree on the underpinnings of the universal human rights. In the immediate postwar era, dignity jurisprudence first developed in particular jurisdictions such as West Germany and the United States. It then underwent a significant growth driven by the development of international human rights regimes since the 1970s and then by the spread of constitutionalism and judicial review during the third-wave democratization in the 1980s and 1990s. The growth of dignity jurisprudence and its spread around the globe ensures that it

<sup>\*</sup> I thank Margaret Lewis, Chien-Chih Lin, Yu-Jie Chen, Ya-Wen Yang, Cheng-Yi Huang, Rung-Guang Lin, and Yang-Sheng Chen for their very helpful comments on the draft of this chapter.

<sup>1</sup> Luís R. Barroso, “Here, There, and Everywhere: Human Dignity in Contemporary Law and in the Transnational Discourse,” *Boston College International & Comparative Law Review* 35, no. 2 (2012): p. 331.

<sup>2</sup> Jeremy Waldron is reported to hold this view. Christopher McCrudden, “In Pursuit of Human Dignity: An Introduction to Current Debates,” in *Understanding Human Dignity* (Oxford: Oxford University Press, 2013), p. 13.

<sup>3</sup> Neomi Rao, “Three Concepts of Dignity in Constitutional Law,” *Notre Dame Law Review* 183, no. 86 (2011): 190.

can no longer serve merely as a placeholder in international human rights instruments or a directive value in domestic constitutions. Rather, it is expected to guide judicial decisions on controversial legal and political issues on all levels of tribunals. Further, human dignity as a legal concept has come under increasing stress, as the *ius commune* of transnational human rights law emerges.<sup>4</sup> As courts around the world look to each other for guidance and inspirations, the diversity of construal and contexts poses a challenge for principled adjudication that takes comparative legal sources seriously.

The diversity, however, should not obscure the common ground that emerged after World War II. It is now generally acknowledged that the career of human dignity as a legal concept began mainly after the war. Its immediate origin may be traceable to the interwar period, when the Catholic Church and intellectuals employed it to revive the natural law tradition, with an aim to resist the collectivistic excess of fascism and communism.<sup>5</sup> Nevertheless, human dignity's postwar prominence in such foundational documents as the United Nations Charter, the Universal Declaration of Human Rights, and German Basic Law was a solemn response to the Holocaust and other state atrocities that the great Enlightenment ideas of liberty and equality alone seemed unable to deflect. As "life, liberty, and the pursuit of happiness" and "liberté, égalité, fraternité" symbolize the spirit of human rights at the dawn of modernity in the late eighteenth century, the image of man emancipated from the ancien régime came to be encompassed in corporate ideologies, such as nationalism, fascism, and communism in the nineteenth and early twentieth centuries.<sup>6</sup> As Hannah Arendt aptly remarked, "As mankind, since the French Revolution, was conceived in the image of a family of nations, it gradually became self-evident that the people, and not the individual, was the image of man."<sup>7</sup> Postwar human rights discourse responded to this tragic development, and human dignity is employed to convey the emotional gravity and the axiological significance attached to the personal or the individual against its dissolution in corporate identities.

The postwar human rights leitmotif shaped what Christopher McCrudden calls the "minimum core" of the content of human dignity.<sup>8</sup> This conceptual core has three elements. The first is the "ontological claim": every human being possesses an intrinsic worth, merely by being human. The second is the "relational claim": this intrinsic worth should be recognized and respected by others. The third claim is the "limited state claim": the intrinsic worth of the individual requires that the state

<sup>4</sup> Paolo G. Carozza, "'My Friend Is a Stranger': The Death Penalty and the Global *Ius Commune* of Human Rights," *Texas Law Review* 81, no. 1031 (2003): 1036–1042.

<sup>5</sup> Samuel Moyn, *Christian Human Rights* (Philadelphia: University of Pennsylvania Press, 2015), 25–64.

<sup>6</sup> Michael Freeman, *Human Rights: An Interdisciplinary Approach* (Malden, MA: Polity Press, 2011), 32–36.

<sup>7</sup> Hannah Arendt, "The Perplexities of the Rights of Man," in *The Portable Hannah Arendt*, ed. Peter Baehr (New York: Penguin Books, 2000), 32.

<sup>8</sup> Christopher McCrudden, "Human Dignity and Judicial Interpretation of Human Rights" *European Journal of International Law* 19, no. 4 (2008): 655, 679.

should be seen to exist for the sake of the individual and not vice versa. Similarly, James R. May and Erin Daly identified four elements in the overlapping consensus of the definition of human dignity: 1) dignity is inherent in the human person; 2) everyone has equal dignity; 3) dignity means human worth; 4) dignity is universal.<sup>9</sup> These formulations demonstrate that the concept of human dignity bears strong connections with liberty and equality. In other words, human dignity crystalizes and enhances these foundational political values, while adding its own weight to the postwar understanding of legitimate international and domestic political order. Jeremy Waldron's idea of dignity captures the intricate dynamics well: as he says, "The modern notion of human dignity involves an upward equalization of rank, so that we now try to accord to every human being something of the dignity, rank, and expectation of respect that was formerly accorded to nobility."<sup>10</sup> Waldron's conception of human dignity as elevated rank, however, does not give sufficient weight to the alternative conception of human dignity as worth, the precious value inhering equally in every person. The two conceptions, namely elevated rank and worth, together entail another important conception, namely dignity as anti-humiliation.<sup>11</sup> All these conceptions contribute to theorization of the core content of human dignity. The core areas of application cover cases involving cruel, inhuman, and degrading treatment or punishment, as well as constitutional protection of human life and physical and mental integrity.<sup>12</sup> Further, it is uncontroverted when it is used to condemn colonialism, slavery, human trafficking, and racial discrimination.

Beyond the core, however, the meaning of human dignity diverges, and the need to conceptualize the complex meanings of human dignity grows. While conceptualization is needed to identify common grounds, it is needed even more to understand divergence and facilitate constructive engagement across jurisdictions. For example, commentators have noted the difference between the heavily liberty-and-rights-oriented American constitutionalism and the comparatively communitarian and value-oriented European dignity jurisprudence.<sup>13</sup> Further, since the 1960s and 1970s, arguably reflective of social changes in the West toward so-called "expressive individualism,"<sup>14</sup> dignity has increasingly been associated with privacy, autonomy, self-fulfillment, and self-realization. This particular conception of human dignity has played a significant role in undermining legal moralism by lifting bans and restrictions on abortion,

<sup>9</sup> James R. May and Erin Daly, *Advanced Introduction to Human Dignity and Law* (Cheltenham, UK: Edward Elgar, 2020), pp. 42–43.

<sup>10</sup> Jeremy Waldron, *Dignity, Rank & Rights* (Oxford: Oxford University Press, 2012), p. 33.

<sup>11</sup> See Avishai Margalit, *The Decent Society* (Cambridge, MA: Harvard University Press, 1998).

<sup>12</sup> Paolo Carozza, "Human Dignity in Constitutional Adjudication," in *Comparative Constitutional Law*, edited by Tom Ginsburg and Rosalind Dixon (Cheltenham, UK: Edward Elgar, 2011), pp. 462–463.

<sup>13</sup> Neomi Rao, "On the Use and Abuse of Dignity in Constitutional Law," *Columbia Journal of European Law* 14, no. 2 (2008): 201–256; Edward J. Eberle, *Dignity and Liberty: Constitutional Visions in Germany and the United States* (London: Praeger, 2002).

<sup>14</sup> See Robert N. Bellah et al., *Habits of the Heart: Individualism and Commitment in American Life* (Berkeley: University of California Press, 2008).

contraceptives, sodomy, and pornography and enhancing equal protection and anti-discrimination of formerly marginalized groups such as the gay, lesbian, and transgendered. The relatively new development of dignity as autonomy and privacy has global influence, but it has progressed the farthest in the West compared to other parts of the world. Still another development that has wide and yet uneven influence conceives of dignity as a judiciable right to dignified living, a right to subsistence, or a right to life with dignity. This socioeconomic strand of dignity has been applied in various jurisdictions to basic needs of life such as employment, housing, health, food, water, and healthy environment.<sup>15</sup>

To facilitate dialogue across the divergent strands of dignity jurisprudence, it is necessary to investigate what this concept means and does in various jurisdictions. The current international literature has already probed widely across regions, but the development in Asia is rarely reported and analyzed.<sup>16</sup> This book aims to fill this gap. It first investigates how human dignity as a legal and constitutional concept features in judicial and political discourse in Asian jurisdictions, which include India, Japan, South Korea, Taiwan, the Philippines, Indonesia, and Hong Kong. These jurisdictions are selected for the following reasons. First, all of them are Asian constitutional democracies or, in the case of Hong Kong, an autonomous region with an established tradition of rule of law, though the latter is a tradition that has eroded during the course of writing this book. They have functional judiciaries exercising meaningful degree of judicial review in protection of constitutional rights. Second, all the courts in these jurisdictions have adopted human dignity in their constitutional jurisprudence. In most jurisdictions, human dignity is based on constitutional texts, as in South Korea, Japan, the Philippines, Indonesia, and India. Hong Kong channeled this concept into its jurisprudence through the linkage in its Basic Law to ICCPR. Taiwan adopted it through judicial interpretation. Next, this book includes two additional jurisdictions – Singapore and China – that are surveyed not because of the judicial usage of human dignity but because of its roles in statutes, executive order, policy papers, or official and public discourse. Singapore is the banner country of the Asian values debate of the 1990s. How human dignity is positioned in its political culture is of great significance in how we understand this concept in Asia. Even though human dignity as a legal concept is rarely used by the Singaporean courts, the Singaporean political leadership has deliberately employed this idea in their formation of the political culture as a multiethnic secular state to balance individual well-being and common good. In the case of China, its 1982 Constitution encompasses, for the first time in history, the concept of dignity. Article 38 of the Chinese Constitution reads: “The personal dignity of citizens of the People’s Republic of China is inviolable. Insult, libel, false charge or frame-up directed against citizens by any means is prohibited.” It is

<sup>15</sup> May and Daly, *Dignity and Law*, 104–111.

<sup>16</sup> For a rare and valuable work, see Man Yee Karen Lee, “Universal Human Dignity: Some Reflections in the Asian Context,” *Asian Journal of Comparative Law* 3, no. 1 (2008), Article 10.

generally acknowledged among Chinese scholars that this Article is meant to address the atrocities during the Great Proletariat Cultural Revolution of 1966 to 1976.<sup>17</sup> As will be demonstrated in this book, the idea of “personal dignity” has exerted influence on legislative deliberation and public discourse.

This book goes beyond human dignity as a legal concept by engaging cultural and religious traditions of this region. In addition to those chapters dealing with human dignity as a constitutional or political concept, there are six chapters addressing human dignity in the contexts of Asian cultural and philosophical traditions. There will be three chapters addressing how human dignity can be understood in three religious or philosophical traditions heavily concentrated in Asia: Confucianism, Buddhism, and Hinduism. Further, Christianity and Islam have significant presence in Asia. In view of the already abundant literature on human dignity in the doctrinal or philosophical systems of these religions, alternatively we investigate the meaning of human dignity via representative voices of these religions in particular societies. They include Islam in Indonesia, Protestantism in South Korea, and Catholicism in the Philippines. This part of the book does not aim to give a comprehensive picture of the tremendously diverse religious and cultural landscape in this region. Rather, it aims to showcase representative patterns of thinking regarding the idea of human dignity in Asian cultures.

## 2 HUMAN DIGNITY AND HUMAN RIGHTS SINCE THE ASIAN VALUES DEBATE

It is a significant fact that human dignity as a legal concept has not only made its way into the constitutional jurisprudence of multiple Asian jurisdictions but also begun to play effective roles in them. It reminds us of how far we have come from the “Asian values” debate of the 1990s. In that debate, Southeast Asian national leaders such as Lee Kuan Yew of Singapore and Mahathir Mohammed of Malaysia, echoed by the Chinese government, challenged the universalism of human rights and championed cultural relativism, which was epitomized in the 1993 Bangkok declaration. When the Bangkok declaration was issued, the third-wave democratization was making its way into East Asia. It is precisely in the ensuing era that human dignity as a constitutional concept entered most of the jurisdictions surveyed in this book, with the exceptions of Japan and India, whose new constitutions acquired the concept not long after WWII. The People Power Revolution in the Philippines in 1986 set democratization in motion, and human dignity was written into the 1987 Constitution. South Korea and Taiwan began democratization in the late 1980s. In South Korea, human dignity was written into the 1962 Constitution but was given a new life in the 1987 Constitution, as the Korean Constitution Court was

<sup>17</sup> 戴耀廷 (Benny Y. T. Tai) and 李敏儀 (Man Yee Karen Lee), “中華人民共和國憲法中關於「人的尊嚴」的論述 [The Discourse on ‘Human Dignity’ in the Constitution of the People’s Republic of China],” 香港社會科學學報 [*Hong Kong Journal of Social Sciences*] no. 38 (2010): 59, 65.

established and human dignity became a judiciable right. In Taiwan, the concept of human dignity was adopted into constitutional jurisprudence in 1995 through judicial interpretation. Hong Kong Basic Law went into effect in 1997, adopting the concept of human dignity through its connection with ICCPR. The 1997 Asian financial crisis struck hard in Northeast and Southeast Asia, which undermined the self-confidence boosting the Asian values claim. In 1998, Indonesian President Suharto resigned and democratization began in earnest. Human dignity was incorporated into the bill of rights of the Indonesian constitutional amendments in 2000. Moreover, by the second decade of the twenty-first century, Taiwan and South Korea became widely considered to be consolidated liberal democracies. In 2009, the primary regional organization of Southeast Asia, the Association of South East Asian Nations (ASEAN), established the ASEAN Intergovernmental Commission on Human Rights, and in 2012 it adopted the ASEAN Human Rights Declaration, which, in its first general principle states: “All persons are born free and equal in dignity and rights.”

### 2.1 *Populism and Authoritarian Threat of Democracy*

Despite notable progress, this region has not been immune from the recent rise of populism, democratic recession, and the threat of authoritarianism. Notably, the election of Rodrigo Duterte in 2016 to the Philippines presidency led to unaccountable extrajudicial killings in his war on drugs. His pursuit of “independent foreign policy” encompasses a fiercely anticolonial bent directed at the United States.<sup>18</sup> Moreover, he has considered human rights advocacy groups as impediments to his war on drugs and anti-terrorism measures.<sup>19</sup> Despite all this, he continues to enjoy consistently high approval ratings. Similarly, under the highly popular Prime Minister Narendra Modi, India regressed from “free” to “partly free” under the Freedom House rating in 2020, for the first time since the late 1990s. Modi consolidated a “Hindu-majoritarian brand of politics, concentrated power excessively in the hands of the executive, and clamped down on political dissent and on the media.”<sup>20</sup> In Indonesia, President Joko Widodo faced the challenge of rising Islamist politics by “fighting illiberalism with illiberalism,” in order to preserve religious pluralism as upheld in the 1945 Constitution.<sup>21</sup> As Herlambang P. Wiratraman remarks, this “authoritarian turn” has been “characterized by state-led attacks on freedom of

<sup>18</sup> Julio C. Teehankee, “Duterte’s Resurgent Nationalism in the Philippines: A Discursive Institutional Analysis,” *Journal of Current Southeast Asian Affairs* 35, no. 3 (2016): 70, 78.

<sup>19</sup> “Philippines: Duterte Threatens Human Rights Community Call for Police to Shoot Activists ‘Reprehensible,’” Human Rights Watch, News Release, August 17, 2017, [www.hrw.org/news/2017/08/18/philippines-duterte-threatens-human-rights-community](http://www.hrw.org/news/2017/08/18/philippines-duterte-threatens-human-rights-community) (accessed April 3, 2021).

<sup>20</sup> Milan Vaishnav, “The Decay of Indian Democracy: Why India No Longer Ranks Among the Lands of the Free,” *Foreign Affairs*, March 18, 2021.

<sup>21</sup> Edward Aspinall and Marcus Mietzner, “Nondemocratic Pluralism in Indonesia,” *Journal of Democracy* 30, no. 4 (2019): 104–118.

expression, criminalization, and the shirking space for civil liberties. In addition, the ever-expanding state surveillance, extra-judicial killings in Papua and alleged cases of human rights abuses by those linked to the state's circle of power are all manifestations of growing impunity in Indonesian politics and governance."<sup>22</sup>

In addition, the sharp power of China has cast a long shadow in this region. The collapsing of the "one country, two systems" framework in Hong Kong is Beijing's blunt response to the loud clamor of the people of Hong Kong for genuine democracy. It resulted in rapidly shrinking spaces for freedom of speech, the press, assembly, and association, as well as rising threats to the personal security of political dissidents under strained judicial independence. China's ambition toward Taiwan has not only posed future military threat; it has already initiated aggressive misinformation warfare to meddle with Taiwan's electoral integrity and domestic policy formation.<sup>23</sup> The threat has also led to further polarization of Taiwan democratic politics. China's rise has provided the background against which the serious controversy on Article 9 of the Japanese Constitution occurred. In 2014, Prime Minister Shinzo Abe's government offered a constitutional reinterpretation to allow its Self-Defense Forces to defend other allies in case of war being declared on them. The geopolitical challenge in an increasingly multipolar world further consolidated the dominance of the ruling Liberal Democratic Party, which, under the Abe administration, may have eroded informal rules guarding its liberal democracy.<sup>24</sup> Moreover, the dominance of institutional power in Japan has undermined vertical accountability on human rights issues involving gender gaps, same-sex marriage, the LGBTQ, anti-discrimination legislation, national human rights institution, migrant workers, environmental rights, and more.<sup>25</sup>

## 2.2 *Human Dignity and Cultural Continuity and Change in Asia*

The actual protection of human dignity and human rights may wax and wane under the vicissitude of geopolitics and domestic sociopolitical dynamics. Ideally, however, the core understanding of human dignity as embodied in government measures and judicial interpretation should serve as an anchor of government actions, especially in times of uncertainty. Yet what is the core content of human dignity as

<sup>22</sup> Herlambang P. Wiratraman, "Political Cartels and the Judicialization of Authoritarian Politics in Indonesia," *International Journal of Constitutional Law Blog*, February 21, 2021, [www.icconnectblog.com/2021/02/symposium-constitutional-struggles-in-asia-part-ii-political-cartels-and-the-judicialization-of-authoritarian-politics-in-indonesia/](http://www.icconnectblog.com/2021/02/symposium-constitutional-struggles-in-asia-part-ii-political-cartels-and-the-judicialization-of-authoritarian-politics-in-indonesia/).

<sup>23</sup> Rush Doshi, "China Steps Up Its Information War in Taiwan: Taiwan's Election Is a Test Run for Beijing's Worldwide Propaganda Strategy," *Foreign Affairs*, January 9, 2020, [www.foreignaffairs.com/articles/china/2020-01-09/china-steps-its-information-war-taiwan](http://www.foreignaffairs.com/articles/china/2020-01-09/china-steps-its-information-war-taiwan) (accessed April 3, 2021).

<sup>24</sup> Maiko Ichihara, "Japanese Democracy after Shinzo Abe," *Journal of Democracy* 32 no. 1 (January 2021): 83–84.

<sup>25</sup> Akiko Ejima, "Thin but Resilient Constitutionalism in Japan?," *International Journal of Constitutional Law Blog*, February 22, 2021, [www.icconnectblog.com/2021/02/symposium-constitutional-struggles-in-asia-part-iii-thin-but-resilient-constitutionalism-in-japan/](http://www.icconnectblog.com/2021/02/symposium-constitutional-struggles-in-asia-part-iii-thin-but-resilient-constitutionalism-in-japan/).

understood in these jurisdictions? Will it withstand the test of time? To what extent does it converge and diverge with those in other parts of the world? These are the background questions of this book. Here I offer my preliminary thoughts to consider these issues.

To begin with, it is important to understand the times as the past has shaped them. In the immediate postwar era, when a large part of the non-Western world was striving for decolonization, human dignity as enshrined in the UDHR was not understood to mean constraining state authority alone. To those societies still colonized by Western powers or threatened by them, it primarily meant national self-determination aspiring for a competent statehood to be treated on equal terms. Further, as most of these nations were underdeveloped, human dignity also meant national development and elevation of socioeconomic well-being. Both goals required nation-building and state-building, which mandated establishment and strengthening of a nation state aspiring for modernization. To the extent that the idea of human dignity was received into these societies through constitution-making after WWII, as Albert H. Y. Chen remarked, human dignity was initially embedded in constitutions aiming to limit and control the state, while, paradoxically, legitimizing and enabling it to withstand domestic and external challenges.<sup>26</sup> The situation is similar in other parts of non-Western world. Yet in much of sub-Saharan Africa, tribalism and kinship loyalties were never replaced by modernized nonpatrimonial political authority.<sup>27</sup> In Latin American and the Middle East, European-style state structures always had limited reach over indigenous societies.<sup>28</sup> By contrast, Northeast Asian and Southeast Asian societies pursued modern states on the basis of a tradition of a strong state, capable of governing through a centralized bureaucracy over tribes, kinship groups, ethnicities, and other social groups. As Francis Fukuyama forcefully argued, China developed the world's earliest modern state, one millennium earlier than Europe. Neighboring countries such as Korea, Japan, and Vietnam borrowed heavily from Chinese ideas of statecraft.<sup>29</sup> In Southeast Asia, the legacy of the Western colonial government, complemented by that of indigenous proto-states such as the Malayan Malacca Sultanate and the Javanese Mataram Sultanate, has continued to shape contemporary political practice and imagination of legitimate political authority over the individual and a tremendous diversity of ethnicities and religions.<sup>30</sup>

As mentioned, human dignity entered most of the Asian jurisdictions, except India and Japan, during the third-wave democratization of the late 1980s and 1990s.

<sup>26</sup> Albert H. Y. Chen, "The Achievement of Constitutionalism in Asia: Moving beyond 'Constitutions without Constitutionalism,'" in *Constitutionalism in Asia in the Early Twenty-First Century*, ed. Albert H. Y. Chen (Cambridge: Cambridge University Press, 2014), 6.

<sup>27</sup> Francis Fukuyama, *Political Order and Political Decay* (New York: Farrar, Straus and Giroux, 2014), 285–298.

<sup>28</sup> Bruce Gilley, *The Nature of Asian Politics* (Cambridge: Cambridge University Press, 2014), 34.

<sup>29</sup> Francis Fukuyama, *The Origins of Political Order* (London: Profile Books, 2011), p. 128.

<sup>30</sup> Gilley, *Asian Politics*, 7.



It was also a time when human dignity as individual autonomy and self-realization ascended upon other layers of meanings of dignity in the West, and its influence has gradually spread to Asia in the following decades. The question then arises as to whether this new conception was an unavoidable logical extension of other conceptions and whether its prominence would prove normatively desirable for Asian societies. This question parallels the recent controversy in revisionist human rights history that also prompts us to consider whether a qualitative break in the concept of human rights occurred in the last quarter of twentieth century. For example, Samuel Moyn argued that there was indeed such a break in the idea of human rights in the 1970s. He argued that the idea of human rights as solely borne by the individual unembedded from the state was formed at that time.<sup>31</sup> Daniel J. Elazar remarked that the 1970s marked the rise of a “postmodern conception of rights.”<sup>32</sup> Seth D. Kaplan considers the UDHR to be more accommodative of both “thin and thick” societies, while the idea of rights in the West has evolved after the 1970s toward one that is more acceptable by thin Western societies than by thick non-Western counterparts.<sup>33</sup> This book does not engage the debate directly. Yet the debate poses interesting questions useful for framing our investigation of Asian understanding of human dignity and human rights. Since human dignity is the conceptual hallmark of the contemporary idea of human rights, competing understandings of human rights would be embodied in competing conceptions of human dignity.

### 2.3 *Cultural Development or Cultural Conflict?*

This inquiry is further related to contemporary reflections on the idea of human rights in an age of polarization and populism. As Ronald Inglehart and Pippa Norris argue, the rise of populism and polarization within the Western countries may be attributable not only to economic disruption and inequality caused by globalization but also to what they call populist “cultural backlash” against the cultural transformation since the 1970s.<sup>34</sup> Their argument implicates a developmental view of Western culture toward individualistic liberal values. Similarly, Edward Rubin argues that the West is moving from a “morality of higher purposes” to a “morality of self-fulfillment,” and the transformation seems irreversible.<sup>35</sup> However, what if the

<sup>31</sup> Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge, MA: Harvard University Press, 2010).

<sup>32</sup> Daniel J. Elazar, “How Present Conceptions of Human Rights Shape the Protection of Rights in the United States,” in *Old Rights and New*, ed. by Robert A. Licht (Washington, DC: AEI Press, 1993), p. 46.

<sup>33</sup> Seth D. Kaplan, *Human Rights in Thick and Thin Societies: Universality without Uniformity* (Cambridge: Cambridge University Press, 2018), pp. 6–7.

<sup>34</sup> Pippa Norris and Ronald Inglehart, *Cultural Backlash: Trump, Brexit, and Authoritarian Populism* (Cambridge: Cambridge University Press, 2019).

<sup>35</sup> Edward L. Rubin, *Soul, Self, and Society: The New Morality and the Modern State* (Oxford: Oxford University Press, 2015).

backlash is rooted in a deeper cultural conflict that is irresolvable, and the best a society can hope for is an ideology that is broad and flexible enough to accommodate the conflicting visions? This alternative interpretation of the cultural conflict is implicated in Jonathan Haidt's finding that the political division in the United States is deeply rooted in moral psychology.<sup>36</sup> Thomas Sowell explains political conflicts with two conflicting visions stemming from two different understandings of human nature, one he calls "constrained vision" and the other "unconstrained vision."<sup>37</sup> These are but examples of two competing cultural interpretations of the crisis of Western democracies. One is the developmental view and the other the conflictive view. Which view offers a better explanation of the challenges in Western democracies will have significant impact on how we understand the future of dignity and rights in general – and how the Asian societies that embrace human rights should chart their course.

From the perspective of Asian societies, the earnest reception of human dignity as a legal concept during the third-wave democratization means reception of the new conception as well as the old ones. It is hence worthy of investigation how this new conception of human dignity interacts with other conceptions of dignity in Asian societies on concrete issues. The conceptual evolution of human dignity in these Asian jurisdictions would involve complex dynamics of legal transplant. As Alan Watson indicated, legal transplantation does not require congruence of the received norms with local culture and tradition. For it to happen and even endure, all it takes is a reasonable degree of congruence between the cultures of legal or governing elites of both the exporting and importing societies.<sup>38</sup> In other words, it is not uncommon that there is a "divergence of law and society" when legal transplants occur.<sup>39</sup> There may hence be a gap between the legal elite culture and the culture surrounding the legal system.

This claim, however, should not be overstated. Democratization brought about not just political transformation but also profound social transformation. Despite variations in practice, the wide acceptance of the ideas of democracy and human rights protection, along with genuine improvement in certain countries, greatly transformed the political landscape upon which the claim of Asian values relied. To varying degrees, the political systems in this region have become more sensitive to popular perceptions of legitimacy and social movements. The legal and political elite as local agents may "localize" or "translate" these norms through local "language and sets of meanings rooted in their own particular cultural and

<sup>36</sup> Jonathan Haidt, *The Righteous Mind: Why Good People Are Divided by Politics and Religion* (New York: Penguin Books, 2013).

<sup>37</sup> Thomas Sowell, *A Conflict of Visions: Ideological Origins of Political Struggles* (New York: Basic Books, 2007).

<sup>38</sup> Alan Watson, "Legal Transplant and Law Reform," *Law Quarterly Review* 92, no. 79 (1976).

<sup>39</sup> Alan Watson, "Legal Change: Sources of Law and Legal Culture," *University of Pennsylvania Law Review* 131, no. 5 (1982–1983): 1121–1151, 1135.