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## WHICH RIGHTS ARE UNIVERSAL?

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**E**VAN CHARNEY HELPFULLY DEFINES THE TERM *universal human rights*. Human rights are held by individuals. They protect individuals against the actions of other individuals and/or collectivities (including political and economic organizations). They are egalitarian because they are held equally by all individuals. They are universal because they apply in all cultural contexts. Finally, human rights are fundamental, meaning that they override other political goods in cases of conflict (barring exceptional circumstances). Most people, I suspect, can endorse this definition of universal human rights.

The controversial part, however, is to specify the content of universal human rights. Which rights are fundamental, universally valid human rights, and which ones are locally valid, 'peripheral' rights? Charney argues that he can identify the content of universal human rights by "transcending cultural particularity." According to Charney, "the basic principles of a liberal-democratic regime" are universal human rights. More precisely, he refers to democracy and civil rights—in other words, American-style civil and political liberties. He does not explicitly say how he has arrived at this conclusion, but he seems to appeal to two arguments.

First, Charney suggests that liberal-democratic rights are universal because they are contained in the Universal Declaration of Human Rights (UDHR). But are the rights set forth in the UDHR truly universal? It is a common complaint in the non-Western world that 'international' human rights instruments have been shaped largely by the values and aspirations of Western liberal societies and that they have not yet adequately incorporated non-Western views. Rather than develop this argument, however, let me point out that the UDHR also runs counter to the mainstream ideas about fundamental human rights in the United States, meaning those expressed in the U.S. Constitution. It is quite peculiar that Charney limits his discussion to articles 1 to 21 of the UDHR. These articles uphold civil and political rights, but he fails to

note that the subsequent articles uphold social and economic rights. Articles 22 to 26 list the rights to social security, work, rest and leisure, medical care, equal social protection for children “whether born in or out of wedlock,” and education. Although such rights are not protected in the U.S. Constitution, they are no less ‘basic’ than civil and political rights in the UDHR. That is why the UDHR stands no chance of ever being taken seriously—in the sense of overriding domestic law—in the United States. Had Charney noted this point—that is, had he not read the UDHR through the lenses of the U.S. Constitution—it would have cast doubt (in a U.S. context, at least) upon his argument that the rights set forth in the UDHR are universal.<sup>1</sup>

Charney also suggests that American-style civil and political rights are universal because non-Western social critics uphold civil and political rights, often in opposition to their own governments. Chinese protesters in Tiananmen Square, for example, “fought and died for a right to free speech.” Moreover, “What is striking is the extent to which the Chinese dissidents were reaching outside of their ‘own’ tradition. They were ‘appropriating’ the ideas of ‘Western liberalism’ to express their political aspirations.” Charney supports this claim with a lengthy quote from the famous Chinese dissident Fang Lizhi. Fang, however, stayed away from Tiananmen Square in May and June 1989.<sup>2</sup> More pertinently, most student protesters (not to mention the workers) were not inspired by Fang’s ‘universalism’.<sup>3</sup> Instead, they drew upon the legacy of their May Fourth, 1919, predecessors, who argued that democracy was the best way to build up Chinese national power.<sup>4</sup> Consider the speech by Wuer Kaixi, one of the student leaders at Tiananmen Square:

At present, our country is plagued with problems such as a bloated government bureaucracy, serious corruption, the devaluation of intellectual work, and inflation, all of which severely impede us from intensifying the reforms and carrying our modernization. This illustrates that if the spirit of science and democracy, and their actual processes, do not exist, numerous and varied feudal elements and remnants of the old system, which are fundamentally antagonistic to large-scale socialist production, will reemerge in society, and modernization will be impossible. . . . The spirit of May Fourth must be carried forward, and only then can our wish for a strong China be realized.

Fellow students, fellow countrymen, the future and fate of the Chinese nation are intimately linked to each of our hearts. This student movement has but one goal, that is, to facilitate the process of modernization by raising high the banners of democracy and science, by liberating people from the constraints of feudal ideology, and by promoting freedom, human rights, and the rule of law. . . . Our views are not in conflict with the government. We only have one goal: the modernization of China. . . . Fellow students, fellow countrymen, prosperity for our nation is the ultimate objective of our patriotic student movement.<sup>5</sup>

It is not correct to assert that Chinese protesters risked their lives and died on behalf of “human moral principles.”<sup>6</sup> The large majority of protesters were

inspired by a patriotic vision of Chinese greatness, and American-style rights were viewed as means to this end.<sup>7</sup> This theme is evident in most speeches and documents from the spring 1989 protests.<sup>8</sup>

In short, Charney has not made the case that American-style civil and political liberties are (or should be) universally viewed as fundamental human rights. This does not mean, however, that the quest for a truly universal human rights regime should be abandoned. In fact, a universal rights regime is already in place, but it is 'thinner' than American-style civil and political liberties. A small set of crucial rights are valued, at least in theory, by all governments in the contemporary world. The most obvious are the prohibitions against slavery, genocide, murder, torture, prolonged arbitrary detention, and systematic racial discrimination. These rights have become part of customary international law, and they are not contested in the public rhetoric of the international arena. Of course, many gross human rights violations occur 'off the record', and human rights groups such as Amnesty International have the task of exposing the gap between public allegiance to rights and the sad reality of ongoing abuse. This is largely practical work, however. Theoreticians can contribute with suggestions for expanding, and rendering more meaningful, this empirical, *de facto* consensus on universal rights.

Charles Taylor's suggestion for expanding the current, rather thin list of universal human rights is particularly useful in this regard.<sup>9</sup> Taylor imagines a cross-cultural dialogue between representatives of different traditions. He suggests that participants should be open-minded, leaving open the possibility of mutual learning from each other's "moral universe." Not all differences, however, can be reconciled. Taylor recognizes that different groups, countries, religious communities, and civilizations hold incompatible fundamental views on theology, metaphysics, and human nature. In response, Taylor argues that a "genuine, unforced consensus" on human rights norms is possible only if we allow for disagreement on the ultimate justifications for those norms. We should try to abstract from those differences for the purpose of working out an "overlapping consensus" of human rights norms. As Taylor puts it, "we should agree on the norms while disagreeing on why they were the right norms, and we should be content to live in this consensus, undisturbed by the differences of profound underlying belief."<sup>10</sup>

Note that Taylor does not claim to be "transcending cultural particularity." Rather, representatives of different cultures would agree on the value of fundamental human rights norms, though they would agree for different reasons. But Taylor does not expect that we can forge an unforced consensus on universal human rights norms by overriding or "transcending" the norms of non-liberal cultures. If members of nonliberal traditions disagree with certain lib-

eral norms in the first place, then those norms cannot be part of the unforced consensus on human rights.<sup>11</sup>

Charney objects to this proposal. He suggests that we should not “allow for significant departures from a list of enumerated basic individual rights (i.e., rights to life, liberty, free practice of religion, free speech, due process, etc.)”—in other words, departures from American-style civil and political liberties. But how can we bring on board representatives of cultures that have different ideas about fundamental rights? Presumably, the liberal rules out force and fraud. One option is to look “within diverse religious traditions to find values and principles that can be emphasized (or perhaps ‘interpreted’) in such a way as to create a consensus on what is a dominant ideal of the Western liberal tradition.” This strategy, in my view, is disrespectful, because it treats nonliberal cultures as mere means for the promotion of liberal views and forecloses the possibility of learning from other cultures. More pertinently, perhaps, members of nonliberal cultures will not take kindly to the proposal that their views should be subordinated to Western liberal (more precisely, American) ideas about the content of fundamental human rights. In all likelihood, the attempt to ‘bring the rest of the world around’ to American-style civil and political rights will be doomed at the start.

Once again, my point is not to suggest that we should abandon the quest for a truly universal human rights regime. But parties engaged in a cross-cultural dialogue on fundamental human rights need to recognize that the final outcome may differ from their own starting points—for example, U.S. participants need to allow for justifiable deviations from American-style civil and political rights. Consider the case of Dr. Sulak Sivaraksa, a leading pro-democracy activist in Thailand and a nominee for the Nobel Peace prize. In 1991, the Thai ruler, General Suchinda, pressed charges against Sulak for *lèse-majesté*—derogatory remarks directed at the royal family—and for defaming him (the general) in a speech given at Thammasat University in Thailand. Fearing for his life, Sulak fled the country but returned in 1992 to face charges after the Suchinda government had fallen. In court, Sulak did not deny that he had attacked the “dictator” Suchinda, but he did deny the charge of *lèse-majesté*, referring to the many services he had performed for the royal family. Sulak explains,

I did not . . . stake my ground on an absolute right to free speech. My defense against the charge of *lèse majesté* was my innocence of the charge; my defense was my loyalty to the King and the Royal Family and, even where I discussed the use of the charge of *lèse majesté* in current Siamese political practice, it was to highlight abuse and to point to the ways in which abuse might undermine the monarchy, rather than to defend any theoretical right to commit this action. I am not affirming, nor would I affirm, a right to commit

lèse majesté. This aspect of the case is particularly concerned with my being Siamese and belonging to the Siamese cultural tradition.<sup>12</sup>

In other words, Sulak aimed to persuade fellow citizens that the dominant political system should be replaced with an alternative, relatively democratic political structure, but he made it explicit that this did not mean advocating the removal of the existing constraint on direct criticism of the Thai king. Perhaps Sulak, like many Thais, would feel deeply offended, if not personally harmed, by an attack on the king. In such a case—where a constraint on the freedom of speech is endorsed by both defenders and critics of the prevailing political system—it seems to me that there is a strong presumption in favor of respecting this deviation from American-style civil and political rights.

An unforced consensus on universal human rights, in short, may well be ‘thinner’ (in some respects) than American-style civil and political rights. In other respects, however, the outcome of cross-cultural dialogue on human rights may lead to conceptions of fundamental rights that go beyond American-style civil and political rights.<sup>13</sup> If members of a cross-cultural dialogue leave open the possibility of learning from other cultures, they may choose to adopt some ‘foreign’ practices. Consider for example the value of filial piety. East Asian societies influenced by Confucianism strongly emphasize the idea that children have a duty to care for elderly parents, a duty to be forsaken only in the most exceptional circumstances. In political practice, this means that parents have a right to be cared for by their children. There are disputes about the best means of implementing this right—Japan and Singapore have laws that make it mandatory to provide financial support for elderly parents, whereas Hong Kong uses more indirect methods such as tax breaks and housing benefits—but the assumption that there is a pressing need to secure this right is not a matter of political controversy in East Asia.

During the course of cross-cultural dialogue, it is not inconceivable that non-East Asian states may also come to regard the right to be cared for by adult children as a fundamental human right. For example, Western participants may come to question the assumption that relatively fit elderly parents can be committed to nursing homes. More pragmatically, the promotion of filial piety can be seen as advantageous in an age when Social Security payments are no longer economically sustainable at their current level. If these arguments are sufficiently persuasive to non-Asian participants, perhaps all parties can agree that the right to be cared for by adult children should be included in the unforced consensus on human rights.<sup>14</sup>

To sum up, the interpretive approach—one that engages with different cultural traditions—is necessary for forging a desirable and feasible international human rights regime. But that is not the only (or even the main) virtue

of the interpretive approach. An international rights regime, even one that emerges from an inclusive cross-cultural dialogue,<sup>15</sup> cannot do all the work. Many rights battles will be fought within societies according to local norms and justifications. Consider the example of the Sisters of Islam, an autonomous, nongovernmental organization of Muslim women in Malaysia.<sup>16</sup> This group challenges the way that Islam has been (mis)used by powerful forces to justify patriarchal practices, often contravening Islam's central ideas and animating principles. It tries to advocate women's rights in terms that are locally persuasive, meaning that it draws upon Islamic principles for inspiration. For example, the Sisters of Islam submitted a memorandum to the prime minister of Malaysia urging the Federal Parliament not to endorse the *hudud* law passed by the Kelantan state legislature. The *hudud* punishments included such troubling features as the inadmissibility of women as eyewitnesses. Sisters of Islam argued against the endorsement of these punishments by rejecting the crude equation of *hudud* with *Shari'a* and *Shari'a* with Islam that helped to justify the Kelantan enactments. Apparently this was effective, because the Federal Parliament has stated that it will not pass the Kelantan *hudud* code. The Sisters of Islam also engage in long-term human rights work, such as distributing pamphlets on Quranic conceptions of rights and duties of men and women in the family that provide the basis for a more egalitarian view of gender relations than the regressive ideas typically (and misleadingly) offered in the name of Islam itself. The assumption is that building human rights on traditional cultural resources—on the customs and values that people use to make sense of their lives—is more likely to lead to long-term commitment to human rights ideas and practices. Conversely, the group seems to recognize that defending rights by appealing to “human moral principles” is likely to be ineffective, if not counterproductive.

### NOTES

1. Charney might reply that the rights set forth in the Universal Declaration of Human Rights (UDHR) ought to be universal and that he didn't mean to imply that civil and political rights are more fundamental than social and economic rights. The problem with this response is that the UDHR does not specify which rights are more fundamental than others and thus cannot be useful when rights conflict in practice (which helps to explain why the UDHR is generally viewed as a wish list of political desiderata, of little usefulness in concrete political disputes that involve trade-offs between valued goods). At least the U.S. Constitution has the virtue of ranking some rights above others (as does John Rawls's *A Theory of Justice*, which ranks civil and political rights over social and economic rights). A defender of universal human rights must “identify a basic minimum of rights” that have priority over other rights and political goods.

2. I thank Perry Link for this information. Link notes that Fang “did not want the government to be able to say he incited the students, because he wanted it to be obvious that the movement was spontaneous, incited by no one” (e-mail correspondence, April 12, 1999).

3. It is worth noting that Fang also appeals to the rights as a means for a nation-building argument—see Fang Lizhi, *Bringing Down the Great Wall* (New York: Norton, 1990), 157-88.

4. Arguably, the spring 1989 movement had even deeper ‘Confucian’ roots. Confucianism has long promoted the value of rule by a moral and intellectual elite, and (consequently) Chinese intellectuals have traditionally been granted uncommon (by U.S. standards) amounts of legitimacy, prestige, and respect. It is quite striking that more than one million ordinary Beijing people participated in a movement led by students from China’s most prestigious universities (consider the (un)likelihood of the American equivalent—a few dozen students from Harvard and MIT leading a movement for radical political change with the enthusiastic support and participation of a million working-class Bostonians).

5. Wuer Kaixi, “New May Fourth Manifesto,” in *Cries for Democracy: Writings and Speeches from the 1989 Chinese Democracy Movement*, ed. Han Minzhu (Princeton, NJ: Princeton University Press, 1990), 136-37.

6. It might be argued in response that the protesters ‘appropriated’ the Statue of Liberty, which suggests that they were inspired by the ‘American’ value of freedom. It is worth noting, however, that the Statue of Liberty was renamed the “Goddess of Democracy,” with two hands on the torch to symbolize the difficulty of implementing democracy in China. An American symbol, it seems, was transformed and used for a distinctly Chinese purpose.

7. This interpretation of the spring 1989 protests helps to explain why student protesters turned so vehemently against the United States following the bombing of the Chinese embassy in Belgrade. This time, Chinese patriotism seemed to require opposition, rather than adherence, to American values. It might be argued in response that Chinese students were manipulated by the state-controlled media, but judging from the (similar) reaction of many mainland Chinese students studying and working in countries outside China, this reaction seems to have come largely ‘from the heart’.

8. Even the Beijing University pamphlet quoted by Charney makes this point. The pamphlet begins by paying lip service to ‘universality’, but it ends with the following lines:

Now people have again realized the truth that “men are born equal.” When other countries in the world are relying on this historical inevitability to modernize quickly, it is time that our poor and backward country with its two thousand years of feudal dynasties begin to open a new chapter in the [country’s historical] annals.

We should never forget:  
 “People are their own masters!”  
 “Power belongs to the great people.”

Note the concern with building up China’s national power and not falling behind other modernizing countries (as well as the Marxist language about historical inevitability). Empowering the people is viewed as a crucial means to empowering the nation.

9. Charles Taylor, “Conditions of an Unforced Consensus on Human Rights,” in *The East Asian Challenge for Human Rights*, ed. Joanne R. Bauer and Daniel A. Bell (New York: Cambridge University Press, 1999), chap. 5.

10. *Ibid.*, 124.

11. Of course, one can always imagine potentially dire implications, such as one where “the scope of rights was limited to the right to life, a right exercised in a life of slavery.” Fortunately,



most members of the human rights community do not seem overly preoccupied with such philosophical dilemmas—they focus on the far more urgent task of exposing gross human rights violations that mass murderers and ethnic cleansers would rather keep secret. But what if there really were an official, publicly articulated commitment to (say) enslaving the people? Does that mean outsiders shouldn't intervene, even if they have the power to do so? Of course not. As Orlando Patterson points out, "There is absolutely no evidence from the long and dismal annals of slavery to suggest that any group of slaves ever internalized the conception of degradation held by their master" [quoted in Michael Walzer, *Spheres of Justice* (Oxford, UK: Basil Blackwell, 1983), p. 250]. So outsiders should intervene, being fairly confident that the liberated slaves will be grateful after the fact.

12. Quoted in Joanne R. Bauer and Daniel A. Bell's introduction to *East Asian Challenge*, 14.

13. Western European and Asian countries have long been pressing the United States to recognize that some economic rights such as the rights to food and decent health care are as fundamental as civil and political liberties (meaning that they shouldn't be subordinated to the latter in cases of conflict), with little success thus far (e.g., the United States has yet to ratify the 1966 United Nations International Covenant on Economic, Social and Cultural Rights). In this piece, I discuss a right that has yet to receive much discussion in the United States—the right to be cared for by adult children. This right was emphasized by several East Asian participants during the course of a recent multiyear dialogue on human rights between prominent East Asian and North American intellectuals and human rights activists (see especially Joseph Chan, "A Confucian Perspective on Human Rights for Contemporary China," in *East Asian Challenge*, 235-36).

14. It might be argued that the right to be cared for by adult children is too specific to be included in a universal bill of rights. But the UDHR has articles on family rights and responsibilities that are just as specific (see, e.g., articles 16, 25.2, 26.3). More straightforwardly, it is widely assumed that children have a right to be cared for by their own parents (barring extreme circumstances), and the Confucian viewpoint is that elderly parents have a similar right to claim care from their adult children. A more fundamental problem, in my view, is that Western countries are not likely to accept that the right to be cared for by adult children should be viewed as more basic than other valued rights and political goals. More generally, it will be much easier to settle on a list of valued rights like the UDHR than to achieve a worldwide consensus on a ranking of valued rights that provides guidance in cases of conflict.

15. In my view, however, several important issues still need to be resolved before we can feel confident about the prospects of achieving a truly universal human rights regime—see my article, "Toward an International Human Rights (and Responsibilities) Regime: Some Obstacles," in *The Responsive Community* 9 no. 1 (1998/1999): 72-78.

16. See Norani Othman, "Grounding Human Rights Arguments in Non-Western Culture: *Shari'a* and the Citizenship Rights of Women in a Modern Islamic State," in *East Asian Challenge*, chap. 7.

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