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Cultural Relativism and Universal Human Rights

*Jack Donnelly **

Cultural relativity is an undeniable fact; moral rules and social institutions evidence an astonishing cultural and historical variability. Cultural relativism is a doctrine that holds that (at least some) such variations are exempt from legitimate criticism by outsiders, a doctrine that is strongly supported by notions of communal autonomy and self-determination. Moral judgments, however, would seem to be essentially universal, as suggested not only by Kant's categorical imperative but also by the common sense distinction between principled and self-interested action. And if human rights are, literally, the rights (every)one has simply because one is a human being, they would seem to be universal by definition.

How can the competing claims of cultural relativism and universal human rights be reconciled? In this article I shall try to specify the nature of their relationship, and argue for an approach that preserves the tension between, and the insights of, both relativism and universalism.

DEFINING "CULTURAL RELATIVISM"

The two extreme positions on cultural relativism can be called radical cultural relativism and radical universalism. Radical cultural relativism would hold that culture is the sole source of the validity of a moral right or rule. Radical universalism would hold that culture is irrelevant to the validity of moral rights and rules, which are universally valid.

* Rhoda Howard's criticisms of earlier drafts forced me to greater clarity and precision, and saved me from several errors—although I have stubbornly insisted on leaving a few in here. John Vincent started me thinking along these lines and provided helpful comments on an earlier draft. Ted Lewellen offered useful observations from an anthropologist's point of view. I am grateful to them for their help.

These radical views are ideal types that mark the end points of a continuum. The body of that continuum, those positions involving varying mixes of relativism and universalism, can be roughly divided into what we can call strong and weak cultural relativism.

Strong cultural relativism holds that culture is the *principal* source of the validity of a moral right or rule. In other words, the presumption is that rights (and other social practices, values, and moral rules) are culturally determined, but the universality of human nature and rights serves as a check on the potential excesses of relativism. At its furthest extreme, just short of radical relativism, strong cultural relativism would accept a few basic rights with virtually universal application, but allow such a wide range of variation for most rights that two entirely justifiable sets might overlap only slightly.

Weak cultural relativism holds that culture may be an *important* source of the validity of a moral right or rule. In other words, there is a weak presumption of universality, but the relativity of human nature, communities, and rights serves as a check on potential excesses of universalism. At its furthest extreme, just short of radical universalism, weak cultural relativism would recognize a comprehensive set of *prima facie* universal human rights and allow only relatively rare and strictly limited local variations and exceptions.

Strong and weak are relative terms referring to the extent of cultural variation permitted. We must be careful, however, not to use merely quantitative measures of relativism; qualitative judgments of the significance of different cultural variations must also be incorporated.

Across the continuum of strong and weak relativisms there are several levels or types of relativity. In a rough way, three hierarchical levels of variation can be distinguished, involving cultural relativity in the *substance* of lists of human rights, in the *interpretation* of individual rights, and in the *form* in which particular rights are implemented. The range of permissible variation at a given level is set by the next higher level. For example, "interpretations" of a right are, logically, limited by the specification of the substance of a right. The range of variation in substance is set by the notions of human nature and dignity, from which any list of human rights derives. In other words, as we move "down" the hierarchy we are in effect further specifying and interpreting, in a broad sense of that term, the higher level.

I shall ultimately try to defend a weak cultural relativist position that permits limited deviations from "universal" human rights standards¹ primarily at the levels of form and interpretation. On the way to this conclusion, I argue, in the following section, that radical relativism and radical universalism are

1. Cultural relativism, of course, applies *prima facie* to practices and moral standards other than human rights, but henceforth I shall be concerned here almost exclusively with cultural relativist arguments applied to human rights, and in particular lists of human rights in widely accepted international documents such as the Universal Declaration of Human Rights.

misguided. I then explore, in greater detail, the levels and types of cultural relativism, and address the problem of the cultural basis of relativism. Finally, in the last two sections, I try to show that the international consensus represented by the Universal Declaration of Human Rights and the International Human Rights Covenants, in the conditions of the modern world, support a weak cultural relativist approach to human rights; that is, an approach that views human rights as *prima facie* universal, but recognizes culture as a limited source of exceptions and principles of interpretation.

RELATIVITY AND UNIVERSALITY: A NECESSARY TENSION

The dangers of the moral imperialism implied by radical universalism hardly need be emphasized. Radical universalism, however, is subjected to other moral objections as well.

Moral rules, including human rights, function within a moral community. Radical universalism requires a rigid hierarchical ordering of the multiple moral communities to which individuals and groups belong. In order to preserve complete universality for basic rights, the radical universalist must give absolute priority to the demands of the cosmopolitan moral community over all other ("lower") moral communities. This complete denial of national and subnational ethical autonomy and self-determination is dubious at best.

Even if the nation is a doomed, transitory stage in the development of human moral community, there is no logical or inescapable moral reason why peoples cannot accept or choose it as their principal form of social organization and the primary locus of their extrafamilial moral and political commitments. Once we allow the moral validity of such commitments, we are bound to accept at least certain types of substantive moral variability, including variability in human rights practices.

Such moral "nationalism" may be based on reasons such as an inability to agree on the structure of a supranational organization or a fear of creating an instrument of universal tyranny. More directly moral reasons might also be advanced, such as the advantages of international diversity provided by a strong commitment to national or local customs. Most importantly, it rests on the notion of self-determination. But however it is justified—and the various arguments are likely to be mutually reinforcing—at least certain choices of such moral communities demand respect from outsiders; not necessarily uncritical acceptance, let alone emulation, but in some cases at least, tolerance. Therefore, radical universalism cannot be justifiably maintained.

This is perhaps too strong a conclusion. There may be some formal principle, such as the universalizability of moral judgments, that might plausibly be argued to be universally valid. There may even be a very short list of universal rights. Advocates and theorists of human rights, however, rarely if ever restrict themselves to either of these extremely limited claims. For any

robust substantive list of basic human rights—for example, the lists in the Universal Declaration of Human Rights and the International Human Rights Covenants—at least some allowance must be made by outsiders for the special practices of national and other noncosmopolitan moral communities.

A cultural relativist account of human rights, however, seems to be guilty of logical contradiction. If human rights are based in human nature, on the simple fact that one is a human being, and if human nature is universal, then how can human rights be relative in any fundamental way?

The simple answer is that human nature is itself in some measure culturally relative. There is a sense in which this is true even at the biological level; for example, if marriage partners are chosen on the basis of largely cultural preferences concerning height, weight, skin tone, or other physical attributes, the gene pool in a community would be altered in ways equivalent to “natural” mechanisms of selection. More importantly, culture can significantly influence the presence and expression of many less easily quantified aspects of human nature, for example, by encouraging or discouraging the development or perpetuation of certain personality types.

The impact of culture on the shaping of individuals is systematic and may lead to the predominance of distinctive social types in different cultures. There can be little doubt that there are important, structurally determined differences, for example, between the modal “natures” of men and especially women in modern western and traditional Islamic societies. In any particular case, “human nature,” the realized nature of real human beings, is a social as well as a “natural” product.

Whether we conceive of this process as involving cultural variation around an inalterable “natural” core or largely cultural variation within a physiologically fixed range, there is an undeniable social side to human nature, at least insofar as that nature is expressed. Human nature, at the levels of the individual, the group, and the species alike, is a range of possibilities, varying, in part in response to culture, within apparently fixed psychobiological limits; it is as much a project, and an individual and social discovery, as a given. Even if all behavior should prove to be ultimately genetic, the expression of that genetic endowment—which also merits being called “human nature”—is in considerable measure culturally determined.

Elsewhere I have sketched a theory of human rights consistent with such an account of human nature.² Here I simply want to stress that the cultural variability of human nature not only permits but requires significant allowance for crosscultural variations in human rights.³

2. Jack Donnelly, *The Concept of Human Rights*, forthcoming, Chapter 3.

3. Note that I am *not* arguing that all such cultural variations are morally justifiable; below, I will argue explicitly that they are not. My point is that *some* such variations are justifiable, on a variety of moral and practical grounds. Particular arguments concerning the justifiability of individual practices, however, are largely beyond my scope here.

But if all rights rested solely on culturally determined social rules, as radical cultural relativism holds, then there could be no human rights, no rights one has simply as a human being. This denial of human rights is perfectly coherent. Furthermore, as I have argued elsewhere, "traditional" societies generally do not recognize rights held simply because one is a human being.⁴ Nonetheless, I shall argue that radical cultural relativism is morally indefensible today.

The strongest form of radical cultural relativism would hold that the concept "human being" is of no moral significance; the mere fact that one is a human being is irrelevant to one's moral status. It is true that premodern societies typically have not recognized "human being" even as a descriptive category, but instead define persons by social status or group membership. For example, the very names of many cultures mean simply "the people" (e.g., Hopi, Arapahoe), and their origin myths define them as separate from outsiders, who are somehow "not-human." Similarly, in ancient Greece there were Hellenes and barbarians. This view, however, is almost universally rejected in the contemporary world.

For example, chattel slavery and caste systems, which implicitly deny the existence of a (morally significant) common humanity, are almost universally condemned, even in the most rigid class societies. Likewise, the basic moral distinction between insiders and outsiders has been seriously eroded by greatly increased individual mobility and by an at least aspirational commitment to the idea of a universal human moral community.

Today there is near universal international agreement, at least in theory, although often not in practice, that certain things simply cannot legitimately be done to human beings—regardless of the difficulties in specifying those things.⁵ Failure to act or even speak out against the grossest affronts to human dignity overseas on the grounds of cultural relativism would be widely—and I believe correctly—perceived as moral cowardice.⁶

Even more striking is the apparent crosscultural consensus on a few particular practices that cannot be justified by even the hoariest of traditions, and certainly not by any new custom. For example, the prohibition of torture and the requirement of procedural due process in imposing and exe-

4. Jack Donnelly, "Human Rights and Human Dignity: An Analytic Critique of Non-Western Conceptions of Human Rights," *American Political Science Review* 76 (June 1982), 303–316.

5. Such international agreement, of course, tends to reflect primarily the views of those who are politically active in the modern sector. Exceptions, therefore, continue to exist, particularly in relatively isolated areas where status-based societies still persist with some vigor. Nonetheless, I would argue that even such exceptions are subject to defensible (although perhaps not necessarily decisive) criticism, on grounds discussed below.

6. Compare R. J. Vincent, "Human Rights and Cultural Relativism" Paper presented at the 25th Annual Convention of the International Studies Association, Atlanta, Georgia, March 1984. This article is largely the result of my efforts to come to grips with the issues raised in Vincent's paper.

cuting legal punishments seem to be accepted as binding by virtually all cultures, despite profound differences in specifying the practical and substantive meanings of these notions.

The radical relativist might respond that such consensus is irrelevant. Logically, this is correct; crosscultural consensus does not necessarily entail any additional force for a moral rule. Nonetheless, I would submit that virtually all people do view such consensus as adding substantial force to the rule, and thus in an important sense this sort of radical relativism, while logically impeccable, is morally defective.

In effect, a moral analog to customary international law seems to operate. If a practice is nearly universal and generally perceived as obligatory, international community standards require that practice of all members of the community, and preclude the legitimate development of alternative practices. There is—or at least one might plausibly argue that there is—a weak cosmopolitan moral community, which imposes minimal substantive limitations on the range of permissible cultural moral variation.

Notice, however, that I have argued only that there are at least a few crossculturally valid moral *values*. This still leaves open the possibility of a radical cultural relativist denial of human *rights*. Such an argument would hold that while there may be universal moral rules or values, human rights—inalienable entitlements held equally by all, grounding particularly strong claims that may be made against the state and society—are but one of several defensible mechanisms to protect human dignity (which in any case is largely a culturally determined notion).⁷

Plausible arguments can be advanced to justify alternative mechanisms to guarantee human dignity; for example, natural *law*, which imposes trans-cultural moral obligations that are not correlative to rights.⁸ Few if any states, however, actually advance such arguments. In the First, Second, and Third Worlds alike, a strong commitment to human *rights* is almost universally proclaimed, even where practice throws that commitment into question.

It is too easy to dismiss such proclamations as mere rhetorical fashion; such a widespread international moral “fashion” must have some substantive basis. That basis, I would suggest, is the moral hazard presented by the modern state.

Traditional rulers usually faced substantial moral limits on their political power, customary limits entirely independent of human rights. Furthermore, the relative technological and administrative weakness of traditional states

7. The argument here rests on the conceptual distinction between *rights*, in the strong sense of titles grounding claims of a special type, and *righteous*; that is, between *rights*, in the sense in which one *has* rights, and (mere) *righteousness*, in the sense in which something *is* right. For a further discussion of this distinction, see Donnelly, note 3 above, Chapter 1 and Vincent, note 6 above, 303–306.

8. Compare Jack Donnelly, “Natural Law and Right in Aquinas’ Political Thought,” *Western Political Quarterly* 33 (December 1980), 520–535.

and nonstate political institutions provided considerable practical restraints on arbitrary abuses of power. In such a world, at least some human rights – inalienable entitlements of individuals held against state and society – might plausibly be held to be superfluous (in the sense that basic dignity was being guaranteed by alternative mechanisms) if not positively dangerous to well-established practices that realized a cultural conception of human dignity.

Such a world, however, exists today only in a relatively small number of isolated areas. And the modern state, particularly in the Third World, not only operates relatively free of the moral constraints of custom but has far greater administrative and technological reach. It thus represents a serious threat to basic human dignity, whether that dignity is defined in “traditional” or “modern” terms.

To the extent that modernization or Westernization has reached into, and transformed, traditional communities, traditional approaches to guaranteeing human dignity seem objectively inappropriate; traditional limits on political power are unlikely to function effectively in modern conditions. In such circumstances – to which we will return in more detail below – at least certain basic human rights seem necessary rather than optional. In most instances, then, radical or unrestricted relativism is as inappropriate as unrestricted universalism; some sort of intermediate position is required.⁹ This requires us to consider in greater detail the various levels and types of cultural relativism.

LEVELS AND TYPES OF RELATIVISM

In discussing foreign practices, we can distinguish between what can be called “internal” and “external” evaluations. An internal judgment asks whether the practice is defensible within the basic value framework of that society; the issue here is whether a plausible and coherent defense of the practice can be made in response to universalistic criticism. Practices that do not even stand up to such evaluations can in no sense be defended on cultural terms. An external judgment applies the standards of the evaluator (modified, as appropriate, by relativistic arguments) in order to determine whether the practice can or should be accepted or defended, all things considered. Clearly the most important controversies are likely to arise over practices that are defensible according to internal standards but unacceptable by external standards; these are the practices we are most concerned with in the discussion of cultural relativism and universal human rights.

To a considerable degree this distinction between internal and external

9. Note that this argument is largely empirical and functional. While others may wish to construct a more ambitious, “universal” argument for human rights, I shall restrict myself here to this historically “limited” horizon.

evaluations matches up with, and further elaborates, the distinction between strong and weak cultural relativism; the stronger one's relativism, the greater one's reliance on internal evaluations. It also helps to elucidate the dilemma we face in judging culturally specific practices, torn between the demands of relativism and universalism, demands that require us to renounce radical relativism and radical universalism in favor of some combination of internal and external judgments.

As I have already emphasized, relativism rests on the notions of moral autonomy and communal self-determination. Respect for autonomous moral communities would seem to demand internal evaluations. But to rely entirely on internal judgments would seem to abrogate one's moral responsibilities as a member of the cosmopolitan moral community; such membership would seem to demand the application of universal standards in external judgments. Membership in one's own national or local moral community also might demand (a different type of) external judgments. Furthermore, moral judgments by their nature are universal, or at least universalizable, even though we know that moral values and particular judgments are, at least in part and in their genesis, historically specific and contingent.

The choice between internal and external evaluations thus is itself a moral choice. However, the choice is not entirely free or simply a matter of personal moral judgment. Within each system – the “universal” standards of the cosmopolitan moral community, the standards of one's home community, and those of the foreign community whose practice is being evaluated – we can rank practices in terms of their moral worth. As a general rule, we can suggest that the more “important” a practice within a particular system, the greater the force of internal standards, which can be overridden only by particularly strong external judgments.

Such a general rule hardly solves all our problems. Besides the obvious difficulties of providing even a very crude system for weighing competing internal and external standards, in some instances at least “important” values, judged by external standards, will compete with internally “important” values or practices, presenting a dilemma of immense proportions. However, such a rule can greatly simplify the process of evaluation – assuming we are able to make at least rough internal judgments of “importance.”

As I noted above, strong and weak relativism cannot be distinguished solely by the number of deviations they allow from “universal” standards; some qualitative measure also is required. The distinction between variations in substance, interpretation, and form is a useful place to begin discussing this issue.

Even very weak cultural relativists – that is, relatively strong universalists – are likely to allow considerable variation in the form in which most rights are implemented. For example, whether free legal assistance is required by the right to equal protection of the laws is best viewed as a technical issue of the form in which the right is implemented, and thus

largely beyond the legitimate reach of universal standards. Important differences between strong and weak relativists are likely to arise, however, when we move to the levels of interpretation and substance.

While the distinction between variations in form and in interpretation is difficult to draw with precision, it is fairly clear and quite important, as we can see by looking at a particular right, such as the right to political participation. In specifying the right to political participation, we can begin by distinguishing electoral from nonelectoral forms of participation. We can also distinguish direct democracy from representative government, and both of these from participation through occasional plebiscites. Representative elections can be further divided into relatively open and closed multiple-party and one-party elections. We can also distinguish elections where voting is a basic right from those where it is a privilege or even a duty, elections intended to determine the will of the people from elections that serve principally to mobilize popular support for government policy, and so forth. All of these variations in "interpretation" clearly are qualitatively different from questions of form such as how often elections, town meetings, or plebiscites will be held.

But while all these mechanisms represent plausible interpretations of the right to political participation, we need not—and should not—hold that all "interpretations" are equally plausible or defensible. They are *interpretations*, not free associations or arbitrary stipulations; the meaning of "the right to political participation" is controversial, but the range of controversy is limited by the concept. For example, an election in which a people were allowed to choose an absolute dictator for life—"one man, one vote, once," as a West African quip puts it—in no way represents a defensible interpretation of the right.

Particular human rights are like "essentially contested concepts," in which there is a substantial but rather general consensus of meaning, coupled with a no less important, and apparently unresolvable, conflict of interpretations.¹⁰ In such circumstances, culture provides one plausible and defensible mechanism for selecting interpretations (and forms). Nonetheless, there are strong conceptual limits on the acceptable range of variation.

In addition to essential contestability, scarcity also implies permitting variations in form and interpretation. The effective political implementation of virtually all human rights consumes resources. While frequently noted for economic and social rights, this is equally true of many civil and political rights. For example, there are significant direct costs, as well as indirect costs such as the diversion of resources, in running an election, operating a legal system in accord with principles of due process, and protecting citizens

10. See W. B. Gallie, "Essentially Contested Concepts," *Philosophy and the Historical Understanding* (New York: Schocken Books, 1964), 157.

against arbitrary or inhumane and degrading treatment by officials of the state.¹¹

Fiscal constraints may also require difficult decisions concerning priorities, decisions that are in part tied to culture. In setting such priorities, however, an especially extreme emphasis or deemphasis of a right (or set of rights) brings us to the edge of the third type of relativity, namely, variations in substance, differences in lists of human rights.

Rights that vary in form and interpretation still are clearly “universal” in an important sense, particularly if the substantive list of rights is relatively universal. But while variations in substance involve much more extreme relativity, even here talk of universality can be meaningful.

If we look at complete lists rather than particular rights, there may be an essential universality even in the midst of considerable substantive diversity. Such universality may take the form of a large common core with relatively few differences “around the edges.” It may involve strong statistical regularities, in which outliers are few and are clearly overshadowed by the central tendency. There may be clusterings, or lesser but still significant overlaps, that allow us to speak of “universality” in a very extended sense. And if we distinguish between “major” and “minor” rights, we might have still another sort of universality amidst substantive diversity: the definition of such categories is of course extremely controversial, but to the extent that variations in substance are concentrated among “minor” rights, a fundamental universality would be retained.

The extent to which the listed rights are aggregated is another important consideration. At the level of broad categories such as civil, political, economic, and social rights, there is widespread agreement—except for a very small minority that still rejects economic and social rights—that “universality” is required; any defensible list must include rights from all these categories. As we disaggregate, however, the permissible range of relativity expands, in part because each listed right is more minor,” and in part because disaggregation is largely a process of interpretation, in a broad sense of that term.

Consider, for example, the right to work, which is almost universally recognized in disaggregations of economic rights. This right might be interpreted as a right to seek employment, to be compensated for unemployment, to be employed, or even a right to employment appropriate to one’s interests and talents. Certain rights specified at this level, however, will be missing from some defensible lists of human rights, including many lists that recognize a right to work. Further disaggregation—for example, specifying

11. Compare Henry Shue, “Rights in the Light of Duties,” in *Human Rights and U.S. Foreign Policy*, ed. Peter G. Brown and Douglas MacLean (Lexington, Mass.: Lexington Books, 1979), 65–81 and Henry Shue, *Basic Rights: Subsistence, Affluence and U.S. Foreign Policy* (Princeton: Princeton University Press, 1980), 35–53.

the length and amount of unemployment benefits, or the extent of vocational training or retraining made available—is likely to bring us into the realm of formal variation, where universality usually is an inappropriate demand.

Thus in considering the various levels and types of relativism, we see once more, and now more deeply and in greater detail, that the problem of cultural relativism and universal human rights cannot be reduced to an either-or choice. Claims of cultural relativism show a great diversity in meaning, substance, and importance. Therefore, any evaluation of such claims must be sensitive to this diversity, which is all too often overlooked when the issue of cultural relativism is raised in the discussion of human rights.

CULTURE AND RELATIVISM

So far we have focused on relativism, in general. The cultural basis of cultural relativism also must be considered, especially in light of the fact that numerous contemporary arguments against universal human rights standards strive for the cachet of cultural relativism but in fact are entirely without cultural basis.

Standard arguments for cultural relativism rely on examples such as the precolonial African village, Native American tribes, and traditional Islamic social systems. Elsewhere I have argued that human rights—rights/titles held against society equally by all persons simply because they are human beings—are foreign to such communities, which instead employed other, often quite sophisticated, mechanisms for protecting and realizing defensible conceptions of human dignity.¹² The claims of communal self-determination are particularly strong here, especially if we allow a certain moral autonomy to such communities and recognize the cultural variability of the social side of human nature. It is important, however, to recognize the limits of such arguments.

Where there is a thriving indigenous cultural tradition and community, arguments of cultural relativism based on the principle of the self-determination of peoples offer a strong defense against outside interference—including disruptions that might be caused by the introduction of “universal” human rights. But while autonomous communities that freely decide their destiny largely according to traditional values and practices still do exist throughout the Third World,¹³ they are increasingly the exception

12. Donnelly, note 4 above.

13. In what follows, I largely restrict myself to relativist arguments made on behalf of indigenous cultural practices in the Third World. This is not because of any greater inherent universality of western or northern practices or values. Rather, it reflects the “western” genesis of international standards and the fact that arguments of cultural relativism today are made largely on behalf of practices in Third World countries.

rather than the rule. They are not, for example, the communities of the teeming slums that hold an ever-growing proportion of the population of most states. Even most rural areas have been substantially penetrated, and the local culture "corrupted," by foreign practices and institutions ranging from the modern state, to the money economy, to "western" values, products, and practices.

In the Third World today, more often than not we see dual societies and patchwork practices that seek to accommodate seemingly irreconcilable old and new ways. Rather than the persistence of traditional culture in the face of modern intrusions, or even the development of syncretic cultures and values, we usually see instead a disruptive and incomplete westernization, cultural confusion, or the enthusiastic embrace of "modern" practices and values.¹⁴ In other words, the traditional culture advanced to justify cultural relativism far too often no longer exists.

Therefore, while recognizing the legitimate claims of self-determination and cultural relativism, we must be alert to cynical manipulations of a dying, lost, or even mythical cultural past. We must not be misled by complaints of the inappropriateness of "western" human rights made by repressive regimes whose practices have at best only the most tenuous connection to the indigenous culture; communitarian rhetoric too often cloaks the depredations of corrupt and often westernized or deracinated elites. In particular, we must be wary of self-interested denunciations of the excessive individualism of "western" human rights.

Human rights are inherently "individualistic"; they are rights held by individuals in relation to, even against, the state and society.¹⁵ But while traditional cultures, both western or nonwestern, usually view persons primarily as parts of a family or community, rather than as autonomous individuals, not all forms of nonindividualistic or antiindividualistic politics are based in traditional culture—even where that culture remains vital. In particular, communitarian defenses of traditional practices usually cannot be extended to modern nation states and contemporary nationalist regimes.

Arguments of cultural relativism are far too often made by economic and political elites that have long since left traditional culture behind. While this may represent a fundamentally admirable effort to retain or recapture cherished traditional values, even in such cases it is at least ironic to see

14. Compare Rhoda Howard, "Is There an African Concept of Human Rights?" in *Human Rights in Foreign Policy: Issues and Responses*, ed. R. J. Vincent, forthcoming. (Currently available as Working Paper No. A:8, Development Studies Programme, University of Toronto.) I have also benefited greatly from reading preliminary versions of Howard's ongoing research on human rights in contemporary Commonwealth Africa.

15. For a further elaboration and defense of this understanding of human rights see Donnelly, note 2 above, and "Human Rights as Natural Rights," *Human Rights Quarterly* 4 (August 1982), 391–405, where, in addition to the argument based on the nature of modern society developed here, I present arguments relying on conceptual analysis and the international consensus represented by the Universal Declaration of Human Rights.

largely westernized elites warning against the values and practice they have adopted. At their best, such arguments tend to be dangerously paternalistic—for example, villagization, which was supposed to reflect traditional African conceptions, was accomplished in Tanzania only by force, against the vocal and occasionally even violent opposition of much of the population—and even such a troubling sincerity is unfortunately rare.

Arguments of cultural relativism regularly involve urban elites eloquently praising the glories of village life—a life that they or their parents or grandparents struggled hard to escape, and a life to which they have not the slightest intention of returning. Government officials denounce the corrosive individualism of western values—while they line their pockets with the proceeds of massive corruption, drive imported luxury automobiles, and plan European or American vacations. Leaders sing the praises of traditional communities, which they claim as the source of their political practices—while they wield arbitrary power antithetical to traditional values, pursue development policies that systematically undermine traditional communities, and replace traditional leaders with corrupt cronies and party hacks.

In other words, appeals to traditional practices and values all too often are a mere cloak for self-interest or arbitrary rule. For example, the All Africa Council of Churches has condemned the fact that “some leaders have even resorted to picking out certain elements of traditional African culture to anesthetize the masses. Despite what is said, this frequently has little to do with a return to the positive, authentic dimensions of African tradition.”¹⁶ While this cynical manipulation of tradition occurs everywhere, let me mention just a few African illustrations.

In Malawi, President Hastings Kamuzu Banda utilizes “traditional courts” in order to deal with political opponents outside of the regular legal system. For example, Orton and Vera Chirwa, after being kidnapped from Zambia, were brought before a “traditional court” made up of five judges and three tribal chiefs, all appointed directly by Banda. While there was a prosecutor, no defense attorney was allowed, and the only possible appeal was to Banda personally.¹⁷ Such procedures have not the slightest connection with authentic traditional practices.

In Zaire, President Mobutu has created the practice of *salongo*, a form of communal labor with a supposedly traditional basis. In fact, it has little or no connection with indigenous traditional practices; rather, it is a revival of the colonial practice of *corvee* labor.¹⁸ In Niger, *samarías*, traditional youth

16. All Africa Council of Churches/World Council of Churches Human Rights Consultation, Khartoum, Sudan, 16–22 February 1975, “Factors Responsible for the Violation of Human Rights in Africa,” *Issue 6* (Winter 1976), 45.

17. *Africa Report* 27 (September/October 1982), 35; *Africa Report* 27 (November/December 1982), 35.

18. Thomas M. Callaghy, “State-Subject Communication in Zaire: Domination and the Concept of Domain Consensus,” *Journal of Modern African Studies* 18 (September 1980), 490.

organizations, have been “revived”—but not so much out of a respect for traditional culture as “to replace party organizations so as to channel youthful energies away from politics.”¹⁹ And Macias Nguema of Equatorial Guinea, probably the most vicious ruler independent black Africa has seen, called himself “Grand Master of Popular Education, Science and Traditional Culture,”²⁰ a title that would be comical if it weren’t so tragic.

The cynicism of many claims of cultural relativism can also be seen in the fact that far too often they are for external consumption only. The same elites that raise culture as a defense against external criticisms based on universal human rights are often ruthless in their suppression of inconvenient local customs, whether of the majority or a minority. National unification certainly will require substantial sacrifices of local customs, but the lack of local cultural sensitivity shown by many national elites that strongly advocate an international cultural relativism suggests a very high degree of self-interest.

Furthermore, numerous and regrettably common practices, such as disappearances, arbitrary arrest and detention, or torture, are entirely without cultural basis. Idi Amin, Pol Pot, and the death squads of El Salvador cannot be attributed to local culture; while these names have become justly synonymous with modern barbarism, such practices are not an expression of established cultural traditions. Rigged elections, military dictatorships, and malnutrition caused by government incentives to produce cash crops rather than food are just a few of the widespread abuses of generally recognized human rights that are in no sense a positive expression of indigenous cultures. Such practices can be condemned on the basis of both internal and external evaluations and thus are in no sense capable of plausible defense.

In traditional cultures—at least the sorts of traditional cultures that would readily justify cultural deviations from international human rights standards—people are not victims of the arbitrary decisions of rulers whose principal claim to power is their control of modern instruments of force and administration. In traditional cultures, communal customs and practices usually provide each person with a place in society and a certain amount of dignity and protection. Furthermore, there usually are well-established reciprocal bonds between rulers and ruled, and between rich and poor.

The human rights violations of most Third World regimes are as anti-theoretical to such cultural traditions as they are to “western” human rights conceptions. In fact, authentic traditional cultural practices and values can be an important check on abuses of arbitrary power. Traditional African cultures, for example, usually were strongly constitutional, with major customary

19. *Africa Contemporary Record*, 14 (1981–1982), B490–491.

20. Rene Pelissier, “Equatorial Guinea: Autopsy of a Miracle,” *Africa Report* 25 (May/June 1980), 11.

limits on rulers; as a Basotho maxim says, "A chief is a chief by the people."²¹ Not only are these traditional checks a resource that human rights advocates may be able to tap, but it has even been argued that transgressions of traditional limits have figured in the collapse of some recent regimes.²²

Finally, as I argued above, there are substantive human rights limits on even well-established cultural practices, however difficult it may be to specify and defend a particular account of what those practices are. For example, while slavery has been customary in numerous societies, today it is a practice that no custom can justify. Likewise, sexual, racial, ethnic, and religious discrimination have been widely practiced, but are indefensible today; the depth of the tradition of anti-Semitism in the West, for example, simply is no defense for the maintenance of the practice.

This is not to say that certain cultural differences cannot justify even fundamental deviations from "universal" human rights standards; I have already argued that they may. However, if cultural relativism is to function as a guarantee of local self-determination, rather than a cloak for despotism, we must insist on a strong, authentic cultural basis, as well as the presence of alternative mechanisms guaranteeing basic human dignity, before we justify cultural derogations from "universal" human rights.

RESOLVING THE CLAIMS OF RELATIVISM AND UNIVERSALISM

Despite striking and profound international differences in ideology, levels and styles of economic development, and patterns of political evolution, virtually all states today have embraced – in speech if not in deed – the human rights standards enunciated in the Universal Declaration of Human Rights and the International Human Rights Covenants. This consensus presents a strong *prima facie* case for a relatively strong universalism; that is, for weak cultural relativism. Even if this "consensus" is largely the complement of vice to virtue, it reveals widely shared notions of "virtue," an underlying "universal" moral position compelling at least the appearance of assent from even the cynical and corrupt.

While human rights – inalienable entitlements of individuals held in relation to state and society – have not been a part of most cultural traditions, or even the western tradition until rather recently, there is a striking similarity in many of the basic values that today we seek to protect through human rights. This is particularly true when these values are expressed in relatively general terms. Life, social order, protection from arbitrary rule,

21. See Richard F. Weisfelder, "The Decline of Human Rights in Lesotho: An Evaluation of Domestic and External Determinants," *Issue 6* (Winter 1976), 23.

22. See, e.g., Victor T. LeVine, "African Patrimonial Regimes in Comparative Perspective," *Journal of Modern African Studies* 18 (December 1980), 672.

prohibition of inhuman and degrading treatment, the guarantee of a place in the life of the community, and access to an equitable share of the means of subsistence are central moral aspirations in nearly all cultures.

This fundamental unity in the midst of otherwise bewildering diversity suggests a certain core of “human nature” – for all its undeniable variability, and despite our inability to express that core in the language of science. And if human nature is relatively universal, then basic human rights must at least initially be assumed to be similarly universal.

In the conditions of modern society, rights, especially human rights, are a particularly appropriate mechanism for protecting this basic, relatively universal core of human nature and dignity. The modern state, the modern economy, and associated “modern” values tend to create communities of relatively autonomous individuals, who lack the place and protections provided by traditional society. Furthermore, regardless of the relative degree of individual autonomy, people today face the particularly threatening modern state, and the especially fierce buffeting of the ever-changing modern economy. Rights held equally by all against the state, both limiting its legitimate range of actions and requiring positive protections against certain predictable economic, social, and political contingencies, are a seemingly natural and necessary response to typically modern threats to human dignity, to basic human values, traditional and modern alike.

Such an analysis seems to be confirmed by an examination of, for example, the Universal Declaration of Human Rights. In the Universal Declaration we can see a set of rights formulated to protect basic human – not merely cultural – values against the special threats posed by modern institutions.

The stress on equality and nondiscrimination, particularly in Articles 1, 2, and 7, reflects an essentially individualistic modern view of man, state, and society. Autonomous individuals are easily viewed as essentially equal. Basic equality, however, is likely to be an incoherent or incomprehensible notion where people are defined, as they usually are in traditional society, by ascriptive characteristics such as birth, age, or sex. Much the same is true of the guarantees in Articles 4 and 6 of an individual’s fundamental status as a person and full member of the community by outlawing slavery and assuring to all equal recognition as a person before the law.

Articles 3 and 5 guarantee life, liberty, and security of the person, and prohibit torture and cruel, inhuman, or degrading treatment or punishment. These rights reflect basic, very widely shared values, expressed in the modern form of rights held against the state; they represent a minimal modern consensus on certain virtually universal guarantees against the state.

Articles 8 through 11 list fundamental legal guarantees such as access to legal remedies and impartial judges, protection against arbitrary arrest and detention, and the presumption of innocence. These rights can be seen as specifications of seemingly universal ideas of fairness, again formulated with

a special eye to the threat to individual dignity posed by the modern state, especially in the absence of the constraining web of customary practices characteristic of traditional society.

Article 12, which recognizes a limited right to privacy, is peculiarly modern. Privacy is of great value to the relatively autonomous individual; it helps to protect his individuality. It is, however, fundamentally foreign to traditional, communitarian societies, as we can see even in English in the etymological connection between privacy and privation. Articles 13, 14, and 15, which recognize rights to freedom of movement, asylum, and nationality, are likewise basic in the relatively fluid, individualistic modern world, but probably would seem odd, at least as basic rights, in most traditional societies.

Article 16, which deals with the right to marry and found a family, is in part of universal applicability, but the requirement of "free and full consent of the intending spouses" reflects a peculiarly modern view of marriage as a union of individuals rather than a linking of lineages. The right to private property, articulated in Article 17, also is of some universal validity – virtually all societies permit individual ownership of at least some goods – although in the modern sense of a right to individual ownership of the means of production it is clearly appropriate only in economies with a large capitalist sector.

The rights to freedom of thought, conscience and religion, opinion and expression, assembly and association, and participation in government, laid out in Articles 18 through 21, are clearly based on modern individualistic conceptions of man and society. For example, traditional societies often do not distinguish clearly between the religious and the political, require conformity of thought and belief, enforce deference, restrict association, and deny popular political participation, all of which are incompatible with such rights. Within the modern framework, however, these rights represent minimum guarantees of basic personal dignity; they are essential guarantees of individual autonomy.

Finally, the economic and social rights recognized in Articles 22 through 27 guarantee, as individual rights, basic protections that in traditional society usually are provided by the family or the community as a whole: social security, work, rest and leisure, subsistence, education, and participation in the cultural life of the community. But not only are these rights directed against the modern state, they are held by individuals simply as human beings, and thus correspond to the individualization of the person in modern society. And Article 28, which guarantees a social and international order in which the previously listed rights can be realized, clearly reflects a peculiarly modern notion of international responsibility for the protection and provision of basic rights.

This review of the rights in the Universal Declaration is perhaps simultaneously superficial and overly long. However, if my argument is correct and the Universal Declaration does represent a minimal response to the

convergence of basic crosscultural human values and the special threats to human dignity posed by modern institutions, then this set of rights has a very strong claim to relative universality. Therefore, the presumption must be that these rights apply universally, although that presumption can be overcome by particular cultural arguments. This, of course, is the position I have called weak cultural relativism.

ASSESSING CLAIMS OF CULTURAL RELATIVISM

Rights are formulated with certain basic violations, or threats to human dignity, in mind.²³ Therefore, the easiest way to overcome the presumption of universality for a widely recognized human right is to demonstrate either that the anticipated violation is not standard in that society, that the value is (justifiably) not considered basic in that society, or that it is protected by an alternative mechanism. In other words, one would have to show that the underlying cultural vision of human nature or society is both morally defensible and incompatible with the implementation of the "universal" human right in question. I would argue that such a test can be met only rarely today, and that permissible exceptions usually are relatively minor and generally consistent with the basic thrust of the Universal Declaration.

For example, it is hard to imagine cultural arguments against recognition of the basic personal rights of Articles 3 through 11. Rights to life, liberty, and security of the person; the guarantee of legal personality; and protections against slavery, arbitrary arrest, detention, or exile, and inhuman or degrading treatment are so clearly connected to basic requirements of human dignity, and are stated in sufficiently general terms, that any morally defensible contemporary form of social organization must recognize them (although perhaps not necessarily as inalienable rights). In fact, I am tempted to say that conceptions of human nature or society incompatible with such rights would be almost by definition indefensible; at the very least, such rights come very close to being fully universal.

Civil rights such as freedom of conscience, speech, and association would be a bit more relative; as they assume the existence and a positive evaluation of relatively autonomous individuals, they are of questionable applicability in strong traditional communities. In such communities, however, they would rarely be at issue. If traditional practices truly are based on and protect culturally accepted conceptions of human dignity, then members of such a community simply will not have the desire or need to claim such civil rights. But in the more typical contemporary case, in which the relatively autonomous individual faces the modern state, they would

23. See Donnelly, note 2 above, Chapter 2. Compare Henry Shue, *Basic Rights*, note 11 above, 29–34.

seem to be close to universal rights; it is hard to imagine a defensible modern conception of human dignity that did not include at least most of these rights. A similar argument can easily be made for the basic economic and social rights of the Declaration.

The Declaration does list some rights that are best viewed as “interpretations,” subject to much greater cultural relativity. For example, the already mentioned right of free and full consent of intending spouses not only reflects a specific cultural interpretation of marriage, but an interpretation that is of relatively recent origin and by no means universal today even in the West. Notice, however, that the right, as Section 2 of Article 16, is subordinate to the basic right to marry and found a family. Furthermore, some traditional customs, such as brideprice, provide alternative protections for women, and a sort of indirect conditionality to marriage that addresses at least some of the underlying concerns of Article 16(2). Such factors make it much easier to accept cultural relativity with regard to this right.

When we consider the much more detailed International Human Rights Covenants, a number of listed rights approach specifications at the level of form. For example, Article 10(2)(b) of the International Covenant on Civil and Political Rights requires the segregation of juvenile defendants. In many cultures, the very notion of a juvenile criminal defendant does not exist. Similarly, penitentiary systems, mentioned in Article 10(3), are culturally specific institutions.

Finally, we should note that even the strongest cultural relativist faces a particularly serious problem where cultures clash or are undergoing substantial transformation – as is the case in much of the Third World. In evaluating customary practices that involve otherwise justifiable deviations from or interpretations of *prima facie* universal human rights, we often face the problem of “modern” individuals or groups who reject traditional practices. Should we give priority to the idea of community self-determination, and permit the enforcement of customary practices against modern “deviants,” even if this involves violations of “universal” human rights? Or should individual self-determination prevail, thus sanctioning claims of universal human rights against traditional society?

In a recent discussion of women’s rights in Africa, Rhoda Howard suggests an attractive, and widely applicable, compromise strategy. Howard argues, on a combination of practical and moral grounds, against an outright ban on practices such as child betrothal and widow inheritance. However, she also argues strongly for national legislation that permits women (and the families of female children) to “opt out” of traditional practices.²⁴ Where

24. Rhoda Howard, “Women’s Rights in English-Speaking Sub-Saharan Africa,” in *Human Rights and Development in Africa*, ed. Claude E. Welch, Jr. and Ronald I. Meltzer (Albany: State University of New York Press, 1984), 66–68. On the particularly volatile issue of “female circumcision,” Howard also argues for educational programs aimed at reducing

practical, guaranteeing a right to “opt out” of traditional practices in favor of “universal” human rights or alternative human rights interpretations seems ideal, for it permits an individual in effect to choose his or her culture, or the terms on which he or she will participate in the traditional culture.

Sometimes, however, allowing such choice is impossible, because the conflicting practices are irreconcilable. For example, a right to private ownership of the means of production is incompatible with the maintenance of a village society in which families hold only rights of use to communally owned land; allowing individuals to opt out and fully own their land would destroy the traditional system. Similarly, although less dramatically, full freedom of religion, including a right to apostasy, is incompatible with certain well-established traditional Islamic views.

Sometimes such conflicts can be resolved, or at least minimized, by the physical separation of adherents of old and new values. Even a separation of old and new values may be difficult and traumatic, given, for example, the interpenetration of rural and urban sectors, but such a course frequently may be possible, particularly with practices that are not material to the maintenance or essential integrity of either culture.

Nevertheless, a choice must sometimes be made, at least by default, between competing practices or conceptions of human rights. Such cases, I would suggest, take us out of the realm in which useful general guidelines are possible.

Such cases, however, are the exception rather than the rule. And if my arguments above are correct, we can justifiably insist on some form of weak cultural relativism; that is, on a fundamental universality of basic human rights, tempered by a recognition of the possible need for limited cultural variations. Basic human rights are, to use an appropriately paradoxical phrase, relatively universal.

the popularity of such practices, particularly in their more extreme, and health threatening, forms. This seems to me generally defensible, and particularly appropriate in this instance, but it does raise the controversial issue of the modern or majority culture exerting pressure against minority cultural practices.