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THE RELATIVE UNIVERSALITY OF HUMAN RIGHTS[1]

Human rights as an international political project are closely tied to claims of universality. The foundational international legal instrument is the Universal Declaration of Human Rights. The 1993 World Human Rights Conference, in the first operative paragraph of the Vienna Declaration and Programme of Action, asserted that "the universal nature of these rights and freedoms is beyond question." Attacks on the universality of human rights, however, are also widespread. And some versions of universalism are indeed theoretically indefensible, politically pernicious, or both.

This essay explores several different senses of "universal" human rights. I also consider, somewhat more briefly, several senses in which it might be held that human rights are "relative." I defend what I call functional, international legal, and overlapping consensus universality. But I argue that what I call anthropological and ontological universality are empirically, philosophically, or politically indefensible. I also emphasize that universal human rights, properly understood, leave considerable space for national, regional, cultural particularity and other forms of diversity and relativity.

Cultural relativism has probably been the most discussed issue in the theory of human rights. Certainly that is true in this journal. I have been an active participant in these debates for a quarter century, arguing (Donnelly 1982; 1984; 1989; 1990; 1994; 1997; 1999; 2003; Howard and Donnelly 1986) for a form of universalism that also allows substantial space for important (second order)

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[1] The tone of this essay owes much to a long conversation with Daniel Bell and Joseph Chan in Japan nearly a decade ago. I thank them for the sort of deep engagement of fundamental differences that represents one of the best and most exhilarating features of intellectual life. I also thank audiences at Yonsei University, Ritsumeikan University, and Occidental College, where earlier versions of this paper were presented, and more than two decades of students who have constantly pushed me to clarify, sharpen, and properly modulate my arguments.

claims of relativism. I continue to insist on what I call the "relative universality" of human rights. Here, however, I give somewhat more emphasis to the limits of the universal.

In the 1980s, when vicious dictators regularly appealed to culture to justify their depredations, a heavy, perhaps even over-heavy, emphasis on universalism seemed not merely appropriate but essential. Today, human rights are backed by the world's preponderant political, economic, and cultural powers and have become ideologically hegemonic in international society. Not only do few states today directly challenge international human rights, a surprisingly small number even seriously contend that large portions of the Universal Declaration do not apply to them. An account that gives somewhat greater emphasis to the limits of universalism thus seems called for, especially now that American foreign policy regularly appeals to "universal" values in the pursuit of a global ideological war that flouts international legal norms.

1. CONCEPTUAL AND SUBSTANTIVE UNIVERSALITY

We can begin by distinguishing the **conceptual universality** implied by the very idea of human rights from **substantive universality**, the universality of a particular conception or list of human rights. Human rights, following the manifest literal sense of the term, are ordinarily understood to be the rights that one has simply because one is human. As such, they are equal rights, because we either are or are not human beings, equally. Human rights are also inalienable rights, because being or not being human usually is seen as an inalterable fact of nature, not something that is either earned or can be lost. Human rights are thus "universal" rights in the sense that they are held "universally" by all human beings. Conceptual universality is in effect just another way of saying that human rights are, by definition, equal and inalienable.

Conceptual universality, however, establishes only that <u>if</u> there are any such rights, they are held equally/universally by all. It does not show that there <u>are</u> any such rights. Conceptually

universal human rights may be so few in number or specified at such a high level of abstraction that they are of little practical consequence. And conceptual universality says nothing about the central question in most contemporary discussions of universality, namely, whether the rights recognized in the Universal Declaration of Human Rights and the International Human Rights Covenants are universal. This is a substantive, question. It will be our focus here.

2. UNIVERSAL POSSESSION NOT UNIVERSAL ENFORCEMENT

Defensible claims of universality, whether conceptual or substantive, are about the rights that we have as human beings. Whether everyone, or even anyone, enjoys these rights is another matter. In far too many countries today the state not only actively refuses to implement, but grossly and systematically violates, most internationally recognized human rights. And in all countries, significant violations of at least some human rights occur daily.

The global human rights regime relies on national implementation of internationally recognized human rights. Norm creation has been internationalized. Enforcement of authoritative international human rights norms, however, is left almost entirely to sovereign states. The few and limited exceptions – most notably genocide, crimes against humanity, certain war crimes, slavery, and perhaps torture and arbitrary execution – only underscore the almost complete sovereign authority of states to implement human rights in their territories as they seen fit.

Except in the European regional regime, supranational supervisory bodies are largely restricted to monitoring how states implement their international human rights obligations.[2] Transnational human rights NGOs and other national and international advocates engage in largely persuasive activity, aimed at changing the human rights practices of states. Foreign states are free to

[2] For introductory overviews of international and regional human rights regimes, see (Donnelly 2003: ch. 8) and (Forsythe 2006: ch. 3, 5).

raise human rights violations as an issue of concern but have no authority to implement or enforce human rights within another state's sovereign jurisdiction. The implementation and enforcement of universally held human rights thus is extremely relative, largely a function of where one has the (good or bad) fortune to live.

3. HISTORICAL OR ANTHROPOLOGICAL UNIVERSALITY[3]

Human rights are often held to be universal in the sense that most societies and cultures have practiced human rights throughout most of their history. "All societies cross-culturally and historically manifest conceptions of human rights." (Pollis and Schwab 1980a: 15; compare Mutua 1995: 358; Penna and Campbell 1998: 21) This has generated a large literature on so-called non-western conceptions of human rights. "In almost all contemporary Arab literature on this subject [human rights], we find a listing of the basic rights established by modern conventions and declarations, and then a serious attempt to trace them back to Koranic texts." (Zakaria 1986: 228) "It is not often remembered that traditional African societies supported and practiced human rights." (Wai 1980: 116) "Protection of human rights is an integral part" of the traditions of Asian societies. (Anwar 1994: 2) "All the countries of the region [Asia] would agree that 'human rights' as a concept existed in their tradition." (Coomaraswamy 1980: 224) Even the Hindu caste system has been described as a "traditional, multidimensional view of human rights." (Buultjens 1980: 113; compare Khushalani 1983: 408; Stackhouse 1984)

Such claims to **historical or anthropological universality** confuse values such as justice, fairness, and humanity need with practices that aim to realize those values. Rights – entitlements that ground claims with a special force – are a particular kind of social practice. Human rights –

[3] This section draws directly from and summarizes (Donnelly 2003: ch. 5).

equal and inalienable entitlements of all individuals that may be exercised against the state and society – are a distinctive way to seek to realize social values such as justice and human flourishing. There may be considerable historical/anthropological universality of values across time and culture. No society, civilization, or culture prior to the seventeenth century, however, had a widely endorsed practice, or even vision, of equal and inalienable individual human rights.[4]

For example, Dunstan Wai argues that traditional African beliefs and institutions "sustained the 'view that certain rights should be upheld against alleged necessities of state'" (1980: 116). This confuses human rights with limited government.[5] Government has been limited on a variety of grounds other than human rights, including divine commandment, legal rights, and extralegal checks such as a balance of power or the threat of popular revolt.

"The concept of human rights concerns the relationship between the individual and the state; it involves the status, claims, and duties of the former in the jurisdiction of the latter. As such, it is a subject as old as politics" (Tai 1985: 79). Not all political relationships, however, are governed by, related to, or even consistent with, human rights. What the state owes those it rules is indeed a perennial question of politics. Human rights provide one answer. Other answers include divine right monarchy, the dictatorship of the proletariat, the principle of utility, aristocracy, theocracy, and democracy.

"Different civilizations or societies have different conceptions of human well-being. Hence, they have a different attitude toward human rights issues" (Lee 1985: 131). Even this is misleading. Other societies may have (similar or different) attitudes toward issues that we consider today to be matters of human rights. But without a widely understood concept of human rights endorsed or

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[4] For detailed support for this claim, see (Donnelly 2003: ch. 5) and (Howard 1986: ch. 2).

[5] Compare (Legesse 1980: 125-127) and (Busia 1994: 231) and, for non-African examples, (Said 1979: 65), (Mangalpus 1978), and (Pollis and Schwab 1980b: xiv).

advocated by some important segment of that society, it is hard to imagine that they could have any attitude toward human rights. And it is precisely the idea of equal and inalienable rights that one has simply because one is a human being that was missing not only in traditional Asian, African, Islamic, but in traditional Western societies as well.

The ancient Greeks notoriously distinguished between Hellenes and barbarians, practiced slavery, denied basic rights to foreigners, and (by our standards) severely restricted the rights of even free adult (male) citizens. The idea that all human beings had equal and inalienable basic rights was equally foreign to Athens and Sparta, Plato and Aristotle, Homer, Hesiod, Aeschylus, Euripides, Aristophanes, Herodotus, and Thucydides. Much the same is true of ancient Rome, both as a republic and as an empire. In medieval Europe, where the spiritual egalitarianism and universality of Christianity expressed itself in deeply inegalitarian politics, the idea of equal legal and political rights for all human beings, had it been seriously contemplated, would have been seen as a moral abomination, a horrid transgression against God's order.

In the "pre-modern" world, both Western and non-Western alike, the duty of rulers to further the common good arose not from the rights (entitlements) of all human beings, or even all subjects, but from divine commandment, natural law, tradition, or contingent political arrangements. The people could legitimately expect to benefit from the obligations of their rulers to rule justly. Neither in theory nor in practice, though, did they have human rights that could be exercised against unjust rulers. The reigning ideas were natural law and natural right (in the sense of righteousness or rectitude) not natural or human rights (in the sense of equal and inalienable individual entitlements).

Many arguments of anthropological universality are inspired by an admirable desire to show cultural sensitivity and respect. In fact they do no such thing. Rather, they misunderstand and

misrepresent the foundations and functioning of the societies in question by anachronistically imposing an alien analytical framework.

I am not claiming that Islam, Confucianism, or traditional African ideas cannot support internationally recognized human rights. Quite the contrary, I argue below that in practice today they increasingly do support human rights. My point is simply that Islamic, Confucian, and African societies did not in fact develop significant bodies of human rights ideas or practices prior to the twentieth century. The next section offers an explanation for this fact.

4. FUNCTIONAL UNIVERSALITY

Natural or human rights ideas first developed in the modern West. A full-fledged natural rights theory is evident in John Locke's *Second Treatise of Government*, published in 1689 in support of the so-called Glorious Revolution. The American and French Revolutions first used such ideas to construct new political orders.

The social-structural "modernity" of these ideas and practices, however, not their cultural "Westernness," deserves emphasis.[6] Human rights ideas and practices arose not from any deep Western cultural roots but from the social, economic, and political transformations of modernity. They thus have relevance wherever those transformations have occurred, irrespective of the pre-existing culture of the place.

Nothing in classical or medieval culture specially predisposed Westerners to develop human rights ideas. Even early modern Europe, when viewed without the benefit of hindsight, seemed a particularly unconducive cultural milieu for human rights. No widely endorsed reading of Christian scriptures supported the idea of a broad set of equal and inalienable individual rights held by all

[6] See (Donnelly 2003: ch. 4). Compare (Goodhart 2003).

Christian, let alone all human beings. Violent, often brutal, internecine and international religious warfare was the norm. The divine right of kings was the reigning orthodoxy.

Nonetheless, in early modern Europe, ever more powerful and penetrating (capitalist) markets and (sovereign, bureaucratic) states disrupted, destroyed, or radically transformed "traditional" communities and their systems of mutual support and obligation. Rapidly expanding numbers of (relatively) separate families and individuals were thus left to face a growing range of increasingly unbuffered economic and political threats to their interests and dignity. New "standard threats" (Shue 1980: 29-34) to human dignity provoked new remedial responses.

The absolutist state offered a society organized around a monarchist hierarchy justified by a state religion. The newly emergent bourgeoisie envisioned a society in which the claims of property balanced those of birth. And as "modernization" progressed, an ever widening range of dispossessed groups advanced claims for relief from injustices and disabilities. Such demands took many forms, including appeals to scripture, church, morality, tradition, justice, natural law, order, social utility, and national strength. Claims of equal and inalienable natural/human rights, however, became increasingly central. And the successes of some groups opened political space for others to advance similar claims for their equal rights.

The spread of modern markets and states has globalized the same threats to human dignity initially experienced in Europe. Human rights represent the most effective response yet devised to a wide range of standard threats to human dignity that market economies and bureaucratic states have made nearly universal across the globe. Human rights today remain the only proven effective means to assure human dignity in societies dominated by markets and states. Although historically contingent and relative, this **functional universality** fully merits the label universal – for us, today.

Arguments that another state, society, or culture has developed plausible and effective alternative mechanisms for protecting or realizing human dignity in the contemporary world deserve serious attention. Today, however, such claims, when not advanced by repressive elites and their supporters, usually refer to an allegedly possible world that no one yet has had the good fortune to experience.

The functional universality of human rights depends on human rights providing attractive remedies for some of the most pressing systemic threats to human dignity. Human rights today do precisely that for a growing number of people of all cultures in all regions. Whatever our other problems, we all must deal with market economies and bureaucratic states. Whatever our other religious, moral, legal, and political resources, we all need equal and inalienable universal human rights.

5. INTERNATIONAL LEGAL UNIVERSALITY

If this argument is even close to correct, we ought to find widespread active endorsement of internationally recognized human rights. Such endorsement is evident in international human rights law, giving rise to what I will call **international legal universality**.

Virtually all states accept the authority of the Universal Declaration of Human Rights. For the purposes of international relations, human rights today means, roughly, the rights in the Universal Declaration. Those rights have been further elaborated in a series of widely ratified treaties. As of May 8, 2006, the six core international human rights treaties (on civil and political rights, economic, social, and cultural rights, racial discrimination, women, torture, and children) had an average 166 parties, which represents a truly impressive 85% ratification rate.[7]

[7] Ratification data is available at http://www.ohchr.org/english/countries/ratification/index.htm.

Although this international legal universality operates in significant measure at an elite interstate level, it has come to penetrate much more deeply. Movements for social justice and of political opposition have increasingly adopted the language of human rights. Growing numbers of new international issues, ranging from migration, to global trade and finance, to access to pharmaceuticals are being framed as issues of human rights. (Brysk 2005)

States that systematically violate internationally recognized human rights do not lose their legitimacy in international law. Except in cases of genocide, sovereignty still ultimately trumps human rights. But protecting internationally recognized human rights is increasingly seen as a precondition of full political legitimacy. Consider Robert Mugabe's Zimbabwe. Even China has adopted the language (although not too much of the practice) of internationally recognized human rights, seemingly as an inescapable precondition to its full recognition as a great power.

International legal universality, like functional universality, is contingent and relative. It depends on states deciding to treat the Universal Declaration and the Covenants as authoritative. Tomorrow, they may no longer accept or give as much weight to human rights. Today, however, they clearly have chosen, and continue to choose, human rights over competing conceptions of national and international political legitimacy.

6. OVERLAPPING CONSENSUS UNIVERSALITY

International legal universality is incompletely but significantly replicated at the level of moral or political theory. John Rawls distinguishes "comprehensive religious, philosophical, or moral doctrines," such as Islam, Kantianism, Confucianism, and Marxism, from "political conceptions of justice," which address only the political structure of society, defined (as far as possible) independent of any particular comprehensive doctrine. (1996: xliii-xlv, 11-15, 174-176;

1999: 31-32, 172-173) Adherents of different comprehensive doctrines may be able to reach an "overlapping consensus" on a political conception of justice. (1996: 133-172, 385-396)

Such a consensus is overlapping; partial rather than complete. It is political rather than moral or religious. Rawls developed the notion to understand how "there can be a stable and just society whose free and equal citizens are deeply divided by conflicting and even incommensurable religious, philosophical, and moral doctrines." (1996: 133) The idea, however, has obvious extensions to a culturally and politically diverse international society.[8]

Human rights can be grounded in a variety of comprehensive doctrines. For example, they can be seen as encoded in the natural law, called for by divine commandment, political means to further human good or utility, or institutions to produce virtuous citizens. Over the past few decades more and more adherents of a growing range of comprehensive doctrines in all regions of the world have come to endorse human rights – (but only) as a political conception of justice.[9]

It is important to remember that virtually all Western religious and philosophical doctrines through most of their history have either rejected or ignored human rights. Today, however, most adherents of most Western comprehensive doctrines endorse human rights. And if the medieval Christian world of crusades, serfdom, and hereditary aristocracy could become today's world of liberal and social democratic welfare states, it is hard to think of a place where a similar transformation is inconceivable.

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[8] Rawls' own extension in The Law of Peoples (1999) involves both a wider political conception of justice and a narrower list of internationally recognized human rights. The account offered here is Rawlsian in inspiration but not that of John Rawls.

[9] (Bielefeldt 2000) makes a similar argument for overlapping consensus universality, illustrated by a discussion of recent trends in Islamic thinking on human rights. See also (Peetush 2003), which deals with South Asian views. (Adams 1998) presents an account of the suffering of Tibetan women activists that stresses their instrumental adoption of human rights ideas to grapple with injustices and suffering that they understand in very different terms. For a looser account of cross-cultural consensus, see (An-Na'im 1992).

Consider claims that "Asian values" are incompatible with internationally recognized human rights.[10] Asian values – like Western values, African values, and most other sets of values – can be, and have been, understood as incompatible with human rights. But they also can be and have been interpreted to support human rights, as they regularly are today in Japan, Taiwan, and South Korea. And political developments in a growing number of Asian countries suggest that ordinary people and even governments are increasingly viewing human rights as a contemporary political expression of their deepest ethical, cultural, and political values and aspirations.[11]

No culture or comprehensive doctrine is "by nature," or in any given or fixed way, either compatible or incompatible with human rights. Here we circle back to the insight underlying (misformulated) arguments of anthropological universality. Whatever their past practice, nothing in indigenous African, Asian, or American cultures prevents them from endorsing human rights now. Cultures are immensely malleable, as are the political expressions of comprehensive doctrines. It is an empirical question whether (any, some, or most) members of a culture or exponents of a comprehensive doctrine support human rights as a political conception of justice.

All major civilizations have for long periods treated a significant portion of the human race as "outsiders" not entitled to guarantees that could be taken for granted by "insiders." Few areas of the globe, for example, have never practiced and widely justified human bondage. All literate civilizations have for most of their histories assigned social roles, rights, and duties primarily on the basis of ascriptive characteristics such as birth, age, and gender.

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[10] (Langlois 2001) offers perhaps the best overview. (Jacobsen and Bruun 2000) and (Bauer and Bell 1999) are good collections of essays.

[11] "Confucians can make sense of rights out of the resources of their own tradition." (Sim 2004: 338) Compare (Chan 1999, 2002). On Confucianism and modern social and political practices, see (Bell and Hahm Chaibong 2003).

Today, however, the moral equality of all human beings is strongly endorsed by most leading comprehensive doctrines in all regions of the world. This convergence, both within and between civilizations, provides the foundation for a convergence on the rights of the Universal Declaration. In principle, a great variety of social practices other than human rights might provide the basis for realizing foundational egalitarian values. In practice human rights are rapidly becoming the preferred option. I will call this **overlapping consensus universality**.

Today, the moral equality of all human beings is strongly endorsed by most leading comprehensive doctrines in all regions of the world. In principle, a great variety of social practices other than human rights might provide the basis for realizing foundational egalitarian values. In practice, human rights are rapidly becoming the preferred option, leading to an overlapping consensus on the Universal Declaration understood as a political conception of justice.

7. VOLUNTARY OR COERCED CONSENSUS?

Is the transnational consensus underlying international legal and overlapping consensus universality more voluntary or coerced? The influence of the United States and Western Europe should not be underestimated. Example, however, has been more powerful than advocacy and coercion has typically played less of a role than positive inducements such as closer political or economic relations or full participation in international society. Human rights dominate political discussions less because of pressure from materially or culturally dominant powers than because they respond to some of the most important social and political aspirations of individuals, families, and groups in most countries of the world.

States may be particularly vulnerable to external pressure and thus tempted or even compelled to offer purely formal endorsements of international norms advocated by leading

powers.[12] The assent of most societies and individuals, however, is largely voluntary. The consensus on the Universal Declaration, it seems to me, principally reflects its cross-cultural substantive attractions. People, when given a chance, usually (in the contemporary world) choose human rights, irrespective of region, religion, or culture.

Few "ordinary" citizens in any country have a particularly sophisticated sense of human rights. They respond instead to the general idea that they and their fellow citizens are entitled to equal treatment and certain basic goods, services, protections, and opportunities. I am in effect suggesting that the Universal Declaration presents a reasonable first approximation of the list that they would come up with, largely irrespective of culture, after considerable reflection. More precisely, there is little in the Universal Declaration that they would not (or could not be persuaded to) put there, although we might readily imagine a global constitutional convention today coming up with a somewhat different list.

The transnational consensus on the Universal Declaration is largely voluntary. It arises above all from the decisions of people, states, and other political actors that human rights are essential to protecting their visions of a life of dignity. Therefore, we should talk more of the relative universality of human rights, rather than their relative universality.[13]

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[12] Even that seems to me not obviously correct. I read hypocrisy more as evidence of the substantive attractions of hypocritically endorsed norms.

[13] Laura Hebert in a private communication pointed out that I previously described my views as weak relativist or strong (but not radical) universalist, but that in an earlier version of this essay I used the label weak universalist. The careful reader will note that here I have avoided such formulations in favor of a notion relative universality that is open to differing emphases. This reflects my growing appreciation of the advantages of approaching the continuum between relativism and universalism less as an ideal type account of all possible positions and more in terms of the spectrum of views that happen to be prevalent among actively engaged participants in the debate at a particular time and place.

The actual spectrum of views actively engaged at any given time and place is likely to cover only a portion of the ideal type spectrum. My arguments have always been formulated primarily, although implicitly, with respect to the former. Over the past decade, much of the relativist end of the Cold War era spectrum has disappeared from mainstream discussions. Therefore, views such as my own that once appeared near the

8. ONTOLOGICAL UNIVERSALITY

Overlapping consensus implies that human rights can, and in the contemporary world do, have multiple and diverse "foundations." A single transhistorical foundation would provide what I will call **ontological universality**.[14] Although a single moral code may indeed be objectively correct and valid at all times in all places, at least three problems make ontological universality implausible and politically unappealing.

First, no matter how strenuously adherents of a particular philosophy or religion insist that (their) values are objectively valid, they are unable to persuade adherents of other religions or philosophies. This failure to agree leaves us in pretty much the same position as if there were no objective values at all. We are thrown back on arguments of functional, international legal, and overlapping consensus universality (understood now, perhaps, as imperfect reflections of a deeper ontological universality).

Second, all prominent comprehensive doctrines have for large parts of their history ignored or actively denied human rights. It is improbable (although conceivable) that an objectively correct doctrine has been interpreted incorrectly so widely. Thus it is unlikely that human rights in general, and the particular list in the Universal Declaration, are ontologically universal.

Third, the ontological universality of human rights, coupled with the absence of anthropological universality, implies that virtually all moral and religious theories through most of their history have been objectively false or immoral. This may indeed be correct. But before we

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edge of the universalist end of the spectrum now appear more moderately universalist. I must also admit, though, that given this new political context I have intentionally given greater emphasis to the space available for diverse implementations of universal human rights norms. See (Donnelly 1999) and the final two sections below.

[14] For a recent attempt to defend ontological universality, see (Talbott 2005: ch. 2-4).

embrace such a radical idea, I think we need much stronger arguments than are currently available to support the ontological universality of human rights.

Overlapping consensus, rather than render human rights groundless, gives them multiple grounds. Whatever its analytical and philosophical virtues or shortcomings, this is of great practical utility. Those who want (or feel morally compelled) to make ontological claims can do so with no need to convince or compel others to accept this particular, or even any, foundation. Treating human rights as a Rawlsian political conception of justice thus allows us to address a wide range of issues of political justice and right while circumventing not merely inconclusive but often pointlessly divisive disputes over moral foundations.

9. CULTURAL RELATIVISM

Having considered a variety of possible senses of "universality," I now want to turn, somewhat more briefly, to several different senses of "relativity." What makes (or is alleged to make) human rights relative? Relative to what? We have already seen that they are historically relative and that, at best, ontological universality remains a matter of debate. The most common argument for relativity appeals to culture.

Cultural relativity is a fact: cultures differ, often dramatically, across time and space. Cultural relativism is a set of doctrines that imbue cultural relativity with prescriptive force. For our purposes we can distinguish methodological and substantive cultural relativism.[15]

Methodological cultural relativism was popular among mid-twentieth century anthropologists. They advocated a radically non-judgmental analysis of cultures in order to free anthropology from unconscious, and often even conscious, biases rooted in describing and judging

[15] (Tilley 2000) carefully reviews a number of particular conceptions and cites much of the relevant literature from anthropology. Compare (Renteln 1988).

other societies according to modern Western categories and values. (Herskovits 1972) Such arguments lead directly to a recognition of the historical or anthropological relativity of human rights.

In discussions of human rights, however, cultural relativism typically appears as a substantive normative doctrine that demands respect for cultural differences.[16] The norms of the Universal Declaration are presented as having no normative force in the face of divergent cultural traditions. Practice is to be evaluated entirely by the standards of the culture in question. As the Statement on Human Rights of the American Anthropological Association (AAA) put it, "man is free only when he lives as his society defines freedom." (1947: 543)

Rhoda Howard-Hassmann has aptly described this position as "cultural absolutism" (Howard 1993): culture provides absolute standards of evaluation; whatever a culture says is right is right (for those in that culture).[17] Rather than address the substance of such claims, which usually

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[16] Even Renteln, who claims to be advancing "a metaethical theory about the nature of moral perceptions," (1988: 56) thus making her position more like what I have called methodological relativism, insists on "the requirement that diversity be recognized" and the "urgent need to adopt a broader view of human rights that incorporates diverse concepts." (1985: 540) Such substantive propositions simply do not follow from methodological relativism or any causal or descriptive account of moral perceptions.

[17] A variant on such arguments popular in the 1980s held that each of the three "worlds" of that era – Western/liberal, Soviet/socialist and Third World – had its own distinctive conception of human rights, rooted in its own shared historical experience and conception of social justice. (e.g. Gros Espiell 1979; Pollis 1982) This story was often associated with a claim that the West was focused on "first generation" civil and political rights, the socialist world on "second generation" economic, social, and cultural rights, and the Third World on "third generation" solidarity rights. (See (Marks 1981; Vasak 1984; 1991). (Ishay 2004) presents a relatively sophisticated post-Cold War version of this argument. For a counterargument, see (Donnelly 1993).)

The three worlds story suggests that level of development and political history impose priorities on (groups of) states. Socialist and Third World states, it was argued, could not afford the "luxury" of civil and political rights, being legitimately preoccupied with establishing their national sovereignty and economic and social development. While usually acknowledging the long run desirability of civil and political rights, they were dismissed as (at best) a secondary priority, a distraction, or even a serious impediment to progress in countries struggling to achieve self-determination and economic development. The claim, though, that benevolent governments that denied civil and political rights could deliver development more rapidly and spread its benefits more universally, unfortunately found almost no support in the experience of developmental dictatorships of the left and the right alike during the Cold War. Quite the contrary, pursuing economic and

involve arguments that other cultures give greater attention to duties than to rights and to groups than to individuals, I identify six serious problems with substantive or absolutist cultural relativism.

First, it risks reducing "right" to "traditional," "good" to "old," and "obligatory" to "habitual." Few societies or individuals, however, believe that their values are binding simply or even primarily because they happen to be widely endorsed within their culture. Without very powerful philosophical arguments (which are not to be found in this cultural relativist literature on human rights) it would seem inappropriate to adopt a theory that is inconsistent with the moral experience of almost all people – especially in the name of cultural sensitivity and diversity.

Second, equating indigenous cultural origins with moral validity is deeply problematic. The AAA statement insists that "standards and values are relative to the culture from which they derive so that any attempt to formulate postulates that grow out of the beliefs or moral codes of one culture must to that extent detract from the applicability of any Declaration of Human Rights to mankind as a whole." (1947: 542) The idea that simply because a value or practice emerged in place A makes it, to that extent, inapplicable to B is, at best, a dubious philosophical claim that assumes the impossibility of moral learning or adaptation except within (closed) cultures. It also dangerously assumes the moral infallibility of culture.

Third, intolerant, even genocidal, relativism is as defensible as tolerant relativism. If my culture's values tell me that others are inferior, there is no standard by which to challenge this. A multidimensional, multicultural conception of human rights must appeal to principles inconsistent with substantive cultural relativism.

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social rights without civil and political rights in practice usually led to poor performance in realizing both, particularly over the medium and long run.

Fourth, cultural relativist arguments usually either ignore politics or confuse it with culture. "Culture" in such arguments involves voluntary compliance that merits external respect. The often deeply coercive aspect to culture is simply ignored. As a result, such arguments regularly confuse what a people has been forced to tolerate with what it values.

Fifth, the "cultures" described in these arguments typically are idealized representations of a past that, if it ever existed, certainly does not exist today. For example, Roger Ames, in an essay entitled "Continuing the Conversation of Chinese Human Rights," (1997) completely ignores the impact of half a century of communist party rule, as if it were irrelevant to discussing human rights in contemporary China.

Sixth, and most generally, the typical account of culture as coherent, homogenous, consensual, and static is deeply misguided. Culture in fact is a repertoire of deeply contested symbols, practices, and meanings over and with which members of a society constantly struggle.[18] Culture is not destiny – or, to the extent that it is, that is only because victorious elements in a particular society have used their power to make a particular, contingent destiny.

The fact of cultural relativity and the doctrine of methodological cultural relativism are important antidotes to misplaced universalism. The fear of (neo-)imperialism and the desire to demonstrate cultural respect that lie behind many cultural relativist arguments need to be taken seriously. Substantive cultural relativism, however, is a deeply problematic moral theory that offers a poor understanding of the relativity of human rights.

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[18] For excellent brief applications of this understanding of culture to debates over human rights, see (Preis 1996) and (Nathan 2001). Compare also (Engelhart 2000) and (Zechenter 1997).

10. SELF-DETERMINATION AND SOVEREIGNTY

Self-determination and sovereignty ground a tolerant relativism based on the mutual recognition of peoples/states in an international community. Self-determination, understood as an ethical principle, involves a claim that a free people is entitled to choose for itself its own way of life and its own form of government. The language of "democracy" is also often used. Democratic self-determination is a communal expression of the principles of equality and autonomy that lie at the heart of the idea of human rights.

Whether a particular practice is in fact the free choice of a free people, however, is an empirical question. And self-determination must not be confused with legal sovereignty. Legally sovereign states need not satisfy or reflect the ethical principle of self-determination. Too often, repressive regimes falsely claim to reflect the will of the people. Too often, international legal sovereignty shields regimes that violate both ethical self-determination and most internationally recognized human rights – which brings us back to the relative enjoyment of human rights, based largely on where one happens to live.

Often the result is a conflict between justice, represented by human rights and self-determination, and order, represented by international legal sovereignty. Non-intervention in the face of even systematic human rights violations dramatically decreases potentially violent conflicts between states. We can also see international legal sovereignty as an ethical principle of the society of states, a principle of mutual toleration and respect for (state) equality and autonomy. However we interpret it, though, legal sovereignty introduces a considerable element of relativity into the enjoyment of internationally recognized human rights in the contemporary world.

11. POST-STRUCTURAL AND POST-COLONIAL ARGUMENTS

The growing hegemony of the idea of human rights since the end of the Cold War, combined with the rise of post-structural and post-colonial perspectives, has spawned a new stream of relativist, or perhaps more accurately anti-universalist, arguments. Although often similar to earlier cultural relativist arguments in both substance and motivation, they typically are based on a very different sort of anti-foundationalist ontology and epistemology[19] and tend to be specially addressed to the context of globalization. They seek to challenge arrogant, neo-imperial arguments of universality, and draw attention to "the civilizationally asymmetrical power relations embedded in the international discourse," (Woodiwiss 2002: 139) in order to open or preserve discursive and practical space for autonomous action by marginalized groups and peoples across the globe.

Although some versions of such arguments are dismissively critical,[20] many are well modulated. "The seduction of human rights discourse has been so great that it has, in fact, delayed the development of a critique of rights." (Mutua 1996: 591) They claim that a lack of critical self-reflection has made human rights advocates "more part of a problem in today's world than part of the solution." (Kennedy 2002: 101) There are "dark sides of virtue." (Kennedy 2004) The uncomfortable reality, whatever the intentions of Western practitioners, too often is "imperial humanitarianism." (Gott 2002; compare Koshy 1999; Cheah 1997)[21]

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[19] Critical Marxian perspectives, however, make similar arguments from a foundationalist perspective. See, for example, (Evans 1996; 1998).

[20] For example, Makau Mutua writes of "the biased and arrogant rhetoric and history of the human rights enterprise," which is simply the latest expression of "the historical continuum of the Eurocentric colonial project." (2001: 202, 204) The hegemony of international human rights norms, in this reading, amounts to granting Western culture "the prerogative of imperialism, the right to define and impose on others what it deems good for humanity." (2001: 219)

[21] (Ignatieff 2001) expresses similar worries from within a very traditional Western liberal perspective.

In these accounts, universality per se – and more particularly the tendency for universal claims to obscure and repress difference – is targeted more than universal human rights in particular. Conversely, even many fairly radical post-structuralist and post-colonial authors reject substantive cultural relativism in favor of a more dialogical approach to cross-cultural consensus that is not in the end dissimilar to overlapping consensus arguments discussed above. (e.g. de Sousa Santos 2002; Hernández-Truyol and Rush 2000; Hernández-Truyol 2002) This, I believe, reflects a growing sophistication in the discussion of relativity and universality.

12. JUSTIFYING PARTICULARITY: UNIVERSAL RIGHTS, NOT IDENTICAL PRACTICES

Over the past decade, most discussions have tried to move beyond a dichotomous presentation of the issue of universality. Most sophisticated defenders of both universality and relativity today recognize the dangers of an extreme commitment and acknowledge at least some attractions and insights in the positions of their critics and opponents.

At the relatively universalistic end of this spectrum, I have defended "relative universality." (Compare Halliday 1995; Perry 1997; Beitz 2001) Towards the relativist end, Richard Wilson argues that ideas of and struggles for human rights "are embedded in local normative orders and yet are caught within webs of power and meaning which extend beyond the local." (1997: 23; compare Dallmayr 2002; Taylor 1999; Penna and Campbell 1998) Near the center, Andrew Nathan uses the language of "tempered universalism." (2001; compare Preis 1996; O'Sullivan 2000)

This more flexible account of universality (and relativity) fits well with a three-tiered scheme for thinking about universality that I have long advocated. (1984; 2003: §6.4) Human rights are (relatively) universal at the level of the concept, broad formulations such as the claims in Articles 3

and 22 of the Universal Declaration that everyone has "the right to life, liberty and security of person" and "the right to social security." Particular rights concepts, however, have multiple defensible conceptions. Any particular conception, in turn, will have many defensible implementations. At this level – for example, the design of electoral systems to implement the right "to take part in the government of his country, directly or through freely chosen representatives" (Universal Declaration Article 21) – relativity is not merely defensible but desirable.

Functional and overlapping consensus universality lie primarily at the level of concepts. Most of the Universal Declaration lies at this level as well. Although international human rights treaties often embody particular conceptions, and sometimes even particular forms of implementation,[22] they too permit a wide range of particular practices. Substantial second order variation, by country, region, culture, or other grouping, is completely consistent with international legal and overlapping consensus universality.

Concepts set a range of plausible variations among conceptions, which in turn restrict the range of practices that can plausibly be considered implementations of a particular concept and conception. But even some deviations from authoritative international human rights norms may be, all things considered, (not il)legitimate.

Four criteria can help us[23] to grapple seriously yet sympathetically with claims in support of such deviations. For reasons of space, I simply stipulate these criteria, although I doubt that they are deeply controversial once we have accepted some notion of relative universality.

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[22] For example, Article 14 of the Convention against Torture specifies that "Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation."

[23] I am implicitly speaking from the perspective of an engaged participant in international society. A different and more complex "subject position" may be important "on the ground" where ordinary people have more

1) Important differences in threats are likely to justify variations even at the level of concepts. Although perhaps the strongest theoretical justification for even fairly substantial deviations from international human rights norms, such arguments rarely are empirically persuasive in the contemporary world. (Indigenous peoples may be the exception that proves the rule.[24])

2) Participants in the overlapping consensus deserve a sympathetic hearing when they present serious reasoned arguments justifying limited deviations from international norms. Disagreements over "details" should be approached differently from systematic deviations or comprehensive attacks. If the resulting set of human rights remains generally consistent with the structure and overarching values of the Universal Declaration, we should be relatively tolerant of particular deviations.

3) Arguments claiming that a particular conception or implementation is, for cultural or historical reasons, deeply imbedded within or of unusually great significance to some significant group in society deserve, on their face, sympathetic consideration. Even if we do not positively value diversity, the autonomous choices of free people should never be lightly dismissed, especially when they reflect well-established practices based on deeply held beliefs.

4) Tolerance for deviations should decrease as the level of coercion increases.

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local and particularistic understandings of their values. I suspect that much of the "talking past each other" in debates on cultural relativism and human rights arises from taking arguments that may be well formulated for a particular setting, be it local or international, and applying them directly in another discursive setting, without the adjustments required to give those arguments resonance and persuasive force in that context. For example, in much of rural China today, direct appeals to internationally recognized human rights are unlikely to be politically efficacious, and often will be positively counter-productive, either for mobilizing peasants or persuading local authorities. Those working directly to improve the day to day life of Chinese peasants needs to give central place to this fact. But I would suggest that it says more about the Chinese state and the enforced isolation and systematic repression of Chinese peasants than about "Asian values."

[24] Defensible categorical differences between "developed" and "developing" countries, I would argue, involve, at most, differing short-term priorities among particular internationally recognized human rights, not major differences in the list of rights appropriate for individuals in such countries.

13. TWO ILLUSTRATIONS

Article 18 of the Universal Declaration reads, in its entirety, "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance." Most schools of Islamic law and scholarship deny Muslims the right to change their religion. Is prohibition of apostasy by Muslims compatible with the relative universality of Article 18? Reasonable people may reasonably disagree, but I am inclined to answer "Probably."

The variation is at the level of conceptions – the limits of the range of application of the principle of freedom of religion – in a context where the overarching concept is strongly endorsed. Most Islamic countries and communities respect the right of adherents of other religions to practice their beliefs (within the ordinary constraints of public order). Prohibition of apostasy also has a deeply rooted doctrinal basis, supported by a long tradition of practice. I think, therefore, that we are compelled to approach it with a certain prima facie tolerance, particularly if it is a relatively isolated deviation from international norm.[25]

Persuasion certainly lies within a state's margin of appreciation. Freedom of religion does not require religious neutrality – separation of church and state, as Americans typically put it – but only that people be free to choose and practice their religion. Furthermore, there is no guarantee that the choice be without cost. A state thus might be justified in denying certain benefits to

[25] Even where there is a broad pattern of systematic violations of international human rights norms, we often would do well not to focus too much on the issue of apostasy, which is likely to have a much stronger internal justification than many other violations of internationally recognized human rights. A better strategy, at least where apostates do not suffer severely, would be to work to improve broader human rights practices, with the aim of creating a situation where we would be "willing to live with" at least some forms of prohibition of apostasy.

apostates, as long as those benefits are not guaranteed by human rights. (Protection against discrimination on the basis of religion is one of the foundational principles of international human rights norms.) It may even be (not im)permissible to impose modest disabilities on apostates, again as long as they do not violate the human rights of apostates, who remain human beings entitled to all of their human rights. And the state is under no obligation to protect apostates against social sanctions from their families and communities that do not infringe human rights.

Executing apostates, however, certainly exceeds the bounds of permissible variation. Violently imposing a specific conception of freedom of religion inappropriately denies basic personal autonomy. Whatever the internal justification, this so excessively infringes the existing international legal and overlapping consensus that it is not entitled to international toleration – although we should stress that the same constraints on the use of force apply to external actors, even before we add into account the additional constraints imposed by considerations of sovereignty and international order.

Consider now Article 4(a) of the racial discrimination convention, which requires parties to prohibit racial violence and incitement to such violence and to "declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred." Article 20(2) of the International Covenant on Civil and Political Rights similarly requires that "any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law." Such requirements have been rejected in the United States, where free speech includes even "hate speech" that does not incite violence.

Here the issue is balancing two competing human rights, rather than a conflict between human rights and another value. Any resolution will require restricting the range of at least one of these rights. Therefore, any approach that plausibly protects the conceptual integrity of both rights

must be described as controversial but defensible. American practice with respect to hate speech clearly falls into this category.

Because incitement to violence is legally prohibited, U.S. practice involves only a narrow deviation from international norms, with respect to one part of a second order conception, in a context of general support for the overarching concepts and conceptions. Furthermore, the deviation is on behalf of a strong implementation of another vitally important human rights. And it is deeply rooted in legal history and constitutional theory. I can imagine few stronger cases for justifiable deviations from international norms.

Targets of hate speech may indeed be harmed by that speech. They remain, however, protected against violence. Conversely, prohibiting speech because of its content harms those whose speech is restricted. It also involves the state imposing a particular viewpoint, which is prima facie undesirable. Reasonable people may reasonably disagree about which harm is greatest. Toleration of the American refusal to prohibit hate speech thus seems demanded, even from those who sincerely and no less reasonably believe that prohibiting hate speech is the better course of action. Americans, however, need to be respectful of the mainstream practice and be willing to engage principled arguments to conform with international norms.

These brief arguments are hardly conclusive, perhaps not even correct. I think, though, that they show that the (relative) universality of internationally recognized human rights does not require, or even encourage, global homogenization or the sacrifice of (many) valued local practices. Certainly nothing in my account of relative universality implies, let alone justifies, cultural imperialism. Quite the contrary, (relatively) universal human rights protect people from imposed conceptions of the good life, whether those visions are imposed by local or foreign actors.

Human rights seek to allow human beings, individually and in groups that give meaning and value to their lives, to pursue their own visions of the good life. Such choices – so long as they are consistent with comparable rights for others and reflect a plausible vision of human flourishing to which we can imagine a free people freely assenting – deserve our respect. In fact, understanding human rights as a political conception of justice supported by an overlapping consensus requires us to allow human beings, individually and collectively, considerable space to shape (relatively) universal rights to their particular purposes – so long as they operate largely within the constraints at the level of concepts established by functional, international legal, and overlapping consensus universality.

14. UNIVERSALISM WITHOUT IMPERIALISM

My account has emphasized the "good" sides of universalism, understood in limited, relative terms. The political dangers of arguments of anthropological universality are modest, at least if one accepts functional and international legal universality. In arguing against ontological universality, however, I ignored the dangers of imperialist intolerance when such claims move into politics. This final section considers a few of the political dangers posed by excessive or "false" universalism, especially when a powerful actor (mis)takes its own interests for universal values.

The legacy of colonialism demands that Westerners show special caution and sensitivity when advancing arguments of universalism in the face of clashing cultural values. Westerners must also remember the political, economic, and cultural power that lies behind even their best intentioned activities. Anything that even hints of imposing Western values is likely to be met with

understandable suspicion, even resistance. How arguments of universalism and arguments of relativism are advanced may sometimes be as important as the substance of those arguments.[26]

Care and caution, however, must not be confused with inattention or inaction. Our values, and international human rights norms, may demand that we act on them even in the absence of agreement by others – at least when that action does not involve force. Even strongly sanctioned traditions may not deserve our toleration if they are unusually objectionable. Consider, for example, the deeply rooted tradition of anti-Semitism in the West or "untouchables" and bonded labor in India. Even if such traditional practices were not rejected by the governments in question, they would not deserve the tolerance, let alone the respect, of outsiders. When rights-abusive practices raise issues of great moral significance, tradition and culture are slight defense.

Consider violence against homosexuals. International human rights law does not prohibit discrimination on the basis of sexual orientation. Sexual orientation is not mentioned in the Universal Declaration or the Covenants, and arguments that it falls within the category of "other status" in Article 2 of each of these documents have been accepted at law only in Europe and a few other countries. Nonetheless, everyone is entitled to security of the person. If the state refuses to protect some people against private violence, on the grounds that they are immoral, it violates their basic human rights – which are held no less by the immoral than the moral.[27] And the idea that the state should be permitted to imprison or even execute people solely on the basis of private voluntary acts between consenting adults, however much that behavior or "lifestyle" offends community

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[26] I probably would not object to readers who took this as implicit acknowledgement of certain shortcomings in some of my previous work on relativism, although I suspect that we might disagree about the range of applicability of such criticisms.

[27] For clarity, let me explicitly note that I am not endorsing these judgments but simply arguing that even if they are accepted they do not justify violating human rights.

conceptions of morality, is inconsistent with any plausible conception of personal autonomy and individual human rights.

I do not mean to minimize the dangers of cultural and political arrogance, especially when backed by great power. American foreign policy often confuses American interests with universal values. Many Americans do seem to believe that what's good for the U.S. is good for the world – and if not, then "that's their problem." The dangers of such arrogant and abusive "universalism" are especially striking in international relations, where normative disputes that cannot be resolved by rational persuasion or appeal to agreed upon international norms tend to be settled by (political, economic, and cultural) power – of which United States today has more than anyone else.

Faced with such undoubtedly perverse "unilateral universalism," even some well meaning critics have been seduced by misguided arguments for the essential relativity of human rights. This, however, in effect accepts the American confusion of human rights with U.S. foreign policy. The proper remedy for "false" universalism is defensible, relative universalism. Functional, overlapping consensus, and international legal universality, in addition to their analytical and substantive virtues, can be valuable resources for resisting many of the excesses of American foreign policy, and perhaps even for redirecting it into more humane channels.

Indirect support for such an argument is provided by the preference of the Bush administration for the language of democracy and freedom rather than human rights. (CompareMertus 2003). For example, the introductions to the 2002 and 2006 national security statements use "freedom" 25 times, "democracy" seven times, and "human rights" just once (and not at all in 2006).[28] Part of the reason would seem to be that human rights does have a relatively

[28] http://www.whitehouse.gov/nsc/nssall.html, http://www.whitehouse.gov/nsc/nss/2006/print/intro.html. The prefaces of the Clinton national security statements of 1996, 1997, and 1999, taken together, use "democracy" 21 times, "human rights" six times, and

precise and well-settled meaning in contemporary international relations. "Democracy" is both narrower (Donnelly 2003: §11.3) and more imprecisely defined, especially internationally. And "freedom" is a remarkably malleable idea – "rich" or "empty," depending on your perspective – as a review of the roster of the "free world" in the 1970s indicates.

International legal and overlapping consensus universality can provide important protection against the arrogant "universalism" of the powerful. Without authoritative international standards, to what can the United States (or any other great power) be held accountable? If international legal universality has no force, why shouldn't the United States act on its own (often peculiar) understandings of human rights? Even the Bush Administration's preference for "coalitions of the willing" provides indirect testimony to the attractions of the idea of overlapping consensus.

The contemporary virtues of (relative) universality are especially great because the ideological hegemony of human rights in the post-Cold War world is largely independent of American power. As Abu Ghraib indicates, international human rights norms may even provoke changes in policy in the midst of "war." The international and national focus on Guantanamo – which on its face is odd, given the tiny percentage of the victims of the war on terror who have suffered in this bit of American-occupied Cuba – underscores the power of widely endorsed international norms to change the terms of debate and transform the meaning of actions.

International legal universality is one of the great achievements of the international human rights movement, both intrinsically and because it has facilitated a deepening overlapping consensus. Even the United States participates, fitfully and incompletely, in these consensuses. Not just the Clinton administration but both Bush administrations as well have regularly raised human rights

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"freedom" five. (http://www.fas.org/spp/military/docops/national/1996stra.htm, http://www.fas.org/man/docs/strategy97.htm, http://www.dtic.mil/doctrine/jel/other_pubs/nssr99.pdf)

concerns in numerous bilateral relationships, usually with a central element of genuine concern. (The real problem with American foreign policy is less where it does raise human rights concerns than where it doesn't, or where it allows them to be subordinated to other concerns.) And all of this matters, directly to tens or hundreds of thousands of people, and indirectly to many hundreds of millions, whose lives have been made better by internationally recognized human rights.

Human rights are not a panacea for the world's problems. They do, however, fully deserve the prominence they have received in recent years. For the foreseeable future, human rights will remain a vital element in national, international, and transnational struggles for social justice and human dignity. And the relative universality of those rights is a powerful resource that can be used to help to build more just and humane national and international societies.

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