

HUMAN RIGHTS AND THE DIALOGUE AMONG CIVILIZATIONS

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The emphasis in most recent discussions of civilizations -- whether they are seen as clashing, converging, or conversing -- has been on differences, especially differences with the West. This paper emphasizes similarities, arguing that the most striking fact about human rights in the contemporary world is the extensive consensus on basic norms across civilizations.

Although civilizations differ in many important ways, the extent and importance of divergences is an empirical, not a theoretical, matter. I will argue that in the contemporary world differences with respect to human rights largely concern matters of detail rather than basic norms. There is an overlapping (rather than complete) consensus on the political (rather than moral or religious) conception of justice¹ presented by the 1948 Universal Declaration of Human Rights.

Intense controversy certainly rages, both between and within civilizations, with respect to a few particular internationally recognized human rights. In addition, there are many systematic and idiosyncratic variations in interpretations and modes of implementing internationally recognized human rights. But these are second order differences of largely local importance. From a broad international, cross-cultural, or inter-

¹ The notion of overlapping consensus is discussed in Section 5 below.

civilizational perspective, the overlapping consensus on the Universal Declaration is a much more striking and important fact.

1. DIALOGUE BETWEEN CIVILIZATIONS

What, though, is our unit of analysis? What do we mean by a "civilization?" How are "civilizations" similar to and different from cultures, religions, or regions? How are civilizations related to states and societies? And who speaks for a civilization? How can we judge competing claims about the nature of a civilization? There are no obvious or uncontroversial answers to any of these questions.² We can, however, be clear about how we use the terms that cluster around "civilization."

Both "culture" and "civilization," it seems to me, refer to widely shared and enduring values associated with a particular (material and social) way of life that thrives primarily within a delimited geographical space. I take civilizations to be a subset of cultures. Almost all relatively long lived communities have a "culture." "Civilization," as I will use that term, refers to a few, relatively broadly dispersed "cultures" at a relatively high level of aggregation. I would thus talk of French culture but Western civilization. Although other uses certainly are defensible, I adopt this one (which is neither less clear nor less common than the alternatives) by stipulation, but without apology.

Thus understood, differences within civilizations seem to me at least as striking and as important as any that might exist between civilizations. Consider "Western" civilization, to which most participants in inter-

² (Braudel 1995: ch. 1-3) provides a useful introduction to some of the leading definitional and conceptual issues. For an interesting exploration of these issues in the context of Europe and Islam, see (Hodgson 1993). On the Year of Dialogue between Civilizations, see <http://www.un.org/Dialogue>. For a sampling of Unesco sources, see <http://www.unesco.org/dialogue2001/en/culture1.htm>.

civilizational dialogues make easy and frequent reference. Politically, "the West" has been classically embodied in Sparta, Athens, and Rome, both the Republic and the Empire; the France of Louis IX, Francis I, Louis XIV, Robespierre, Napoleon, Louis Napoleon, the Third Republic, the Popular Front, Petain, and de Gaulle; the Germany of Emperor Frederick III, the Great Elector Frederick William, Frederick the Great, Kaiser Wilhelm II, Adolf Hitler, Willy Brandt, and Helmut Kohl; the England of Henry VIII, Elizabeth I, Oliver Cromwell, George III, Gladstone, Disraeli, Lloyd George, Chamberlain, Churchill, Thatcher, and Lady/Princess Diana; and the United States of Washington, Jefferson, Jackson, Lincoln, Grant, Wilson, two Roosevelts, two Johnsons, several Kennedys, and various Bushes -- not to mention Nixon, Carter, Reagan, Clinton. "The Western tradition" includes both Caligula and Marcus Aurelius, Francis of Assisi and Torquemada, Leopold II of Belgium and Albert Schweitzer, Jesus of Nazareth and the Holocaust -- and just about everything in between.

In characterizing and comparing civilizations, we thus need to be careful not to take some particular expressions, however characteristic they might be, for the whole. This is true even when we are talking about basic values. For example, Christianity and secularism are arguably both equally important to contemporary Western civilization, despite their often divergent implications. And the balance between secular and religious forces, values, and orientations varies dramatically with time, place, and issue in "the West." When we talk about particular practices, the differences within civilizations can be staggering.

Civilization, as I am using that term, must be carefully distinguished from both religion and politics, despite the fact that all three are complexly and inescapably inter-related. The United States is a state, a political entity, not a civilization. Islam is a religion -- or, as many believers would put it, a true and comprehensive way of life -- not a

civilization. If we insist that there is an Islamic civilization -- centered on Mecca and running, say, from the Maghreb to the Indus -- then not all Muslims, or even all majority Muslim countries, are part of "Islamic civilization." The broader Muslim world, running from Dakar to Jakarta, may be an international political unit of growing interest or importance, but it is not a civilization.

This is crucial in determining what is to count as evidence for a claim of the form "civilization x holds belief y." We cannot rely on authoritative texts. The Koran and the Christian Bible have helped to shape Islamic and Western civilization respectively. But civilizations are complexly embodied and continuously evolving ways of life that, even when they do not diverge from what one might expect from a reading of a foundational text, simply cannot be understood through textual analysis, let alone be explained in terms of or reduced to those texts.

No less importantly, political authorities are but one (problematic) source of evidence of the views and practices of a civilization. Beyond the (very serious) problem of divergences between people, societies, and their governments, even the long-established practice of leading states may diverge significantly from the norms and values of the civilization of which it is a part. The United States, for example, is in many ways a very atypical Western country in its approach to economic and social rights.

The careful reader will note that I have said more about what civilizations are not than about what they are. This is largely because I would prefer that we dispense with the term civilization, and whatever it supposedly represents, much as many contemporary anthropologists have abandoned the idea of culture (or have come to see culture as a set of sites of contestation rather than some "thing").

Beyond the scientific difficulties posed by any reasonably precise definition of civilization (or culture) there is a political reason for my

reticence to use the term. Too often a small elite arrogates to itself the "right" to speak for "its" culture or civilization. And too often, the culture or civilization to which this elite appeals is something that has to be imposed on those who are supposedly the carriers of this culture. Consider, for example, Suharto and his cronies in Indonesia. Even when not simply a mask for repression, such appeals often are based on a reading of the civilization or culture in question that is at best highly contested internally. If the scientific merits of the term were clear, such political concerns might carry little weight. But given the almost insuperable problems in defining civilizations and determining their substance, the danger of political abuse ought, I think, to weigh very heavily in our choice of terms.

This, however, leaves us with a problem. Many well meaning people regularly refer to similarities and differences between civilizations or cultures. And there are undeniable differences between, say, Tokyo, Cairo, and New York, and the "civilizations" of which they are exemplars. How should we address these differences, which I readily admit are real?

I would suggest that we avoid the temptations to spurious explanation, false essentialism, and excessive aggregation that is encouraged by too ready a reference to civilization or culture. Are we really saying much of interest or importance when we talk of, say, Japan as Asian? Most often not, I think, especially when we are dealing with questions of human rights.

Consider the common claim that Asian societies are communitarian and consensual while Western societies are individualistic and competitive. What exactly is this supposed to explain, or even refer to, in any particular Asian or Western country? Dutch or Norwegian politics is certainly from more consensual than, say, Thai politics. The Dutch welfare state is in its own way as caring and paternalistic as the most traditional of Japanese employers. Such examples, which confound alleged civilizational differences,

are easily multiplied.

Were I to have focused in the preceding paragraph on literature, art, or religion, the answers might have been different -- although even then one would have to address the differences between say Dutch, Italian, and American literature, art, or religion. Depending on how one selects one's examples, differences between (or within) "civilizations" are either highlighted or obscured. And there is no neutral way to choose examples, even if we are able to dismiss some sets as obviously biased.

I thus return to a point that I made on the first page of this paper: however we define or measure civilizations, difference between them involve empirical, not theoretical, questions. They thus must be addressed in particular cases, rather than abstractly. Comparing civilizations "in general" usually is a hopeless or pointless task.

Although some progress may be possible if we ask instead how civilizations a, b, and c approach issue x, the comparative method must be applied both within and between civilizations. Before we make glib claims about the views or practices of any particular civilization, we need to consider both the range and the distribution of answers within each civilization. Only then can we begin to compare across or between civilizations.

Obviously, in the brief space available in a paper such as this, none of this comparative work is possible for a topic as wide as human rights. What I will do instead is make a series of readily falsifiable claims about the views and practices of four contemporary civilizations. My central claim, namely, that there are few systematic differences across civilizations, is readily refuted by several examples of systematic difference.

This shifts the burden of proof onto proponents of difference. But that is where it belongs. Those who assert difference should be required to

present the evidence. This is especially true because no amount of evidence can conclusively establish the claim that there are not differences.

For the purposes of this paper, I will recognize Western, Asian, Islamic, and African civilizations -- without putting any emphasis on what civilization(s) might be left out, and with cavalier disregard for the potential overaggregation represented by this very short list. My justification is that over the last few decades, most who have argued that there are systematic differences between civilizations with respect to human rights have referred to some subset of these civilizations.

A similar simplifying move is required for human rights. I will argue in a moment that the 1948 Universal Declaration of Human Rights represents a relatively uncontroversial, and generally workable, specification of the basic contours of internationally recognized human rights. The rights recognized in the Universal Declaration are summarized in Table 1. I will argue that there are few basic or systematic differences between Western, Asian, Islamic, and African civilizations, as those civilizations exist in the contemporary world, with respect to these rights.

2. THE UNIVERSALITY OF THE UNIVERSAL DECLARATION

The Universal Declaration of Human Rights was adopted by the United Nations General Assembly on December 10, 1948, by a vote of 48-0, with eight abstentions. The principal drafters were Canadian (John Humphrey) and French (Rene Cassin), and the American representative on the Commission on Human Rights, Eleanor Roosevelt, played a leading role in ushering the Declaration through the UN machinery. The Western role in the development of the Universal Declaration thus was central, and in many ways dominant.

But important contributions in the drafting were also made by Charles Malik (Lebanon), P. C. Chang (China), Hernan Santa Cruz (Chile) and Alexi

Pavlov (USSR).³ In addition to 20 Latin American states, 13 "non-Western" countries voted for the Universal Declaration: Afghanistan, Burma, China, Egypt, Ethiopia, India, Iran, Iraq, Lebanon, Pakistan, Philippines, Syria, Turkey. In other words, "Western" states, understood as the states of Europe plus the United States, Canada, Australia, and New Zealand, made up only about a third of the votes for the Universal Declaration. And Muslim states provided half as many votes to the final total as Western states.⁴

Ashlid Samnoy captures the situation in 1948 when she argues that the debate in the United Nations

gives an impression of a massive appreciation of the Declaration. The events were characterised as "the most important document of the century" (Ecuador), "a world milestone in the long struggle for human rights" (France), "a decisive stage in the process of uniting a divided world" (Haiti), "an epoch-making event" (Pakistan) and "a justification of the very existence of the United Nations" (the Philippines)⁵

There simply was no North-South split in 1948 with respect to the Universal Declaration. Quite the contrary, countries from what would later be called the Third World were at least as enthusiastic about the Universal Declaration as Western countries. In fact, the only serious disagreement was within the West, as the Soviet bloc countries abstained because they wanted greater emphasis on economic and social rights.

Furthermore, and much more importantly, in the ensuing half century the Universal Declaration has come to be almost universally endorsed by both states and leading movements of political opposition in all regions of the

³ Very similar accounts of the leading personalities are provided in (Morsink 1999: 28-34) and (Samnoy 1990: ch. 7).

⁴ The Soviet bloc abstained primarily because in their view it failed to go far enough in the area of economic and social rights. Saudi Arabia's abstention rested primarily with disagreements with parts of Articles 16 and 18. Just one country, South Africa, could be seen as fundamentally opposed to the Declaration. (Morsink 1999: 21-28)

⁵ (Samnoy 1990: 210)

world. The six principal international human rights treaties have an average of over 150 parties, spread widely across all regions and civilizations.⁶ And both governments and their opponents appeal to human rights not only much more frequently but more centrally than just a few decades ago. It is rare for an official policy statement on human rights not to include prominent reference to the Universal Declaration. Political opposition movements in all areas of the world rely at least as heavily on the Universal Declaration as the governments that they challenge.

The question, of course, is how deep this international consensus penetrates. Even if ultimately very thin, it is significant. Practice everywhere falls substantially short of the demands of the Declaration. The aspirations expressed in such a document, however, reveal at least as much about the values and attitudes of different cultures and civilizations as the details of local political practice.

I will go farther, however, and argue that, for all the talk of civilizational differences, the consensus in the contemporary world is surprisingly deep. I have been dealing professionally for about twenty years with cultural relativists arguments applied to human rights. I have come to respond by asking a simple but surprisingly telling question. "Which rights in the Universal Declaration do you claim that your civilization rejects?" My experience has been that rarely is it suggested that even one article should be eliminated. And I have never had anyone tell me that Africans, Asians, Muslims, Latin Americans, or for that matter Westerners, would eliminate as many as four of the articles in the Universal Declaration.

To choose more or less randomly from the list of the Universal Declaration, no contemporary civilization supports torture, justifies racial discrimination, defends the denial of freedom of conscience, believes that

⁶ <http://www.unhchr.ch/pdf/report.pdf>

people are not entitled to social security, sees primary education as a luxury rather than a right, or justifies systematic denials of food or medicine to citizens in need. I leave open the possibility of civilizational differences on a few of the rights in the Universal Declaration, some examples of which I will return to later. I also readily admit that there are important, and often heated, disagreements over some of the details in the formulation of those rights. But I have never encountered a seriously advanced, plausible argument that any contemporary civilization supports wholesale and systematic deletions from the Universal Declaration of Human Rights.

We need to be careful, however, not to conclude too much from this agreement. The very general and abstract formulation of rights in the Universal Declaration may obscure potentially important disagreements concerning definitions and implicit limitations.

Consider Article 5: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." The real controversy comes over definitions of terms such as "cruel." Is the death penalty cruel, inhuman, or degrading? Most European states consider it to be. The United States does not. In the next section I will argue that such definitional issues pose fewer problems than one might initially imagine. But we must address them directly.

Implicit limits on rights pose a potentially even more serious challenge to universalist arguments. Most of the rights in the Universal Declaration are formulated in categorical terms. For example, Article 19 begins "Everyone has the right to freedom of opinion and expression." To use the hackneyed American example, this does not mean that one can scream fire

in a crowded theater. All rights have limits.⁷ But if these limits differ widely and systematically across civilizations, the resulting differences in human rights practices might indeed be considerable.

To sustain a universalist argument one needs to show that the thin consensus on the abstract formulations of the Universal Declaration penetrates to the level of more precise formulations of these rights. Are there systematic differences in definitions of terms across civilizations? Do civilizations differ systematically in the standard limits they put on the exercises of rights? And if these differences are systematic, how significant are they?

3. CONCEPTS, INTERPRETATIONS, AND IMPLEMENTATIONS⁸

The Universal Declaration formulates rights at the level of the concept, an abstract, general statement of an orienting value. "Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment." (Article 23) Only at this level do I claim that there is a consensus on the rights of the Universal Declaration. But, as we will see as we proceed, consensus at this level is of considerable theoretical and practical importance.

Definitional issues occur at what I will call the level of interpretation. What counts, for example, as adequate protection against unemployment? Does it mean a guaranteed job? Or is compensation to those who are unemployed enough? I would contend that both of these are plausible interpretations of the concept of protection against unemployment, and that therefore variations of this sort are entirely defensible.

⁷ Logically, there can be at most one absolute right (unless we implausibly assume that rights never conflict with one another).

⁸ This section draws heavily on conceptual distinctions and arguments developed in (Donnelly 1984).

I want to make three points about interpretations. First, the concept limits the range of plausible interpretations. Most theoretically possible practices with respect to employment, beginning with a completely free labor market, are obviously incompatible with the requirements of Article 23.

Second, differences of interpretation are considerable within civilizations. There are important definitional differences on many rights between different Western societies, as the examples of the death penalty and the welfare state illustrate. Japan and Vietnam have rather different interpretations of many rights, despite being East Asians. And so forth.

Third, such differences within civilizations dramatically reduce the plausibility of most arguments for systematic differences between civilizations. There may be more different interpretations across two regions than within a particular region -- although we cannot simply assume that. I would suggest, however, that these inter-civilizational differences are more isolated than systematic. "Cruel" is a somewhat elastic term, especially when we look over the wide sweep of human history. But in the contemporary world there is considerable consensus on a relatively narrow range of defensible interpretations.

The third level of specification is what I call implementation. Just as concepts need to be interpreted, interpretations need to be implemented in law and political practice. For example, what shall be the rate of unemployment compensation, how long shall it be provided, under what conditions and circumstances? Here the range of actual and defensible variation is even greater (although again only within the limits implied by the higher level specifications).

Differences in implementations occur primarily at the level of the state, given that international human rights law leaves states with considerable discretion to implement internationally recognized human rights as they see fit. I would thus be skeptical of finding much in the way of

patterns of difference between civilizations. But even if we do, it should not be allowed to obscure the broader universality of views at the level of the concept.

I stress this three-level scheme to avoid a common misconception. The argument for universality is only at the level of the concept; or, rather, the only (empirically and morally) defensible argument is at this level. The Universal Declaration insists that all states share a limited but important range of obligations. It is, in its own words, "a common standard of achievement for all peoples and all nations." But the ways in which these rights are implemented, so long as they fall within the range of variation consistent with the overarching concept, are matters of legitimate variation, country by country.

This is particularly important because most of the "hot button" issues in recent discussions have occurred at the level of implementation. Pornography, homosexuality, and corporal punishment, for example, simply are not addressed, at the level of concept, in the Universal Declaration. Debates over pornography, for example, are about the limits of freedom of expression. Homosexuality is not mentioned as a prohibited grounds of discrimination in Article 2. States are free to extend the underlying conceptual logic of non-discrimination to same-sex behaviors and partnerships. But such extension simply are not required, or even obviously implied, by the Universal Declaration's right to non-discrimination.

4. HUMAN RIGHTS, STATES, AND MARKETS

I have made a series of falsifiable claims about the absence of systematic differences between civilizations with respect to the rights specified at the level of the concept in the Universal Declaration. Many observers find this so surprising as to be implausible. My argument would be considerably strengthened if I could account for this lack of difference.

I will argue that the idea and practice of human rights are rooted in two interrelated pairs of historical and conceptual changes associated with "modernity": the rise of modern markets and modern states and the rise of political claims of equality and toleration.⁹ I take these to be relatively uncontroversial descriptive claims about the source and character of contemporary human rights norms.

To reduce half a millennium to a few paragraphs, in the modern era ever more powerful (capitalist) markets and (centralized, sovereign, bureaucratic) states gradually penetrated first Europe and then the entire globe. In the process, "traditional" communities were destroyed or radically transformed, typically with extremely traumatic consequences. In particular, "traditional" practices of mutual economic and political obligation were disrupted but (initially at least) not replaced with functional equivalents. These disruptions created the problem that human rights were "designed" to solve: an ever growing number of (relatively) separate families and individuals left to face a growing range of (relatively) unbuffered economic and political threats to their interests and dignity.

The absolutist state in Europe -- increasingly freed from the constraints of cross-cutting feudal obligations, independent religious authorities, and tradition -- offered its own solution: a reintegrated society organized around a new monarchist hierarchy of birth justified by a state religion. But the newly emergent bourgeoisie, the other principal early beneficiary of modern markets and states, advanced counter-claims envisioning a more open, pluralist society where the claims of property

⁹ Elsewhere I have argued at some length that human rights thus understood -- equal and inalienable rights of all individuals that hold against society and the state -- are largely unknown in pre-modern Western and non-Western societies. (1980; 1982) My argument here requires only the weaker, and truly not very controversial, claim that contemporary ideas of human rights emerged out of the historical practice of the modern West.

balanced those of birth. By the late seventeenth century, such claims increasingly were formulated as matters of natural rights.

More or less contemporaneously, the Reformation disrupted the unity of Christendom, with consequences that were no less traumatic, and often even more violent. By the middle of the seventeenth century, however, states gradually began to stop fighting, both nationally and internationally, over religion. Although full religious equality was far off -- just as the claims of the bourgeoisie for "equal" treatment initially fell far short of full political equality even for themselves, let alone for all -- religious toleration gradually became the norm, in both Protestant and Catholic countries.¹⁰ If we add to this story the growing possibilities for physical and social mobility that both accompanied and fostered these social, economic, political, and religious changes, we have the crucible out of which contemporary human rights ideas and practices were formed.

Privileged ruling groups faced a growing barrage of demands -- first for relief from social and political disabilities, then for inclusion on the basis of equality -- from a growing number of dispossessed groups. Bourgeois and freeholder claims that "low" birth should be no political disability, and the demands of (Christian) religious dissenters that they be left alone to worship God in their own way, began to enter political debates in the mid-seventeenth century in the form of appeals to natural rights held by all human beings. The first important instances of which I am aware in English were during the Civil Wars of the 1640s. They received a "seminal"

¹⁰ The story of the preceding two paragraphs is only contingently a European one; to the extent that it rests on a structural economic and political logic, the connection with Europe is largely a historical accident. The key role of religious difference in shaping currently dominant conceptions of human rights may, however, be more essentially a Western story. It may also help to explain the special problems religious fundamentalism poses for human rights (which reflect the Westphalian vision of religion as a subject that is no longer appropriately addressed through

theoretical statement in John Locke's Second Treatise of Government, which was published in conjunction with the "Glorious Revolution" of 1688. With the American and French Revolutions, natural rights or the rights of man gained relatively widespread currency.

Once claims of natural rights became well established -- that is, as governments increasingly came to recognize the existence of certain "natural" rights for some segment of the population -- the focus of debate gradually shifted to questions of the substance of those rights (especially the question of economic and social rights other than the right to property) and which groups (e.g., religious dissidents, workers, women, and racial minorities) could legitimately claim them. And with the claims of colonized peoples, along with the post-World War II problem of responding to genocide, human rights began to emerge as legitimate claims in international, not just national, politics.

The claims for respect and inclusion advanced by all these groups -- as well as "newly recognized" minorities today such as the disabled, and the elderly -- might have taken many forms, including appeals to Scripture, morality, decency, justice, natural law, social utility, and national strength. In practice, most dispossessed groups have made powerful appeals to most of these, and many other, grounds. But claims of equal and inalienable natural or human rights increasingly came to be preferred.¹¹ In recent decades, the hegemony of rights claims has become so pronounced that critics increasingly refer to the "tyranny" or "imperialism" of rights.¹²

Modern societies, especially over the past two centuries, have

international or national violence).

¹¹ The principal exception is the right of indigenous peoples, which at least as they are often articulated today, have at best an ambivalent relationship to human rights, especially universal human rights.

¹² See, for example, (Glendon 1991).

increasingly come to be organized around states guaranteeing their citizens (rather than subjects) an extensive array of civil, political, economic, social, and cultural goods, services, and opportunities as matters of human rights. Many of the most intense internal political debates in modern states have focused on who is entitled to which such rights. Even in contemporary international relations, appeals to social and political equality and minimum standards of decent treatment are increasingly prominent and increasingly presented as a matter of human rights.

The story I have told in the preceding paragraphs focuses on the West, because that is where these processes first appeared. But through a combination of force and the power of example, modern markets and modern states in the nineteenth and twentieth centuries came to dominate the whole of the globe. Faced with common problems, people throughout the globe have responded with the common solution of human rights. Although I am painfully aware of the gross oversimplifications inherent in this story, I would argue that it nonetheless captures an essential point, namely, the structural basis for the convergence of ideas on the Universal Declaration.

5. AN OVERLAPPING CONSENSUS ON HUMAN RIGHTS

The functional or causal argument in the preceding section may help to explain why there is a consensus on the Universal Declaration. The plausibility of a universalistic perspective would be substantially strengthened if we could also account for how such a consensus might be achieved, given the profound philosophical differences that undoubtedly do exist between (and within) civilizations. Here I believe that the Rawlsian idea of an overlapping consensus provides considerable insight.

Rawls distinguishes "comprehensive religious, philosophical, or moral

doctrines" from "political conceptions of justice."¹³ Because the latter address only the political structure of society, defined (as far as possible) independent of any particular comprehensive doctrine, adherents of different comprehensive doctrines may reach an "overlapping consensus" on a political conception of justice.¹⁴ I will argue that there is an international overlapping consensus on the Universal Declaration model.¹⁵

The idea of overlapping (rather than complete) political (rather than moral or religious) consensus offers a plausible answer to the question "how is it possible that 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?"¹⁶ Although formulated initially for domestic societies, this line of argument has an obvious extension to international society, particularly a culturally and politically diverse pluralist international society.

Moral theories and other comprehensive doctrines have rarely (until recently) been founded on human rights. For example, human rights, despite their political prominence, have played a tiny part in the history of (Western) moral theory.¹⁷ Nonetheless, human rights can be relatively easily derived from many moral theories: for example, they can be seen as encoded in or derived from the natural law, as political means to further human good (utility), or political institutions designed to produce virtuous citizens.

¹³ (Rawls 1996: xliii-xlv, 11-15, 174-176; Rawls 1999:31-32, 172-173).

¹⁴ (Rawls 1996: 133-172, 385-396).

¹⁵ My arguments, however, should be read as drawing on, rather than simply elaborating, Rawls; as Rawlsian, but in some details different from Rawls.

¹⁶ (Rawls 1996: 133).

¹⁷ No major moral philosopher prior to World War II took human rights as a moral primitive. More recently, Alan Gewirth (1982; 1996) stands as a moderately prominent exception that proves the rule.

The increasing political prominence of human rights over the past few decades has led more and more adherents of a growing range of comprehensive doctrines to endorse human rights -- but (only) as a political conception of justice. For example, Muslims of various political persuasions in many parts of the Islamic world have in recent decades developed Islamic doctrines of human rights that are strikingly similar in substance to the Universal Declaration.¹⁸

Although internationally recognized human rights "do not depend on any particular comprehensive religious doctrine of human nature,"¹⁹ they are not compatible with all comprehensive doctrines. Claims such as those in the Covenants that "these rights derive from the inherent dignity of the human person" or in the 1993 Vienna Declaration that "all human rights derive from the dignity and worth inherent in the human person" set the range of possible comprehensive doctrines within an overlapping consensus. The link between human rights and comprehensive doctrines, although loose, is a matter of substance, not just procedural agreement. Certain comprehensive doctrines are in principle excluded from the consensus. Most importantly, human rights, because they are held equally by all human beings, are incompatible with all fundamentally inegalitarian comprehensive doctrines.

Are inegalitarian comprehensive doctrines predominant, or even prominent, in contemporary African, Asian, Western, and Islamic civilizations? In their past, all of these civilizations have been at times been dominated by views that treated some significant portion of human beings as "outsiders" that are not entitled to whatever minimal guarantees that

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¹⁹ (Rawls 1999: 68). Although Rawls refers here explicitly to a short list of rights comprised principally of life, liberty, property, and formal equality, (p. 65) the argument holds for the Universal Declaration model more generally. See also pp. 78-81.

could be taken for granted by "insiders." Slavery, for example, has been at one time or another widely justified within each of these civilizations. And for most of their histories all of these civilizations have assigned social roles, rights, and duties based on inegalitarian ascriptive characteristics such as birth, age, and gender. Today, however, the basic moral equality of all human beings is not merely accepted but strongly endorsed by the leading comprehensive doctrines in all of these civilizations.

This convergence on egalitarian comprehensive doctrines, 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 -- equal and inalienable rights held by all citizens (even against their own state and society) -- might provide the basis for politically implementing foundational egalitarian values. In practice, the standard threats of modern markets and modern states have made universal human rights a prominent potential choice. And the ability of such rights to ameliorate, although certainly not eliminate, many leading standards threats in many leading countries of the world has greatly facilitated the development of an overlapping consensus.

6. VOLUNTARY OR COERCED CONSENSUS?

The reference in the preceding sentence to leading states suggests a further explanation for the normative convergence on the Universal Declaration, namely, the influence of powerful (Western) states. Even granting that there is an overlapping consensus on the Universal Declaration, is that consensus free or coerced? This is still another way of posing the question of the depth of the universalist consensus.

We should not underestimate the importance of the example and advocacy of the world's leading power, the United States, and its principal allies. But I would suggest that example has been far more powerful than advocacy

(which, as I will note further below, has often been clumsy, even insulting). Human rights dominate political discussions not only, or even primarily, because of the support of materially dominant powers but most importantly because they respond to some of the most important social and political aspirations of individuals, families, and groups in most countries of the world. Some state governments may feel coerced into endorsing the Universal Declaration. But the assent of most societies and individuals is largely voluntary.²⁰

The international consensus on the Universal Declaration largely reflects its cross-cultural substantive attractions. The collapse of the Soviet Union and its empire, and the retreat of dictatorial regimes in all areas of the world, provides striking support for this claim. People, when given a chance, usually (in the contemporary world) choose human rights, irrespective of civilization. And it is the mass of the population, we must remember, that are the carriers of civilization. They are the best authorities on what their civilization values.

Few "ordinary" citizens have a particularly sophisticated sense of what a commitment to human rights means. 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. My argument is that the Universal Declaration presents a pretty good first approximation of the list that they would come up with, largely irrespective of civilization, after considerable reflection. Or, perhaps a bit more precisely, there is almost nothing on the list in the Universal Declaration

²⁰ Once more, it seems to me that the burden of proof lies on those who hold otherwise. States may be in a position that leaves them unusually vulnerable to external pressure, and thus unusually tempted to purely formal endorsements of international norms advocated by leading powers. (Even that seems to me not obviously correct. I read hypocrisy more as evidence of the substantive attractions of the norms that are hypocritically endorsed.) But

that they would not put there, although one might readily imagine a global constitutional convention coming up with a somewhat larger list. In other words, the Universal Declaration is a pretty good substantive first approximation.

We should also note that ordinary citizens often do become dissatisfied, even disillusioned, with rights-protective politics. The problem may be especially severe in countries without a long tradition of democratic political participation. But the recurrence of fascist and racist tendencies in contemporary Western Europe reminds us that this is not a problem restricted to non-Western societies or civilizations. The reflective recognition of basic human equality is in the world of political practice regularly challenged by a more self-interested desire to assert special privileges for oneself and one's associates. The day to day work of rights-protective politics thus is difficult, and often frustrating, everywhere.

We should also note that important segments in all these civilizations challenge some, maybe even many, of the rights in the Universal Declaration. For example, surveys in the United States have found that a majority of Americans when asked do not support the U.S. Bill of Rights (when it is not identified as such). But law and politics in the United States are significantly structured by these rules, most of which are not simply endorsed but widely implemented within the states that make up Western civilization.

But neither such slippages and challenges nor the rights-abusive policies of many (all?) governments provide evidence for systematic civilizational differences. Quite the contrary, when we subtract the immediate political interests of citizens and their governments -- and this subtraction, I think, is the principal positive contribution of an appeal to

I can see little evidence that societies feel similarly compelled.

civilizations -- we see something very close to a voluntary overlapping consensus on the Universal Declaration.

Do the basic political aspirations of people differ systematically across civilizations? I remain unconvinced by claims that they do. I thus would simply repose my basic question: "Which articles of the Universal Declaration would Africans/Asians/Muslims/Westerners delete?" And, if one want to carry it to the next step, which additions are as important as these within a single civilization? I think that the answers to this follow-up question may be more numerous and more interesting, but even here I would suggest that the differences we are talking are relatively modest when one considers the entire structure of the Universal Declaration.

7. EXPLAINING THE PERSISTENCE OF RELATIVIST ARGUMENTS

If my argument is even close to correct, why are cultural relativist arguments such an important and persistent part of international discussions of human rights? The plausibility of the universalist perspective would be further enhanced by accounting for this seemingly puzzling fact. At least six explanations come to mind, which I can do little more than list here.

First, it is common to confuse levels of specification. In fact, it is surprisingly common for even otherwise rather sophisticated individuals to confuse the particular institutions associated with the realization of a right in their country or culture as essential to that right. To speak of the country that I know best, Americans seem to have unusually great difficulty in realizing that the way we do things here is not necessarily what international human rights norms require. Americans too often blindly generalize from the particulars of their experience and institutions, rather than see their practices as (at best) one way to implement internationally recognized human rights.

The problems this causes are exacerbated by narrow minded and ham-

handed Western (especially American) international human rights policies and statements. A classic illustration is provided by the case of Michael Fay, an American teenager who vandalized hundreds of thousands of dollars worth of property in Singapore. When he was sentenced to be publicly caned, there was a furor in the United States. President Clinton argued, with apparently genuine indignation, that it was abominable to cane someone -- while failing to find it even notable that state governments in his own country were frying people to death in the electric chair. If this indeed is what universalism means -- and I hasten to repeat that it is not -- then of course relativism looks far more attractive.

Such comments feed into what I see as a third important explanation for the popularity of relativist arguments, namely, the legacy of colonial domination. African, Asian, and Muslim (as well as Latin American) leaders and citizens have vivid (often personal, although increasingly now historical) recollections of their sufferings under colonial masters and neo-colonial exploitation. Even when the statements and actions of great powers stay within the range of the overlapping consensus on the Universal Declaration, there is understandable (although not necessarily justifiable) sensitivity to external pressure. When international pressures exceed the bounds of the overlapping consensus, that sensitivity often becomes (now certainly justifiably) very intense.

The differences in question are largely symbolic: differences at the level of implementation are almost by definition of relatively minor importance. But the symbolism is often extraordinarily powerful.²¹ And it is the emotive power that is noticed most in discussions, rather than the

²¹ And, as an American, I must again admit (with considerable embarrassment) that both individuals and government officials in the United States seem unusually prone to a misplaced self-righteousness that stubbornly refuses to consider the possibility that men and women of good will could

relatively minor character of the differences at issue.

Fourth, and related to (but analytically distinct from) such defensive reactions, arguments of relativism are often rooted in a desire to express and foster national, regional, cultural, or civilizational pride. It certainly is no coincidence that the "Asian values" debate of the 1990s really took off in the wake of the Asian economic miracle.

Fifth, such defensive and assertive demands for trans-civilizational respect are greatly encouraged by an often shocking ignorance of the nature of foreign societies and civilizations, even among leaders that one might imagine ought to know better. The United States provides a gallery of examples of astonishingly ignorant leaders.

The single most important explanation for the prevalence of arguments of cultural relativism in my view, however, is that they are used by vicious elites as a way to attempt to deflect attention from their repressive policies.²² I do not think that it is a coincidence that most (although not all) of the leading proponents of such views at the level of inter-state debates are associated with undemocratic and repressive regimes. But lacking the space to pursue this claim, let me simply recall the distinction drawn above between states and civilizations, and ask the reader to at least ponder the possibility that relativist arguments often are much more political than civilizational.

8. DIALOGUE OVER REAL DIFFERENCES

The above discuss is explicitly one-sided. I have drawn attention to commonalities across civilizations, largely ignoring very real differences.

possibly seen anything but the purest motives in American actions.

²² Well meaning Westerners with a well-developed sense of the legacy of Western colonialism indirectly support such arguments when they shy away from criticism any argument advanced by non-Westerners.

Even if I am correct that those differences are largely limited and mostly concern relatively secondary issues, it is crucial that we not confuse overlapping consensus with homogeneity.

There are at least two areas where dialogue focusing on difference can be illuminating and productive. First, there are multiple routes taken to the overlapping consensus on the Universal Declaration. Whether these routes are more diverse within or between civilizations, the differences in foundations underlying the idea of "dialogue between civilizations" are worth pursuing for reasons that include their inherent interest, for the purposes of deeper understanding of others, and for the insights they may offer about avenues for change.

Those conversations, however, are greatly facilitated if we have a common point of reference, as I think we do in the case of the Universal Declaration. Reasoning from first principles to an indeterminate outcome is an interesting exercise, perhaps, but not one that is very conducive to dialogue and an increase in mutual understanding. Reasoning back from an agreed upon ending point to the various first principles that might ground that conclusion is, in my view, much more enlightening for all parties to the dialogue. In other words, even the discussion of true diversity is facilitated by stable points of agreement, such as the Universal Declaration.

Second, the fact that differences are relatively minor and restricted to a relatively small range of issues does not mean that those differences are unimportant, especially at the level of day to day politics. Questions such as capital and corporal punishment, the limits of religious liberty, and the dimensions of gender equality are vital issues that merit intensive discussions within and between states and civilizations. If those discussions are to be constructive, however, we often will be required to walk a difficult line between respect for the other and respect for one's own values.

Let me take a relatively uncontroversial case -- slavery -- but illustrate it in a perhaps controversial way. Suppose that in contemporary Saudi Arabia a group were to emerge arguing that because slavery was accepted in the early Muslim world, it should be reinstated in contemporary Saudi Arabia. I am certain that almost all Saudis, from the most learned of mullahs to the most ordinary of citizens, would reject this view. But how should these individuals be dealt with?

Dialogue seems to me the appropriate route, so long as they do not attempt to practice slavery. And those in the majority who would remonstrate these individuals for their despicable views have, I think, an obligation to use precisely such forceful moral terms. Nonetheless, freedom of belief and speech requires the majority to tolerate these views, in the minimal sense of not imposing legal liabilities for those who hold or express them. Should they attempt to practice slavery, however, the force of the law is appropriately applied to suppress and punish this practice.

How should "outsiders," for example, Westerners, respond? Again, condemnation of the views seems appropriate, although so long as the problem is restricted to expressions of beliefs only in Saudi Arabia, there probably will be few occasions for such condemnations. But suppose that, for whatever reason, the unthinkable were to happen, and the practice of slavery were in fact re-introduced in Saudi Arabia, not, let's us imagine, as a matter of law, but rather through the state refusing to prosecute slave-holders. (Again, I repeat, this is an quite implausible, but that very implausibility helps us to consider the case with a relatively neutral analytical eye.)

Here we run up against the state system and the fact that international human rights law gives states near total discretion to implement internationally recognized human rights within their own territories. The legal basis for action is at best extraordinarily problematic. One might argue that slavery is legally prohibited as a matter of jus cogens, general

principles of law, and customary (as well as treaty) law. But international enforcement of any of these (themselves contentious) prohibitions is if anything even more contentious.

Suppose, though, that outsiders were to decide that they lacked the authority to intervene coercively. They would still be bound by their own moral principles (as well as by international human rights norms) to condemn such practices in the strongest possible terms. And foreign states would be entirely justified in putting whatever pressure short of force they could mobilize on Saudi Arabia to halt the practice of slavery.²³

This hypothetical example illustrates the fact that some practices simply do not deserve or respect -- quite the contrary, they demand our condemnation. But it also indicates that some beliefs, however despicable, deserve our toleration -- because freedom of opinion and belief is an internationally recognized human rights. So long as one stays within the limits of internationally recognized human rights, others owe one, as a matter of human rights, at least a limited and grudging but nonetheless real respect as a human being. But they owe one nothing more.

I have thus effectively sketched two ends of a continuum of approaches to particular differences connected with internationally recognized human rights. At one end are differences of implementation, discussed above, where variations are entirely justifiable. Here dialogue concerning those differences is best seen as a matter of mutual enlightenment. At the other extreme stands my slavery example, where variations are clearly prohibited. Dialogue here should be seen as reproof, rejection, and an attempt to change at least behavior, and perhaps even beliefs.

If I am correct in my claims about the overlapping consensus on the

²³ Whether they would do so, in light of competing economic and security interests, is well beyond my scope here.

Universal Declaration, there are very few actual cases today that call for uncompromising rejection. But there are a few issues, mostly at the national level, but even at the level of civilizations, that lie toward this end of the continuum. Apostasy in the Muslim world is one example that has received some attention. Some Muslim commentators have strongly defended the practice of punishing apostates from Islam, while a number of others, both within and outside the Muslim world, have insisted on the universal validity of Article 18 of the Universal Declaration, which guarantees the right to change one's religion. I certainly do not have the space -- even if I had the courage -- to attempt to address the substance of this debate even across, let alone within, civilizations.²⁴ Nonetheless, it is important to realize that such issues do exist, and to recognize that dialogue in such cases is likely to take a very different form than in cases more toward the other end of my continuum.

Having recognized, however belatedly, the reality of difference, I want to close to returning to the central theme of this paper, the remarkable, and surprisingly deep, overlapping consensus that we see today on the Universal Declaration of Human Rights. It would be dangerous to deny differences between civilizations where they do exist. But neither should we assume that they are greater than they in fact are. Whatever the situation in other issue areas, in the case of human rights, for all the undeniable differences, it is the similarities across civilizations that are more striking and important. Whatever our differences, now or in the past, all contemporary civilizations are linked by the growing reality of the Universal Declaration as, in its own words, "a common standard of achievement for all peoples and all nations" -- and, I think we can add, civilizations.

²⁴ For a recent forceful statement of the universalist perspective, see (Franck 2001).

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