

Also by Jack Donnelly
The Concept of Human Rights (1985)
International Human Rights (2d ed., 1998)
Realism and International Relations (2000)

Universal Human Rights in Theory and Practice

2d Edition

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directly and indirectly supported the kind of false essentialism that I have tried, however inadequately, to argue against for twenty years now.

I also think that it is important to resist the argument that internationally recognized human rights are a Western artifact that is irrelevant and meaningless in most of the rest of the world. Ideas and social practices move no less readily than, say, noodles and gunpowder. If human rights are irrelevant in a particular place, it is not because of where they were invented or when they were introduced into that place. Culture is *not* destiny.

Preis is probably correct that the ultimate remedy to this mistaken view lies in the sort of detailed, local analysis that she provides in her article (the empirical portions of which look at contemporary Botswana). But work at a high level of abstraction can have some value—especially when it directly addresses arguments that are prevalent in both academic and policy discussions.

Having said all of this, though, I readily admit that there are undeniable differences between, say, Tokyo, Tehran, and Texas and the “cultures” of which they are exemplars. How ought we to deal with these differences? That is the question of the next chapter.

6/ Human Rights and Cultural Relativism

Cultural relativity is an undeniable fact; moral rules and social institutions evidence astonishing cultural and historical variability. The doctrine of cultural relativism holds that some such variations cannot be legitimately criticized by outsiders. I argue, instead, for a fundamentally universalistic approach to internationally recognized human rights.

In most recent discussions of cultures or civilizations¹—whether they are seen as clashing, converging, or conversing—the emphasis has been on differences, especially differences between the West and the rest. From a broad cross-cultural or intercivilizational perspective, however, the most striking fact about human rights in the contemporary world is the extensive overlapping consensus on the Universal Declaration of Human Rights (compare §3.2). Real conflicts do indeed exist over a few internationally recognized human rights. There are numerous variations in interpretations and modes of implementing internationally recognized human rights. Nonetheless, I argue that culture² poses only a modest challenge to the contemporary normative universality of human rights.

1. Defining Cultural Relativism

When internal and external judgments of a practice diverge, cultural relativists give priority to the internal judgments of a society. In its most extreme form, what we can call *radical cultural relativism* holds that culture is the sole source

1. Civilizations seems to be emerging as the term of choice in UN-based discussions. 2001 was designated the United Nations Year of Dialogue Among Civilizations. For a sampling of Unesco sources, see <http://www.unesco.org/dialogue2001/en/culture1.htm>. I use “culture” and “civilization” more or less interchangeably, although I think that a useful convention would be to treat civilizations as larger or broader: for example, French culture but Western civilization.

2. As in the preceding chapter, I begin by taking at face value the common understanding of culture as static, unitary, and integral. See, however, §5.7 and §6.

of the validity of a moral right or rule.³ *Radical universalism*, by contrast, would hold that culture is irrelevant to the (universal) validity of moral rights and rules. The body of the continuum defined by these end points can be roughly divided into what we can call strong and weak cultural relativism.

Strong cultural relativism holds that culture is the principal source of the validity of a right or rule. At its furthest extreme, strong cultural relativism accepts a few basic rights with virtually universal application but allows such a wide range of variation that two entirely justifiable sets of rights might overlap only slightly.

Weak cultural relativism, which might also be called strong universalism, considers culture a secondary source of the validity of a right or rule. Universality is initially presumed, but the relativity of human nature, communities, and rules checks potential excesses of universalism. At its furthest extreme, weak cultural relativism recognizes a comprehensive set of *prima facie* universal human rights but allows limited local variations.

We can also distinguish a qualitative dimension to relativist claims. Legitimate cultural divergences from international human rights norms might be advocated concerning the *substance* of lists of human rights, the *interpretation* of particular rights, and the *form* in which those rights are implemented (see §4). I will defend a weak cultural relativist (strong universalist) position that permits deviations from international human rights norms primarily at the level of form or implementation.

2. Relativity and Universality: A Necessary Tension

Beyond the obvious dangers of moral imperialism, radical universalism requires a rigid hierarchical ordering of the multiple moral communities to which we belong. The radical universalist would give absolute priority to the demands of the cosmopolitan moral community over other ("lower") communities. Such a complete denial of national and subnational ethical autonomy, however, is rare and implausible. There is no compelling moral reason why peoples cannot accept, say, the nation-state, as a major locus of extrafamilial moral and political commitments. And at least certain choices of a variety of moral communities demand respect from outsiders—not uncritical acceptance, let alone emulation, but, in some cases at least, tolerance.

But if human rights are based in human nature, on the fact that one is a human being, how can human rights be relative in any fundamental way? The simple answer is that human nature is itself relative (see §1.3). There is a sense in which this is true even biologically. For example, if marriage partners are

3. I am concerned here only with cultural relativist views as they apply to human rights, although my argument probably has applicability to other relativist claims.

chosen on the basis of cultural preferences for certain physical attributes, the gene pool in a community may be altered. More important, culture can significantly influence the presence and expression of many aspects of human nature by encouraging or discouraging the development or perpetuation of certain personality traits and types. Whether we stress the "unalterable" core or the variability around it—and however we judge their relative size and importance—"human nature," the realized nature of real human beings, is as much a social project as a natural given.

But if human nature were infinitely variable, or if all moral values were determined solely by culture (as radical cultural relativism holds), there could be no human rights (rights that one has "simply as a human being") because the concept "human being" would have no specificity or moral significance. As we saw in the case of Hindu India (§5.5), some societies have not even recognized "human being" as a descriptive category. The very names of many cultures mean simply "the people" (e.g., Hopi, Arapahoe), and their origin myths define them as separate from outsiders, who are somehow "not-human."

Such views, however, are almost universally rejected in the contemporary world. For example, chattel slavery and caste-based legal and political systems, which implicitly deny the existence of a morally significant common humanity, are almost universally condemned, even in the most rigid class societies.

The radical relativist response that consensus is morally irrelevant is logically impeccable. But many people do believe that such consensus strengthens a rule, and most think that it increases the justifiability of certain sorts of international action. In effect, a moral analogue to customary international law seems to operate. If a practice is nearly universal and generally perceived as obligatory, it is required of all members of the community. Even a weak cosmopolitan moral community imposes substantive limitations on the range of permissible moral variation.

Notice, however, that I contend only that there are a few cross-culturally valid moral *values*. This still leaves open the possibility of a radical cultural relativist denial of human *rights*. Plausible arguments can be (and have been) advanced to justify alternative mechanisms to guarantee human dignity. But few states today attempt such an argument. In all regions of the world, a strong commitment to human *rights* is almost universally proclaimed. Even where practice throws that commitment into question, such a widespread rhetorical "fashion" must have some substantive basis.

That basis, as I argued in Chapter 4, lies in the hazards to human dignity posed by modern markets and states. The political power of traditional rulers usually was substantially limited by customs and laws that were entirely independent of human rights. The relative technological and administrative weakness of traditional political institutions further restrained abuses of power. In such a world, inalienable entitlements of individuals held against

state and society might plausibly be held to be superfluous (because dignity was guaranteed by alternative mechanisms), if not positively dangerous to important and well-established values and practices.

Such a world, however, exists today only in a relatively small number of isolated areas. The modern state, even in the Third World, not only has been freed from many of the moral constraints of custom but also has a far greater administrative and technological reach. It thus represents a serious threat to basic human dignity, whether that dignity is defined in "traditional" or "modern" terms. In such circumstances, human rights seem necessary rather than optional. Radical or unrestricted relativism thus is as inappropriate as radical universalism.⁴ Some kind of intermediate position is required.

3. Internal Versus External Judgments

Respect for autonomous moral communities would seem to demand a certain deference to a society's internal evaluations of its practices, but to commit ourselves to acting on the basis of the moral judgments of others would abrogate our own moral responsibilities. The choice between internal and external evaluations is a moral one, and whatever choice we make will be problematic.

Where internal and external judgments conflict, assessing the relative importance attached to those judgments may be a reasonable place to start in seeking to resolve them. Figure 6.1 offers a simple typology.

Case 1—morally unimportant both externally and internally—is uninteresting. Whether or not one maintains one's initial external condemnation is of little intrinsic interest to anyone. Case 2—externally unimportant, internally very important—is probably best handled by refusing to press the negative external judgment. To press a negative external judgment that one feels is relatively unimportant when the issue is of great importance internally usually will be, at best, insensitive. By the same token, Case 3—externally very important, internally unimportant—presents the best occasion to press an external judgment (with some tact).

Case 4, in which the practice is of great moral importance to both sides, is the most difficult to handle, but even here we may have good reasons to press a negative external judgment. Consider, for example, slavery. Most people today would agree that no matter how ancient and well established the practice may be, to turn one's back on the enslavement of human beings in the name of cultural relativity would reflect moral obtuseness, not sensitivity. Human sacri-

4. We can also note that radical relativism is descriptively inaccurate. Few people anywhere believe that their moral beliefs rest on nothing more than tradition. The radical relativist insistence that they do offers an implausible (and unattractive) account of the nature and meaning of morality.

		Internal judgment of practice	
		Morally unimportant	Morally very important
External judgment of practice	Morally unimportant	Case 1	Case 2
	Morally very important	Case 3	Case 4

Figure 6.1 Type Conflicts over Culturally Relative Practices

fice, trial by ordeal, extrajudicial execution, and female infanticide are other cultural practices that are (in my view rightly) condemned by almost all external observers today.

Underlying such judgments is the inherent universality of basic moral precepts, at least as we understand morality in the West. We simply do not believe that our moral precepts are for us and us alone. This is most evident in Kant's deontological universalism. But it is no less true of the principle of utility. And, of course, human rights are also inherently universal.

In any case, our moral precepts are *our* moral precepts. As such, they demand our obedience. To abandon them simply because others reject them is to fail to give proper weight to our own moral beliefs (at least where they involve central moral precepts such as the equality of all human beings and the protection of innocents).

Finally, no matter how firmly someone else, or even a whole culture, believes differently, at some point—slavery and untouchability come to mind—we simply must say that those contrary beliefs are wrong. Negative external judgments may be problematic. In some cases, however, they are not merely permissible but demanded.

4. Concepts, Interpretations, Implementations

In evaluating arguments of cultural relativism, we must distinguish between variations in substance, interpretation, and form. Even very weak cultural relativists—that is, strong universalists—are likely to allow considerable variation in the form in which rights are implemented. For example, whether free legal assistance is required by the right to equal protection of the laws usually will best be viewed as largely beyond the legitimate reach of universal standards.

Important differences between strong and weak relativists are likely to arise, however, at the levels of interpretation and, especially, substance.

A. SUBSTANCE OR CONCEPT

The Universal Declaration generally formulates rights at the level of what I will call the *concept*, an abstract, general statement of an orienting value. "Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment" (Art. 23). *Only* at this level do I claim that there is a consensus on the rights of the Universal Declaration, and at this level, most appeals to cultural relativism fail.

It is difficult to imagine arguments against recognizing the rights of Articles 3–12, which include life, liberty, and security of the person; the guarantee of legal personality, equality before the law, and privacy; and protections against slavery, arbitrary arrest, detention, or exile, and inhuman or degrading treatment. These are so clearly connected to basic requirements of human dignity, and are stated in sufficiently general terms, that virtually every morally defensible contemporary form of social organization must recognize them (although perhaps not necessarily as inalienable rights). I am even tempted to say that conceptions of human nature or society that are incompatible with such rights are almost by definition indefensible in contemporary international society.

Civil rights such as freedom of conscience, speech, and association may be a bit more relative. Because they assume the existence and positive evaluation of relatively autonomous individuals, they may be of questionable applicability in strong, thriving traditional communities. In such communities, however, they would rarely be at issue. If traditional practices truly are based on and protect culturally accepted conceptions of human dignity, then members of such a community will not have the desire or the need to claim such rights. In the more typical contemporary case, however, in which relatively autonomous individuals face modern states, it is hard for me to imagine a defensible conception of human dignity that does not include almost all of these rights. A similar argument can be made for the economic and social rights of the Universal Declaration.

In twenty years of working with issues of cultural relativism, I have developed a simple test that I pose to skeptical audiences. Which rights in the Universal Declaration, I ask, does your society or culture reject? Rarely has a single full right (other than the right to private property) been rejected. Never has it been suggested to me that as many as four should be eliminated.

Typical was the experience I had in Iran in early 2001, where I posed this question to three different audiences. In each case, discussion moved quickly to freedom of religion, and in particular atheism and apostasy by Muslims

(which the Universal Declaration permits but Iran prohibits).⁵ Given the continuing repression of Iranian Bahais—although, for the moment at least, the apparent end to executions—this was quite a sensitive issue. Even here, though, the challenge was not to the principle, or even the right, of freedom of religion (which almost all Muslims support) but to competing "Western" and "Muslim" conceptions of its limits. And we must remember that *every* society places some limits on religious liberty. In the United States, for example, recent court cases have dealt with forced medical treatment for the children of Christian Scientists, live animal sacrifice by practitioners of santaria, and the rights of Jehovah's Witnesses to evangelize at private residences.

We must be careful, however, not to read too much into this consensus at the level of the concept, which may obscure important disagreements concerning definitions and implicit limitations. Consider Article 5 of the Universal Declaration: "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. We must recognize and address such differences without overstating their importance or misrepresenting their character.

Implicit limits on rights may also pose challenges 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.⁶ But if these limits differ widely and systematically across civilizations, the resulting differences in human rights practices might indeed be considerable.

Are there systematic differences in definitions of terms across civilizations? Do cultures differ systematically in the standard limits they put on the exercises of rights? And if these differences are systematic, how significant are they? I have suggested that the answers to these questions are largely negative. For reasons of space—as well as the fact that such negative arguments cannot be conclusively established—I leave this claim as a challenge. Critics may refute my argument with several well-chosen examples of substantial cultural variation either at the level of concepts or in systematic variations at the level of interpretation that undermine the apparent conceptual consensus. So far, at least, I

5. Gender equality, perhaps surprisingly, did not come up (although these were elite, English-speaking audiences, and Iran has, self-consciously, made considerable progress on women's rights issues in recent years). But even when it does, dispute usually focuses on the meaning of nondiscrimination or on particular practices, such as equal rights in marriage.

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

have not encountered anyone capable of presenting such a pattern of contradictory evidence, except in the case of small and relatively isolated communities.⁷

B. INTERPRETATIONS

What ought to count, for example, as adequate protection against unemployment? Does it mean a guaranteed job, or is it enough to provide compensation to those who are unemployed? Both seem to me plausible interpretations. Some such variations in interpreting rights seem not merely defensible but desirable, and even necessary.

Particular human rights are like "essentially contested concepts," in which there is a substantial but rather general consensus on basic meaning coupled with no less important, systematic, and apparently irresolvable conflicts of interpretations (Gallie 1968). In such circumstances, culture provides one plausible and defensible mechanism for selecting interpretations (and forms).

We should also note that the Universal Declaration lists some rights that are best viewed as interpretations. For example, the right of free and full consent of intending spouses reflects an interpretation of marriage over which legitimate controversy is possible. Notice, however, that the right (as stated in Sec. 2 of Art. 16) is subordinate to the right to marry and to found a family (over which, at this highest level of generality, there is little international dispute). Furthermore, some traditional customs, such as bride price, provide alternative protections for women that address at least some of the underlying concerns that gave rise to the norm of free and full consent.

I would suggest, however, that defensible variations in interpretations are likely to be relatively modest in number. And not all "interpretations" are equally plausible or defensible. They are *interpretations*, not free associations or arbitrary, let alone self-interested, stipulations. The meaning of, for example, "the right to political participation" is controversial, but an election in which a people were allowed to choose an absolute dictator for life ("one man, one vote, once," as a West African quip put it) is simply indefensible.

We must also note that considerable divergences in interpretation exist not only between but also *within* cultures or civilizations. Consider, for example, differences within the West between Europe and the United States on the death penalty and the welfare state. Japan and Vietnam have rather different interpretations of the rights to freedom of speech and association, despite being East Asians.

7. The general similarity of regional human rights instruments underscores this argument. Even the African Charter of Human and Peoples' Rights, the most heterodox regional treaty, differs largely at the level of interpretation and, in substance or concept, by addition (of peoples' rights) rather than by subtraction.

Even where there are variations between two cultures, we still need to ask whether culture in fact is the source of cause of these differences. I doubt that we are actually saying much of interest or importance when we talk of, say, Japan as Asian. Consider the common claim that Asian societies are communitarian and consensual and 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 at least as consensual as 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 are easily multiplied, suggest that even where variations in practice exist, culture does much less explanatory work than most relativists suggest—or at least that the "culture" in question is more local or national rather than regional or a matter of civilization.

C. IMPLEMENTATION OR FORM

Just as concepts need to be interpreted, interpretations need to be implemented in law and political practice. To continue with the example of the right to work, what rate of unemployment compensation should be provided, for how long, in what circumstances? The range of actual and defensible variation here is considerable—although limited by the governing concept and interpretation.

Even a number of rights in the International Human Rights Covenants involve specifications at the level of form. For example, Article 10(2)(b) of the International Covenant on Civil and Political Rights requires the segregation of juvenile defendants. In some cultures the very notion of a juvenile criminal defendant (or a penitentiary system) does not exist. Although there are good reasons to suggest such rules, to demand them in the face of strong reasoned opposition seems to me to make little sense—so long as the underlying objectives are realized in some other fashion.

Differences in implementations, however, often seem to have little to do with culture. And even where they do, it is not obvious that cultural differences deserve more (or less) respect than differing implementations attributable to other causes (e.g., levels of economic development or unique national historical experiences).

I stress this three-level scheme to avoid a common misconception. My argument is for universality only at the level of the concept. 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." The ways in which these rights are implemented, however, so long as they fall within the range of variation consistent with the overarching concept, are matters of legitimate variation (compare §7.7).

This is particularly important because most of the "hot button" issues in recent discussions have occurred at the level of implementation. For example,

debates about pornography are about the limits—interpretation or implementation—of freedom of expression. Most Western countries permit the graphic depiction of virtually any sex act (so long as it does not involve and is not shown to children). Many others countries punish those who produce, distribute, or consume such material. This dispute, however, does not suggest a rejection of human rights, the idea of personal autonomy, or even the right to freedom of speech.

We should also note that controversy over pornography rages internally in many countries. Every country criminalizes some forms of pornography, and most countries—Taliban Afghanistan being the exception that proves the rule—permit some depictions of sexual behavior or the display of erotic images that another country has within living memory banned as pornographic. Wherever one draws the line, it leaves intact both the basic internationally recognized human right to freedom of speech and the underlying value of personal autonomy.

D. UNIVERSALITY WITHIN DIVERSITY

There are at least three ways in which rights that vary in form and interpretation can still be plausibly described as “universal.” First, and most important, there may be an overlapping consensus (see §3.2) on the substance of the list, despite diversity in interpretations and implementations. Second, even where there are differences at the level of substance or concept, a large common core may exist with relatively few differences “around the edges.” Third, even where substantial substantive disagreements occur, we might still be justified in speaking of universal rights if there are strong statistical regularities and the outliers are few and clearly overshadowed by the central tendency.

In contemporary international society, I think that we can say that there are few far outliers (e.g., North Korea) at least at the level of agreed-on concepts. I would admit that overlapping conceptual consensus often is thin. Nonetheless, I think that we can fairly (although not without controversy) say that variations at the level of concepts are infrequent. Somewhat more contentious is the claim that I would also advance that the range of diversity in standard interpretations is modest and poses relatively few serious international political disputes.

We do not face an either-or choice between cultural relativism and universal human rights. Rather, we need to recognize both the universality of human rights and their particularity and thus accept a certain *limited* relativity, especially with respect to forms of implementation. We must take seriously the initially paradoxical idea of the relative universality of internationally recognized human rights.⁸

8. Coming at a similar perspective from the other end of the spectrum, Richard Wilson notes that human rights, and struggles over their implementation, “are embedded in local normative orders and yet are caught within webs of power and meaning which extend beyond the local” (1997: 23). Andrew Nathan has recently described this orientation as “tempered universalism” (2001).

5. Explaining the Persistence of Culturalist Arguments

If my argument for relative universality is even close to correct, how can we explain the persistence of foundational appeals to culture? If we could explain this puzzle, both for the relativist arguments considered in this chapter and for the claims about human rights in traditional societies considered in Chapter 5, the plausibility of a universalist perspective would be enhanced. At least six explanations come to mind.

First, it is surprisingly common for even otherwise sophisticated individuals to take the particular institutions associated with the realization of a right in their country or culture to be essential to that right. Americans, in particular, seem to have unusually great difficulty in realizing that the way we do things here is not necessarily what international human rights norms require.

Second, narrow-minded and ham-handed (Western, and especially American) international human rights policies and statements exacerbate these confusions. Consider 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, but he failed to find it even notable that in his own country people are being fried 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.

The legacy of colonialism provides a third important explanation for the popularity of relativist arguments. African, Asian, and Muslim (as well as Latin American) leaders and citizens have vivid, sometimes personal, recollections of their sufferings under colonial masters. 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. (Compare the sensitivity of the United States to external criticism even in the absence of such a historical legacy.) When international pressures exceed the bounds of the overlapping consensus, that sensitivity often becomes (justifiably) very intense.

Fourth, arguments of relativism are often rooted in a desire to express and foster national, regional, cultural, or civilizational pride. It is no coincidence that the “Asian values” debate (see Chapter 7) took off in the wake of the Asian economic miracle—and dramatically subsided after the 1997 financial crisis.

The belief that such arguments have instrumental efficacy in promoting internationally recognized human rights is a fifth important reason. For example, Daniel Bell plausibly argues that building human rights implementa-

tion strategies on local traditions (1) is "more likely to lead to long term commitment to human rights"; (2) "may shed light on the groups most likely to bring about desirable social and political change"; (3) "allows the human rights activist to draw on the most compelling justifications"; (4) "may shed light on the appropriate attitude to be employed by human rights activists"; and (5) "may also make one more sensitive to the possibility of alternative" mechanisms for protecting rights (1996: 657–659). I would insist only that we be clear that this is a practical, not a theoretical, argument; that we operate with a plausible theory of culture and an accurate understanding of the culture in question; and that we not assume that culture trumps international norms. "To realize greater social justice on an international scale, activists and intellectuals must take culture seriously, but not in the totalizing, undifferentiated way in which some leaders of non-Western nations have used it as a trump card" (L. Bell 2001: 21).

This leads to the sixth, and perhaps the most important, explanation for the prevalence of culturalist arguments, namely, that they are used by vicious elites as a way to attempt to deflect attention from their repressive policies. And well-meaning Westerners with a well-developed sense of the legacy of Western colonialism indirectly support such arguments when they shy away from criticizing arguments advanced by non-Westerners even when they are empirically inaccurate or morally absurd.

6. Culture and Politics

So far I have proceeded, in line with the standard assumption of cultural relativists, by treating "cultures" as homogenous, static, all-encompassing, and voluntarily accepted "things," the substance of which can be relatively easily and uncontroversially determined. None of these assumptions is defensible.

A. IDENTIFYING A "CULTURE"

Cultures are anything but homogenous. In fact, differences *within* civilizations often are as striking and as important as those between civilizations. "The Western tradition," for example, includes both Caligula and Marcus Aurelius, Francis of Assisi and Torquemada, Leopold II of Belgium and Albert Schweitzer, Jesus and Hitler—and just about everything in between.

We thus face a difficult problem even in determining what is to count as evidence for a claim of the form "civilization *x* holds belief *y*." Political authorities are but one (very problematic) source of evidence of the views and practices of a civilization. Nor can we rely on authoritative texts. For example, the Christian Bible has significantly shaped Western civilization. But even when particular practices do not diverge from what one might expect from reading this "foundational" text—and setting aside the fact that such expectations

change with time, place, and reader—few Western practices are adequately explained in terms of, let alone reducible to, those texts.⁹

Even the long-established practice of leading states may diverge significantly from the norms and values of the civilization of which they are a part. The United States, for example, is in many ways a very *atypical* Western country in its approach to economic and social rights. In characterizing and comparing civilizations, we must not mistake some particular expressions, however characteristic, for the whole. For example, Christianity and secularism are arguably equally important to modern Western civilization. And the balance between secular and religious forces, values, and orientations varies dramatically with time, place, and issue in "the West."

Such cautions are especially important because culturalist arguments regularly rely on appeals to a distant past, such as the precolonial African village, Native American tribes, and traditional Islamic societies. The traditional culture advanced to justify cultural relativism far too often no longer exists—if it ever did in the idealized form in which it is typically presented. In the Third World today we usually see not the persistence of "traditional" culture in the face of "modern" intrusions, or even the development of syncretic cultures and values, but rather disruptive "Westernization," rapid cultural change, or people enthusiastically embracing "modern" practices and values.¹⁰ And the modern nation-states and contemporary nationalist regimes that have replaced traditional communities and practices cannot be judged by standards of a bygone era.

We must also be careful to distinguish "civilization" or "culture" from religion and politics. The United States is a state, a political entity, not a civilization. Islam is not a civilization but a religion, or, as many believers would put it, a true and comprehensive way of life that transcends culture or civilization. An "Islamic civilization"—centered on Mecca and running, say, from the Maghreb to the Indus—does not include all Muslims, or even all majority Muslim countries. The broader Muslim world, running from Dakar to Jakarta, may be an international political unit of growing interest or importance, but it certainly is not a culture or civilization. And tens of millions of Muslims live outside of even this community.

9. To cite one example of misplaced textualism, Roger Ames (1997) manages to devote an entire article to "the conversation on Chinese human rights" that manages to make only a few passing, exceedingly delicate, mentions of events since 1949. China and its culture would seem to have been unaffected by such forces as decades of brutal party dictatorship or the impact of both socialism and capitalism on land tenure and residence patterns. In fact, although he cites a number of passages from Confucius, Ames does not even attempt to show how traditional Confucian ideas express themselves in contemporary Chinese human rights debates.

10. None of this should be surprising when we compare the legal, political, and cultural practices of the contemporary West with those of ancient Athens, medieval Paris, Renaissance Florence, or even Victorian London.

liberty, and the dimensions of gender equality merit intensive discussions both within and between states and civilizations.

Should traditional notions of "family values" and gender roles be emphasized in the interest of children and society, or should families be conceived in more individualistic and egalitarian terms? What is the proper balance between rewarding individual economic initiative and redistributive taxation in the interest of social harmony and support for disadvantaged individuals and groups? At what point should the words or behaviors of deviant or dissident individuals be forced to give way the interests or desires of society?

Questions such as these, which in my terminology involve conflicting interpretations, involve vital issues of political controversy in virtually all societies. In discussing them we must often walk the difficult line between respect for the other and respect for one's own values. A number of examples of how this might be done in contemporary Asia are found in §7.7. Here I want to consider a relatively easy case—slavery—in an unconventional 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 re-instituted in contemporary Saudi Arabia. I am certain that almost all Saudis, from the most learned clerics to the most ordinary 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. 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 on 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. Condemnation by outsiders also 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 the unthinkable were to occur and the practice of slavery were reintroduced in Saudi Arabia—not, let us imagine, as a matter of law, but rather through the state refusing to prosecute slave-holders. 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.

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 coercive international enforcement is extraordinarily contentious and without much legal precedent. Outsiders, however, remain 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.

This hypothetical example illustrates the fact that *some* cultural practices, rather than deserve our respect, demand our condemnation. It also indicates, though, that some beliefs, however despicable, demand our toleration—because freedom of opinion and belief is an internationally recognized human right. So long as one stays within the limits of internationally recognized human rights, one is entitled to at least a limited and grudging toleration and the personal space that comes with that. But such individuals are *owed* nothing more.

Many cases, however, are not so easy. This is especially true where cultures are undergoing substantial or unusually rapid transformation. In much of the Third World we regularly face the problem of "modern" individuals or groups who reject traditional practices. Should we give priority to the idea of community self-determination and permit the enforcement of customary practices against modern "deviants" even if this violates "universal" human rights? Or should individual self-determination prevail, thus sanctioning claims of universal human rights against traditional society?

In discussing women's rights in Africa, Rhoda Howard suggests an attractive and widely applicable compromise strategy (1984: 66–68). On a combination of practical and moral grounds, she argues against an outright ban on such practices as child betrothal and widow inheritance, but she also argues strongly for national legislation that permits women (and the families of female children) to "opt out" of traditional practices. This would permit individuals and families to, in effect, choose the terms on which they participate in the cultures that are of value to their lives. Unless we think of culture as an oppressive external force, this seems entirely appropriate.

Conflicting practices, however, may sometimes be irreconcilable. For example, a right to private ownership of the means of production is incompatible with the maintenance of a village society in which families hold only rights of use to communally owned land. Allowing individuals to opt out and fully own their land would destroy the traditional system. Even such conflicts, however, may sometimes be resolved, or at least minimized, by the physical or legal separation of adherents of old and new values, particularly with practices that are not material to the maintenance or integrity of either culture.

Nevertheless, a choice must sometimes be made, at least by default, between irreconcilable practices. Such cases take us out of the realm in which useful general guidelines are possible. Fortunately, though, they are the exception rather than the rule—although no easier for that fact to deal with when they do arise.

It would be dangerous either to deny differences between civilizations where they do exist or to exaggerate their extent or practical importance. 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 recognition of the Universal Declaration as, in its own words, "a common standard of achievement for all peoples and all nations." Or, as I prefer to put it, human rights are relatively universal.

7/ Human Rights and "Asian Values"

The debate over culture and human rights in the 1970s and 1980s was dominated by discussions of so-called nonwestern conceptions of human rights, which I discussed critically in Chapter 5. In the 1990s, discussions took on a more combative tone, especially in the debate over "Asian values."¹ Asian leaders and (often politically well-connected) intellectuals began to assert claims of legitimate, culturally based differences that justified substantial deviations from standard international interpretations of human rights norms.² Articles in prominent Western journals began appearing with titles such as "Asia's Different Standard" (Kausikan 1993), "Culture is Destiny" (Zakaria 1994), and "Can Asians Think?" (Mahbubani 1998). Regional figures, such as Singapore's Lee Kwan Yew and Malaysia's Mahathir bin Mohamad emerged onto a wider international stage. And the "East Asian Economic Miracle"—which even after the crisis of 1997 remains impressive—increased interest in such arguments in other regions.

The first six sections of this chapter present a critical reading of these arguments. The final section, however, steps back and seeks to illustrate the space for local variation in an Asian context; that is, the relative universality of internationally recognized human rights.

1. Langlois (2001) provides an excellent recent discussion. Chapter 1 offers a fine overview and Chapters 2 and 3 usefully seek to separate politics and cant from legitimate concerns and insights. For good collections of essays provoked by and participating in the Asian values debate, see Bauer and Bell (1999), Van Ness and Aziz (1999), van Hoof et al. (1996), Cauquelin, Lim, and Mayer-König (1998), and Jacobsen and Bruun (2000).

2. A focal point for this discussion was the Regional Meeting for Asia of the World Conference on Human Rights, held March 29–April 2, 1993 in Bangkok, and relativist arguments advanced that summer at the Vienna Conference. This discussion was also fostered by the decision of China to move from denial of the relevance of international human rights standards (and of its own human rights problems) to acceptance, but with a strong relativist twist, as symbolized in its 1991 White Paper (China 1991).