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## Exploring Universal Rights: A Symposium

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### Abstract

A review of:

Which Rights Should Be Universal? by William J. Talbott. New York, NY: Oxford University Press, 2005. 232pp.

### Keywords

Democracy, Development, Human rights, Self-determination, Moral reasoning, Autonomy, Talbott, Liberalism, Cultural rights, Multiculturalism, Intervention, Well-being, Universality, Theory, Moral objectivity, Women, Feminist, Methodology, Women's rights, Power, Difference, Conflict, Post-colonial

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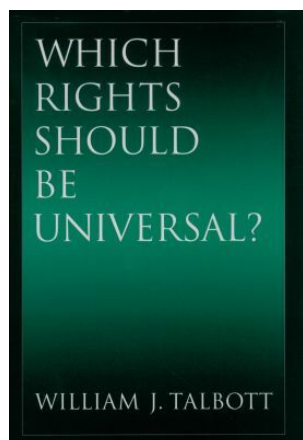
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## Exploring Universal Rights: A Symposium

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**Which Rights Should Be Universal? by William J. Talbott. New York, NY: Oxford University Press, 2005. 232pp.**

### Preface

by Jamie Mayerfeld

The struggle for human rights has been shadowed by philosophical doubt. Can we assert universal human rights without engaging in moral imperialism? Can we have confidence in the moral beliefs that underlie human rights claims? Can we justify human rights to those who do not believe in the intrinsic value of autonomy? Which Rights Should Be Universal?, the first of two projected volumes on human rights, is a significant contribution to this literature. In a series of original and mind-opening arguments, William Talbott, a professor of philosophy at the University of Washington, lifts us over one philosophical impasse after another. Admirers of Which Rights Should Be Universal? will find their thinking about human rights enlarged and enhanced by a wealth of new concepts; critics will be kept busy in answering the book's copious arguments. From any perspective, Professor Talbott's book moves the conversation about human rights onto a new plane.

This symposium emerged from two public panels devoted to Professor Talbott's book—the first in Seattle on April 10, 2006, to mark the formal inauguration of the Program on Values in Society of the University of Washington, and the second in Philadelphia on August 31, 2006, at the annual meeting of the American Political Science Association. The participants are all leading scholars of human rights: Brooke Ackerly (Vanderbilt University), Charles Beitz (Princeton University), Jack Donnelly (University of Denver), Henry Shue (Oxford University), and Kok-Chor Tan (University of Pennsylvania). Jamie Mayerfeld (University of Washington) leads off with a synopsis of Talbott's book. The critical essays raise the following questions and challenges for Talbott's arguments: what theoretical approaches best promote the human rights of women? (Ackerly). Do we need the idea of moral objectivity to make sense of human rights? (Ackerly and Donnelly). Should values other than autonomy be highlighted in the justification of human rights? (Donnelly, Shue, and Tan). Does empirical evidence support the view that democracy is a human right? (Beitz). Should human rights include cultural rights? (Tan). Which criteria may justify external intervention in a state's domestic

affairs? (Tan and Beitz). How should we distinguish paternalist from non-paternalist strategies of promoting human rights? (Shue).

In an essay published concurrently in *Human Rights & Human Welfare*, Professor Talbott responds at length. He uses the occasion to provide detailed answers to his colleagues' questions and criticisms, and to elaborate upon the arguments of his book.

## **An Overview and Appreciation** **by Jamie Mayerfeld**

Some of us believe in a human right to freedom of speech and freedom of religion, in the equality of men and women, in a human right to democracy, and in a human right to economic subsistence where that includes adequate nutrition, basic health care, safe drinking water, and elementary education. We believe that all human beings have these rights. That is our moral belief. But some people, and perhaps some cultural groups as a whole, do not share this belief. They deny that all these things are human rights. What should we say about this situation? Are these people mistaken in their moral beliefs, or is that an unacceptably arrogant thing to say? Are we arrogantly imposing our views on other cultures?

To ask the question another way: are there any universal human rights, rights that ought to be honored even in cultures that do not believe in them? And if so, what rights belong in the list of universal human rights? These are the questions that William Talbott sets out to answer in his book. He argues that we should believe in universal human rights. He is a moral universalist because he believes that “there are moral truths that apply to everyone, even those who disagree with them” (15). This view strikes many people as morally imperialistic, so one of Talbott’s main goals is to show that you can be a moral universalist without being a moral imperialist. We avoid being moral imperialists so long as we acknowledge that our belief in certain universal human rights is fallible—that we could be wrong—and so long as we do not try to impose our beliefs on others for their own personal good. The view that Talbott adopts is one he describes as “epistemically modest” but metaphysically “immodest” (15): no belief, not even the belief in universal human rights, is infallible, yet the most reasonable belief is that there exist universal human rights, that it is wrong to violate those rights, and that these claims are true, whether or not people agree.

Talbott is sensitive to the history of Western imperialism, marked by the destruction, enslavement, and savage mistreatment of entire groups of people. The Western imperialists were moral imperialists, convinced of the superiority of their moral code, and willing to impose it by force on other peoples. Talbott gives the example of *requerimiento*, the ultimatum delivered by the Spanish conquistadors to American natives, ordering them to convert to Christianity and submit to the Spanish monarch, or else become slaves and lose all their property. Because we are repulsed by the tyranny and cruelty of the conquistadors, we may draw the lesson that it is wrong to believe in a universal moral system, valid across cultures. But that is the wrong lesson to draw. The correct lesson is that the conquistadors acted on the wrong set of universal moral beliefs, emboldened by a sense of infallibility and the idea that they could paternalistically impose their values on others for the others’ good.

Why should we believe in universal human rights? We must first unlearn some familiar arguments. In the history of philosophy, a recurrent argument has been that human rights are self-evidently true, or are derived from self-evident truths. The argument appears in the U.S. Declaration of Independence: “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable rights, that among these are life, liberty, and the pursuit of happiness.” There is an old cartoon that shows a boy tugging on Thomas Jefferson’s sleeve and saying, “If these truths are self-evident, why do you keep harping on them?” Like the boy in the cartoon, Talbott is suspicious of the argument used in the Declaration of Independence. Human rights are not self-evident. Nor can they be derived from self-evident premises. For this reason, they cannot be proven. This is not an embarrassment for human rights, because it is in fact doubtful that *any* moral beliefs can be proven (22). Talbott asks that we give up the assumption, so long ingrained in Western philosophy, that proof is necessary for holding justified moral beliefs (23-35).

What justifies moral beliefs if not proof? The answer is that human beings are capable of forming reasonably reliable moral judgments when they adopt a universal moral standpoint that attaches due weight to the interests and perspectives of all affected parties. To adopt a universal moral standpoint, we must cultivate empathic understanding; that is, we must try to imagine what it is like to be someone else affected by our actions. Even so, our moral judgments may be mistaken because they can be distorted by self-serving beliefs, some of which are socially enforced. So, we must strive to correct the bias of socially-enforced, self-serving beliefs. When we do this, and when our views are informed by empathic understanding, we can form reasonably reliable, though not infallible, moral judgments about particular kinds of acts. These moral judgments in turn justify broader moral principles that make sense of our beliefs as a whole and that, in some instances, cause us to re-examine and revise our particular moral judgments. The more we bring our particular moral judgments and moral principles into equilibrium, and the more we test our moral beliefs against other people’s arguments and against the known facts about human nature and human society, the more reliable our moral beliefs become. This model of moral reasoning is more inductive than deductive, more bottom-up than top-down.

Any real hope for moral progress, Talbott argues, lies in bottom-up reasoning of this kind. He offers the example of Bartolomé de las Casas, the 16<sup>th</sup> century Spaniard who, after participating in the conquest of the “New World,” gradually came to oppose the mistreatment of the indigenous population and then devoted his life to defending their freedom. How did Las Casas come to oppose a policy supported by the full weight of the Crown, the Church, and their intellectual servants? The most plausible explanation, Talbott argues, is that Las Casas, having gotten to know the indigenous population and observed their way of life, and having allowed himself to empathize with their situation, perceived directly that what was being done to them was wrong. He thus formed a set of particular moral judgments incompatible with the official Spanish policy. His fellow Spaniards, by contrast, locked themselves into a pattern of top-down moral reasoning that excused the continuation of the morally inexcusable. Can we prove that Las Casas’ position represented moral progress? No, we cannot, but any other suggestion is implausible. It would be odd to deny that Las Casas’ position was morally superior to that of his fellow Spaniards.

The same kind of bottom-up reasoning that led Las Casas to challenge the policies of the Spanish Crown gives us reasons for believing in universal human rights. Particular moral judgments

reached from a universal moral standpoint show us the overriding value of a right to autonomy: the right of individuals to form and act on their own judgments of what is good. Talbott dwells, at length, on the issue of women's rights, showing that the patriarchal denial of autonomy to women, historically common to almost every culture in the world, cannot be justified from a universal moral standpoint. A large number of familiar but facile arguments purport to show that women's interests are best served under patriarchy. Such arguments do not conform to the evidence. The brute fact is that patriarchy is bad for women. The patriarchal institutions that prevent women from exercising meaningful control over the course of their lives also cause women to suffer from domestic violence, poverty, abandonment, higher rates of morbidity, and early death.

When thinking from a universal moral standpoint we should take into account what centuries of experience have taught us about human nature, human society, and the effects of alternative social arrangements. From a universal moral standpoint we can see, or ought to see, that torture, slavery, and the deprivation of subsistence are wrong. In addition, we can or ought to see that people should be allowed to decide for themselves what opinions to hold and express, who to associate with, which religion to adopt, what careers to pursue. In short, people have a right to autonomy—a right to chart the direction of their own lives. How should we explain the right to autonomy? One explanation is that the right of autonomy is inseparable from human dignity itself. Respect for other persons as persons requires that we recognize them as autonomous beings capable of choosing their own life path. But there is another explanation as well: centuries of experience have taught us that normal adult human beings (that is, those not suffering from severe cognitive impairments) lead better, more fulfilling lives when decisions about their own lives are left to themselves. The reasons for this explanation lie in factors that Talbott identifies as “(1) first-person concern; (2) first-person access; (3) first-person bias, and (4) the value of choice” (124). Our concern for ourselves and knowledge of our own needs, and the personal growth that derives from making our own choices, mean that we ourselves, not other people, are the best custodians of our own interests.

But autonomy means more than being left alone. It implies the power to develop a capacity for well-informed judgment, the ability to exercise one's powers of judgment, and finally the freedom to act on the judgments one has formed. Human rights, Talbott argues, are social guarantees that protect the development, exercise, and implementation of one's own judgment in ways that do not interfere with other people's ability to develop, exercise, and act on their own judgment. The rights needed to guarantee autonomy for all include physical security and subsistence, the right of children to “normal physical, cognitive, emotional, and behavioral development” and to education (where this includes the development of empathic understanding), freedom to communicate with others and to hear others' views, freedom of association, and “a sphere of personal autonomy free from paternalistic interference” (163).

To this list, Talbott adds a right to democracy. His argument is bluntly pragmatic. History is filled with examples of governments that have imposed dramatically unjust and destructive policies. The underlying problem is one of knowledge and motivation: too many governments lack an adequate incentive to respond to the legitimate concerns of the people, and lack adequate information about the effects of their policies. Talbott refers to this as the “appropriate responsiveness” problem and the “reliable feedback” problem (114). Democracy, for all its limitations, is the only political system that can solve these problems. Talbott's point is not that democracy guarantees protection of other human rights. But without democracy, the protection of

other human rights is impossible over the long term. Democracy is a necessary though insufficient condition for the protection of our human rights as a whole.

Which Rights Should Be Universal? provides a bold, powerful, and original theory of human rights. It is likely to change how one thinks about a great many things, and its arguments are supported—appropriately in a work that celebrates bottom-up thinking—by innumerable wise observations on a wide range of topics. Though Talbott claims epistemic modesty, he lays out a powerful philosophical worldview, large in scope and penetrating in detail. Its breadth of vision is one reason why this is such an exhilarating book to read. Its humane outlook is another. Anyone interested in the meaning of human rights and the justification of political power must now contend with William Talbott’s arguments.

## **Power, Difference, and Conflict in Human Rights Theory**

### **By Brooke Ackerly**

In this era of feminisms and post-colonial consciousness, when scholars are attentive to differences among women within and across cultures and socio-economic statuses, we might expect that it is hard for any universalizing theory to hold up. But the project undertaken by Talbott has some things going for it that give it a shot. The key building block is what the author calls “epistemic modesty.” Since so many theoretical incoherencies result from a lack of self-reflection, the critical<sup>1</sup> reader is instantly optimistic that this project is going to go well. The challenge is to sustain that epistemic modesty—that willingness to believe in the fallibility of one’s own thinking—while trying to articulate a human rights theory that does not undermine the critical ambitions of human rights activists.

Talbott uses the example of culturally-reinforced, gender-based human rights violations to demonstrate the practical import of his human rights theory. I appreciate Talbott’s effort at epistemic modesty and attention to women’s human rights violations. In these remarks, I focus on where such modesty should lead. It does not take long for questions about epistemology and women’s human rights to lead to questions about power, difference, and conflict. The critical thrust of my argument is on Talbott’s willingness and ability to confront questions of power, difference, and conflict and to do so in a way that does not undermine the work of human rights defenders.

### **Epistemic versus Epistemological Modesty: Why We Need to Focus on Methodology**

The critical scholar in me is inspired by the foundational importance Talbott gives to “epistemic modesty.” Most feminist critical theory puts epistemological reflection at the foundation of all inquiry. However, feminists do not use it as a disclaimer against errors nor as a shield from critical

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<sup>1</sup> With the use of little “c” critical theory, I mean to lump together the theoretical tools of many critical perspectives that help us make difference visible. These include Feminisms, Queer Theory, Cultural Studies, Critical Race Theory, Bioethics, Post-colonial Theory, Anthropology, Critical Theory, Multiculturalism, and Comparative Political Thought.

interrogation (cf. Alcoff 1991: 25). What is the difference between epistemic and epistemological modesty? “Epistemic” modesty is related to knowledge, specifically, the justification of belief. “Epistemological” modesty is related to a philosophy of knowledge, particularly with regard to its methods, validation, scope, and the distinction between belief and opinion. Epistemological modesty requires epistemic modesty but is more demanding with respect to self-reflection and humility; epistemological modesty requires a self-reflective theoretical methodology but does not render invisible the privilege of the human rights theorist. To be epistemologically modest, it is not enough to note that there may be a problem with one’s thinking. Epistemological modesty requires that we set out critical systems to evaluate both our claims and our system of understanding. As Stephen White argues,

*... constructing such contestable foundations involves the embodiment within them of some signaling of their own limits... Its elaboration of fundamental meanings must in some sense fold back upon itself, disrupting its own smooth constitution of a unity. In a way, its contestability will thus be enacted rather than just announced* (White 2000: 8).

As feminists use it, epistemological modesty is a methodological concept, a philosophical tool. Epistemological modesty enables the user to do philosophy better, with more modesty, with more humility, incorporating more perspectives (those he sees and those he does not).

By contrast, epistemic modesty is a humility about one’s moral guideposts. However, as Talbott deploys it, epistemic modesty is not a philosophical tool. When the abuse of power is the subject of inquiry (as is the case in human rights), it is not sufficient to be modest in the claims we make about justice, as Talbott does. Feminist methodologies compel and guide our exploration into the unknown.

### **Objective Standpoint versus Destabilizing Epistemology: the Power of Epistemology**

Talbott’s epistemic modesty allows him to be cautious against making some claims of justice, and overconfident in making others. For example, he is overconfident when he writes, “There is an objective difference between education and indoctrination” (109). Is this not an example of the difference between belief and opinion, which is a function of epistemology? Talbott’s epistemic modesty does not provide him with a theory of knowledge and the exercise of power through knowledge claims that much feminist, post-modern, and post-colonial scholarship treats as central to theorizing about injustice.<sup>2</sup> From a perspective of epistemological modesty, one cannot be confident that an objective standpoint is in fact “objective.” No one standpoint can be objective because the defense of the claim to “objectivity” requires a prior political agreement between the interlocutor and the speaker on the definition of acceptable argument about what constitutes “objectivity.” We could not, of course, determine the standards of “objectivity” democratically, but rather defer to an authority—the authority of a principle-wielding philosopher<sup>3</sup> or the authority of a transcendently-authorized leader (such as a pope). Any of these three ways of justifying the “objectivity” of a standpoint privileges a form of power. While “objective” from within the justificatory regime, none

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<sup>2</sup> See, for example, Spivak (1988).

<sup>3</sup> Although this book does not present the principle, Talbott promises a second book that does (116).



are neutral with regard to other justificatory regimes. Talbott's epistemic modesty does not extend to interrogating epistemological power.

We might compare Talbott's attempts to create an "objective" standpoint with feminist attempts to accept that there is no "objective" standpoint, instead constructing an epistemological position of privilege from a political position of marginalization. Feminist standpoint epistemologists explore this possibility. The challenge for such standpoint feminism, a challenge that was raised by feminists themselves, is that it does privilege *a* perspective. Though the privileged perspective is marginalized, it is less marginalized than others in that it is visible or at least able to be made visible by feminists, whereas other positions are not. Additionally, (and this is the view that gets more airtime among feminists), the standpoint approach "essentializes" about the marginalized. To use Kimberle Crenshaw's language (2000), an approach that relies on defining a perspective risks treating all marginalization as similar to the one observed (over-inclusion) and being blind to other forms of marginalization (under-inclusion).

In order to be true to the goal of epistemic modesty, the justificatory regime cannot rely on an "objective" standpoint. In fact, it cannot rely on any standpoint that attempts to transcend differences. How can we say anything critical if we have no Archimedean point from which to assess our criticisms? Not only does epistemic modesty require something methodologically more demanding (epistemological modesty) but also it requires a destabilizing epistemology. A destabilizing epistemology requires different methods, validation, and scope from a philosophy of knowledge that assumes that principles (or other authorities—whatever they are) can be identified (even if they have not been) and can be used to build a theory of human rights.

### **Equilibrium Model: How Does the Equilibrium Approach Process Conflict?**

We are most familiar with what Talbott calls the "Proof paradigm," a form of analytic theorizing that Talbott criticizes for relying on one way of reasoning. Talbott's own approach, "equilibrium" theorizing, is subject to the same criticism because he too seeks an objective standpoint and principles from which to defend human rights.

Talbott's discussions of the equilibrium model of theorizing are some of the most valuable aspects of the book. Here he brings in Todorov (1984) and Sale (1990) to describe actual and hypothetical moral reasoning processes. As Talbott sees it, moral reasoning never results in a systemic revolutionary review of the foundations of moral thought, but rather always an incremental revision of thinking such that one does not shake the foundations as they are evaluated.

Another philosophy of knowledge—and one that is more consistent with his view of the fallibility of human reasoning and imagination—would be a theory in which method and substance assumed the fallibility of human reason. A theory that respects the limits of human reason and imagination must find its critical force in something other than principles or even Rawlsian public reason. Such a theory would justify human rights-based criticisms using the same mechanisms that it used to criticize insufficient formulations of human rights. The logic of Talbott's argument should lead him to such a conclusion, but this conclusion is not part of the substance of his argument about which rights are universal.

One question for our author that would help me understand both the worldview and the epistemology of the equilibrium process is: How does this approach process conflict? The story he tells of the shift in thinking from the Declaration of Independence to the Constitution is one of learning. I agree that learning is a very important part of a modest theory of human rights. But is not early American constitutional history also a story of conflict including competing interests and disagreements about institutionalization? To continue the point into the 19<sup>th</sup> century, the end of slavery was not just about moral learning; it was about conflict.<sup>4</sup> I agree with Talbot that the Constitution is a fabulous document because its authors built in the mechanisms of change. But one might also emphasize that another purpose of the document is to help us adjudicate conflict and to rule despite continued conflict.

Moreover, the Constitution is designed to manage change in a certain way, slowly (cf. this symposium Beitz 2007; and Shue 2007). Such an approach serves the interests of the slaveowner, not the slave. Given that conflict is at least as relevant to moral reasoning and rights recognition as moral learning, how does Talbot's theory deal with conflict and the power dynamics at play in the short-term and long-term adjudication of such conflict?<sup>5</sup>

A second question I have is: what turn in the theory enables Talbot to elevate democratic institutions above others at fostering critical self-reflection and learning? What theoretical argument or empirical evidence supports Talbot's immodest confidence in democratic institutions? To reframe the question as an immanent critique: how does the theory help us think about which democratic institutions are better at doing what Talbot expects of democratic institutions? How does an equilibrium model assess competing propositions?

### **Capable Adults: How Does the Theory Settle the Unsettled?**

Faith in democratic institutions is one of two foundational moves that are beyond scrutiny in Talbot's theory. The other is his unreflective characterization of the subject of rights as those with "tools to formulate and pursue alternative life plans" (Talbot 2005: 91). There is theoretical and sociological evidence that universal agreement around both of these is lacking. Moreover, there is plenty of contemporary political discussion that suggests that human reason and imagination have not been maximized on these issues. In the preceding section I spotlighted Talbot's faith in democracy and democratic institutions so I will not reiterate those here (cf. Beitz 2007). Here I focus on Talbot's centering of the capable adult as the agent of human rights.

While Talbot thinks that right can extend beyond "normal, human adults," he centers his project on these. Children, disabled, and other vulnerable groups have human rights, but his construction of universal human rights happens around the capable adult:

I focus on distinctively human rights—that is, rights that should be guaranteed to normal, human adults....The universality extends to all normal adult human beings, but it does not necessarily stop there (16).

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<sup>4</sup> See Douglass (1852).

<sup>5</sup> See Shiffman (2002); and Stammers (1993, 1995, 1999).

The focus on the autonomous, capable adult (with no dependents and no dependencies) and the characterization of that person as “normal” (though socially unrecognizable) is a holdover from Western social contract theories (Ackerly forthcoming). Talbott goes on to clarify in chapter six that he means to construct the content of human rights from the capacities of the “normal adult.” In particular, we know which rights are human rights by noticing which rights are necessary to exercise “the *faculty of judgment*...the ability to form, evaluate, and pursue plans, including plans for an entire life” (124). We need three kinds of rights: those that enable children and adults to develop their judgment; those that enable them to exercise judgment; and those that guarantee a sphere of autonomy. All are necessary to protect against paternalism. When Talbott asks “What’s So Bad about Paternalism?” he answers with regard to “adults with normal cognitive, emotional, and behavioral development” (135).

While I do not object that the rights that Talbott envisions are indeed rights (137), his construction of these rights strikes me as limited and limiting. First, the rights are limited in that they do not offer a scheme for thinking about the rights of prisoners (people found guilty by due process of having committed a crime have rights that may not best be understood in relation to their judgment about their autonomy) or about the rights of the severely disabled and those who care for them (cf. Nussbaum 2006). While some forms of paternalism are a practice of an abuse of power, not all caring for dependents is best characterized as “paternalism.” And yet we need to think about the human rights of those who are either permanently or temporarily in conditions of dependency due to life circumstances or stage of life.

Second, the rights are limiting: they do not offer helpful guidance in thinking about how we might use human rights to think about the right of indigenous people to their blood and the genetic knowledge acquired from the study of their blood. Can Talbott’s way of delimiting rights adjudicate the rights claims of pharmaceutical companies, countries, and NGOs working to stop the devastation of HIV/AIDS?

Further, the foundational assumption of a normal capable adult is not modest. It flies in the face of theoretical debates and active political discussions about capability, care and dependency, functioning, age, and the discrimination model itself. All of this debate makes the treatment of the adult capable of making and executing a life plan an odd ground to stake out as immutable in a theory premised upon epistemic modesty.

### **Feminist Suggestions**

Sustaining Talbott’s commitment to epistemic modesty and to a self-regulating system requires taking these epistemological and methodological concerns seriously. As it stands, Talbott is in the ironic position of offering a theory of human rights that cannot deal with power, difference, or conflict.

In imagining how I might respond to these concerns, I have been inspired by feminist human rights scholarship. Talbott uses the example of certain women’s human rights violations to set out the scope of a theory of human rights but uses little of the feminist scholarship on human rights to help him think through the implications of women’s human rights violations for women’s human rights theory. Feminists have made important arguments about human rights by drawing on

women's experience of human rights violations.

### *Power*

Feminist scholars of women's human rights argue that when we look at women's experiences of human rights violations we see rights violations that had previously gone unnoticed.<sup>6</sup> The examples that Talbott focuses on—female cutting and footbinding—are not as socially invisible as are domestic violence, the feminization of poverty, and the “missing” women whom Sen tries to count (99). Feminist analysis shows us why the dichotomy between public and private is problematic for the recognition of women's human rights violations, let alone the realization of those rights. A more modest epistemological perspective would have asked how women—the women of Tostan (the organization that Talbott highlights), for example—interpret their rights and rights violations in order to answer Talbott's question “What Do Women Want?” (101). Attention to women's human rights scholarship would potentially give him a human rights theory that attended to power.

### *Difference*

Talbott makes much of the Rawlsian original position and, like Talbott, Susan Okin also argues that the original position is a construction that fosters empathy (1989). However, that is not the only reading of the original position. If the original position is a space that obfuscates difference or should make difference visible, as Seyla Benhabib (1986) argues, Talbott's use of the original position as a standpoint for generating empathetic understanding is problematic. Against a backdrop of two decades of feminist, post-colonial, and post-modern scholarship on difference, Talbott's unreflective confidence in the original position seems unapprised.

From post-colonial and feminist scholars who take up the questions of cultural relativism, multiculturalism, the norm of women as purveyors of culture, etc. we might get an alternative hypothesis from Talbott's evolutionary thesis and its confidence that things will get better.<sup>7</sup> A feminist hypothesis would pay more attention to the amount of power required to sustain the *status quo*.<sup>8</sup> Attention to feminist thought about universalism despite difference would potentially give Talbott a theory that attended to power and difference.

### *Conflict*

From feminist literatures that take up the subject of liberty and care, a more developed notion of autonomy and freedom relevant to the female subject might be useful for addressing the issues of invisible rights violations, empathy, and cultural roles.<sup>9</sup> Attention to the ways in which the treatment

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<sup>6</sup> See, for example, Bunch (1990, 1995, 2003, and 2004); Charlesworth (1994); MacKinnon (1993); Mayer (1995a, 1995b); Nussbaum (1997); and Sen (2004), among so many others.

<sup>7</sup> See, for example, Al-Hibri (1999); Benhabib (2002); Flax and Okin (1995); Honig (1999); Narayan (1997); Nussbaum (1999); Okin (1994, 1999); Shachar (2001); and Song (2005).

<sup>8</sup> See, for example, Cornell (1998, 2004); and Enloe (1990, 1993, 2000, 2004).

<sup>9</sup> See, for example, Cornell (1998); Gould (2004); Hirschmann (1992, 2003); and Nussbaum (2000).

of women, during conflict, is masked by gender roles would potentially give Talbott a theory of human rights that attended to some conflicts.

In sum, as Talbott has characterized the problem of human rights, an identifiable autocrat is the most probable violator of human rights. In feminist analysis, human rights are opposed and violated in the everyday practices, values, and norms of society, institutionalized in formal and informal economic and political institutions, and reinforced by the interrelated dimensions of these. How does Talbott's theory guide the shake-down and shake-up of society, politics, and economics to address women's human rights violations? Without attention to power, difference, and conflict and to the ways in which social norms can be deployed to conceal the exercise of some forms of power, difference and conflict, Talbott gives us a human rights theory that undermines the work of human rights defenders.

## Conclusion

In short, returning to the methodology of Talbott's theory, what kind of theoretical methodology does epistemic modesty require? And, how does the self-regulating equilibrium theory deal with conflict and power, particularly the ways in which power can be used to make some conflicts and differences invisible? Women's human rights do offer us a lens into seeing what human rights are. The lesson from women's human rights violations that would inform a theory of human rights prompts us to have a theoretical methodology that guides the practices of epistemological modesty. We need a theoretical methodology that commits us to looking for the invisible, the marginalized, and those oppressed in ways unimaginable to us. Without a methodology that pays political attention to that which is invisible to us, we cannot practice epistemic modesty and we cannot respectfully theorize from women's experiences of human rights violations.

## Protection and Paternalism

by Henry Shue

One of the deepest tensions about human rights is that if the objects of human rights—the interests protected by the rights—are as important as they are cracked up to be, as vital to a decent human life as claimed, indeed as worthy of being the core of a human right, especially of one of the most fundamental human rights, these interests ought to be guaranteed, or as nearly guaranteed as fallible human institutions can make possible. Something should be done—we should not sit idly by while the rights are violated and the vital interests at their core are frustrated. This is the only life one gets. If this one is blighted, he will not have enjoyed a decent life. Later will not work; later his life will be over. The rest of us—some of the rest of us—should take action now.

On the other hand, insofar as the interests that are the objects of human rights are the products of individuals' good judgments and self-determination (on Talbott's conception, human rights are very much about providing for good judgment and self-determination), which together constitute autonomy (132), actions that others take to help, even actions intended only to protect rights, may be counter-productive by blocking the development and exercise of autonomy. The first two of his

nine rights are “a right to physical security” (128-129 and 178) and “a right to physical subsistence” (129 and 178), both of which he considers as examples of “development-of-judgment rights.”

One small worry is that he several times says the right to physical subsistence is to be “understood as a right to an opportunity to earn subsistence for those who are able to do so” (178, 137 and 129). I think it is crucial to include provision for those who are not able to earn their own subsistence, especially those who are developing—the young—and those who are declining—the old. For them what needs to be guaranteed is subsistence itself, not an opportunity to earn it, which would be an opportunity they are incapable of exercising. Talbott probably agrees, but I would like to have seen an explicit commitment to those who are unable to earn subsistence.

But he expands (compared to my conception) security rights to include the procedural rights that protect security: due process and the rule of law. And his third and fourth rights are: 3) “children’s rights to what is necessary for normal physical, cognitive, emotional, and behavioral development” (which may be where the guarantee of subsistence itself, as distinguished from the opportunity to earn it, falls, for the young) and 4) “the right to education” (137). The entire first eight of his nine rights are said to “constitute the social basis for autonomy” (137).

One danger is that efforts to guarantee rights will undermine autonomy, which is the object of most rights for Talbott; the very social institutions created to protect rights, especially if they are state institutions, backed by state power, may themselves encroach upon or directly violate rights. The disturbing dilemma that the state can be both the most effective guardian of rights and the most devastating violator of rights is well-known and much commented upon: for a start, there is no such thing as “the state.” Good states, which receive and respond to what Talbott labels “reliable feedback” from their people, are very different animals from bad states. But the problem is not only about opposite uses of state power.

The underlying challenge is: how do you effectively protect the rights of others when the form that rights take is self-empowerment? Can I protect you in a way that enables you to become more able to protect yourself through good judgment and self-determination, or must my efforts at protecting you relieve you of the motivation or capacity to protect yourself, or even block or harm the process through which you might otherwise have become able to protect yourself and control your own life? Paternalism and what Talbott calls “self-reinforcing paternalism” (117) are genuinely serious problems.

As John Stuart Mill recognized, some capacities develop only when one struggles for oneself—you end up weaker, and less in control of your life, if others “save” you before you have had a chance to save yourself and thereby develop your strengths, of mind as well as body, in the process. But one crucial line must be drawn, I think, at irreparable harm. Struggle can indeed strengthen and educate, even sometimes if you lose and must struggle again another day before you become self-determining. But not of course if in the struggle you are killed or, very importantly for my purposes, crippled, physically or mentally. This is one reason why security rights and subsistence rights seem to me to be basic: severe bodily harm and extreme physical deprivation cripple and blight. They leave people without the capacities necessary for clear decision-making, effective action, and the other elements of empowerment, even if the people survive.

Now I do not think that Talbott disagrees with the general point that irreparable harm cannot be chalked up as “all part of the education” for autonomy. The issue is, in effect, exactly how much, or

when, should we worry about paternalism when protective action by others is essential to the prevention of irreparable harm, fatal or crippling? In a fascinating chapter titled “Women’s Rights as a Microcosm of Human Rights,” Talbott uses two examples, foot-binding and female genital cutting, distinguishes two forms of moral imperialism, and advocates a two-step process for dealing with the two practices in a way that avoids moral imperialism. I want to quote a substantial passage that succinctly explains all these pairs:

*One can be a moral imperialist in two ways: first, by claiming to be infallible on moral matters.... The second way to be a moral imperialist is to be a moral paternalist. A moral paternalist imposes his idea of what is right on those who disagree for their own good.... It is morally imperialistic to use coercion to force women to give up foot binding or female genital cutting if they don't want to give it up.... I have explained why those practices are bad for women. I did not mean to imply that because they are bad for women, I think outsiders should use coercion to stop the practices.... There is a nonpaternalistic approach to ending the practices that has been effective. Foot binding in China ended in a two-step process. The first step was education.... The next step was a group decision to end the practice. A group decision was necessary, because the practice involved enforcement by convention. When a practice involves enforcement by convention, each individual will be motivated to do whatever she expects the rest of the group to do (107-108).*

Three issues could arise. I want to discuss only the third, but I probably have to assume a position on the second. The first is historical: how did foot binding end in China? I leave this entirely aside. The second is political: can outside coercion successfully stop such practices? I will simply assume it might, in order to reach the third issue. The third is conceptual: would outside coercion to stop such practices be paternalistic and thereby morally imperialistic? I say: no. Talbott says: yes.

Talbott has said: “A law is paternalistic when it is enacted to promote the good of those targeted by the law by *overruling* their own judgment about what is good for them” (117). Those whose good is targeted by coercive action to end either foot binding or female genital cutting are little girls, who are both too young to have formed any relevant judgments and unlikely to have been allowed to take seriously an option of refusing to accept the practice. The people whose judgments are being overruled are the mothers of the girls and others in the community who believe in the practices. It is not paternalism to overrule the judgments of 2nd, 3rd...and Nth parties for the sake of the good of someone too young and inexperienced to have good judgment concerning the matter in question. So, first, the case does not fit the definition of paternalism. Second, it is in no way disrespectful to a young girl or boy to overrule their preference about their own physical well-being. More important, the matter in question is the mutilation and crippling of an important part of the young girl’s body in such a way that she will be incapable of performing or enjoying activities that normally contribute to human happiness by the time she is capable of forming good judgments about whether these activities would be desirable for her. Women with bound feet, for example, could leave their own houses only with pain and special effort. By the time she could make a self-determining decision about the activities normal feet make possible, she would have been rendered incapable of them through coercion by others who in many cases are acting in truly paternalistic fashion: supposedly providing for the little girl’s future happiness by making her a desirable wife (in the case of both practices). It is those who engage in such practices who are guilty of paternalism. Outsiders who could effectively use coercion against the would-be internal coercers and mutilators would be providing protection—protection of the security rights of children, vital to their full development.

A grander critique would be that Talbott's conception of human rights is too hierarchical, with autonomy at the apex. I think that many things that are indeed instrumentally good, like physical security, are also intrinsically good, so that one should not view them only as contributing to the development of good judgment and self-determination. I suspect that it is the failure to acknowledge that physical security is as intrinsically good as autonomy that underlies what I see as the drawing of the line between protection and paternalism at the wrong place. But this is much too grand a claim to try to justify in a brief comment. Perhaps I have illustrated it.

## Which Human Rights Should We Have?

by Jack Donnelly

William Talbott's Which Right Should Be Universal? is a book with many virtues. Most impressive is his demonstration in Chapters 6 and 7 ("Autonomy Rights" and "Political Rights") that a wide range of basic human rights are vital contributors to the core value of personal autonomy. Based on "the claim to first-person authority"—the idea that normal adults, placed in the right environment, can be "reliable judges of what is good for them" (123-128, 174)—Talbott powerfully rebuts standard arguments for paternalistic authoritarian rule, even in cases where the motives of the rulers are impeccable. And, in an intriguing twist, he manages to do this with a consequentialist argument that makes no appeal to the intrinsic value of choice.

Which Rights Should Be Universal? also elaborates a vision of moral reasoning as a process of iterated, "bottom up" reflection on particular cases, combined with "top down" reflection on principles, that aims to establish equilibrium in the structure of justificatory norms and practices. Talbott takes this idea, familiar from Rawls and Habermas, and usefully contrasts it with what he nicely describes as "the Proof paradigm," which he claims has been "an almost unmitigated disaster in Western moral philosophy" (23).

Here, however, I will not focus on these or any other virtues.<sup>10</sup> Instead I will argue that Talbott offers a deeply problematic account of "universal human rights" and how we should go about justifying them.

### Dignity or Autonomy?

Talbott defines universal human rights as those that "should be legally protected everywhere." (16, cf. 3) The grounding for these rights, he argues, "is the capacity for making reliable judgments about one's own good. All normal human beings have this capacity. Basic human rights provide the

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<sup>10</sup>In addition to an easy style, great clarity of exposition, and frequent nice turns of phrase, I would single out his account of the various forms of moral imperialism and his search for a middle ground between imperialism and "wishy-washiness," (15, 39-44, 75-79, 107-110 and *passim*) along with his emphasis on the political problems of reliable feedback and appropriate response to that feedback, (36, 114-115, 128-134, 158-159), the self-reinforcing nature of self-serving paternalism, (91-92ff., 104, 135) the importance of empathic understanding to moral reasoning, (65-67, 76-86, 167-168) the problem of designing institutions and values for a world inhabited by neither angels or devils (141-142, 147), and the capacity of an uninterested majority to accept modest personal sacrifices in the name of fairness (154-157, 165, 181). And, to exercise a pet peeve, the book also has an extremely useful index.



background conditions that enable them to develop and exercise it” (17). “The best way of understanding human rights is that they are the rights that make possible the development and exercise of individual autonomy” (106, cf. 162).

Talbott does a good job of showing, with great economy, how his list of nine rights—to physical security and subsistence very widely understood, education, freedoms of the press, thought and opinion, association, a sphere of personal autonomy, “political rights, including democratic rights and an independent judiciary,” and the right of children to what is necessary for their proper development (163, 178)—can be derived from an account of autonomy understood as the capacity for good judgment and self-determination. “Basic human rights are the rights necessary for the development and exercise of autonomy” (107).

Attractive as I find this answer, there are at least three serious problems in Talbott’s route to this conclusion. First, he advances little in the way of evidence or argument for his claim that most ordinary human beings have a capacity to make reliable judgments about their own good. He does show that authoritarian regimes systematically fail to deliver on their promise of exemplary performance. But the failure of others to be good judges does not establish the capacity of most individuals to judge well—particularly if by “good” we mean something more than the tautological notion that people choose on the basis of projected pleasure and pain. This is particularly important because, as Talbott acknowledges, this capacity requires human beings to be placed in the right circumstances, understood more or less those defined by these rights.<sup>11</sup>

Second, human beings are also able, when placed in the right circumstances, to do all kinds of other things, including know and act on the word of God, lie, communicate, eat, and defecate. Why is autonomy, and only autonomy, a ground for basic human rights? One searches in vain for anything even approaching an argument for autonomy’s status in this book. Instead, it is an unsupported assertion. Although I find it attractive, I imagine that many others will not. And we all deserve some kind of account of why we should choose to prioritize autonomy over all other human capacities (the account, however, cannot be instrumental: autonomy functions here as a ground rather than a contributor to other intrinsically valued features of human life).

Third, and most troubling, Talbott admits that “[t]he rights on this list are not the only rights that should be universal” (164); “[t]here are other rights, not on the list of basic rights, that also should be universal” (37). The basis of *their* universality remains a complete mystery—Talbott does not even allude to it. And why *these* universal rights do *not* need to be universally legislated is never discussed.

Talbott does claim that “if the basic rights are guaranteed, these others can be defined democratically” (37); “that guaranteeing the rights on this list establishes a form of government that, over time, will tend to become more just by adopting other rights in addition to these basic ones.” (164, cf. 13)<sup>12</sup> But what do we do if a society democratically chooses *not* to legislate these other

<sup>11</sup> The circularity in this argument is not on its face fatal, particularly if we understand “human nature” as radically socially constructed. It is, however, a problem, especially when combined with Talbott’s argument for the objectivity of human nature and moral value (examined in the next section).

<sup>12</sup> Note that this account of “basic rights” is very different from Shue’s more familiar (1996) largely Rawlsian account, which sees a right as basic if no other right can be enjoyed without it. Talbott requires both less (merely that it contribute to the realization of other rights) and more (that it contribute to autonomy).

universal human rights? And why should some universal human rights not be treated as making demands for immediate implementation on all states? Talbott does not even hint at an answer to such questions in this book.

Even more troubling is the problem of what to do in (and in responding to) societies where the “basic rights” are not yet well established, let alone widely implemented and enforced. This is especially important because even many of Talbott’s basic rights will be vulnerable unless the full set is enforced. Even if we accept his argument about causal priority or efficacy, are we to simply sit back and wait for the basic rights to be established, and then to do their work in bringing us the other universal human rights? Is it really acceptable for a state not to strive to implement some universal human rights until it has effectively enforced Talbott’s nine basic rights? Again, we search in vain for even the suggestion of an answer to such vital questions.

It also turns out that there is still another sense of universality lurking in Talbott’s book. “Because basic human rights are essential to the solution of a universal moral problem—government abuse of its coercive powers—the basic human rights *should be* universal” (37-38). This is certainly an important role of human rights, which I too have emphasized in my own work. But why single out *this* universal problem and not, say, the no less universal problem (today at least) that market mechanisms and individual and family self-help fail to provide adequate subsistence for all? And if the grounding for universality is government abuse, Talbott’s list of basic rights needs to be changed. Not only do subsistence rights not make it onto the list but neither do the right to education or the right of the child to normal development—let alone a whole range of other human rights not on Talbott’s list of nine.

Or consider torture, which Talbott at least twice presents as paradigmatic (7, 32, cf. 85). Many forms of torture involve no infringement of autonomy—or at least they are objectionable not primarily because of their infringements on autonomy. Consider mutilation of fairly and justly convicted criminals. Yet Talbott explicitly includes protection against torture and mutilation among his security rights (128).<sup>13</sup>

This inclusion, I think, is no mistake. It suggests, however, that Talbott has an incomplete (and at least partially misleading) account of universal human rights. Autonomy certainly is a large part of the ground of human rights. But no less important is the fact that human rights address certain things that human beings should not have to suffer (e.g., mutilation) even if such violations do not infringe on their autonomy. And human rights identify certain goods, services, and opportunities that all human beings ought to have available to them, at least in the contemporary world, even if they are not desirable principally (or even at all) for their contribution to autonomy.

For all its vagueness, the appeal of the International Human Rights Covenants to the inherent dignity of the human person seems to me a lot closer to correct than Talbott’s (at least equally vague) appeal to autonomy (alone) as the basis for determining which human rights should be universal. Autonomy is a significant part of human dignity, especially in a world that has created

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<sup>13</sup> He also includes protection against imprisonment (and killing). This suggests to me that he intends the prohibition to be of imprisonment, torture, or mutilation of the innocent. But I take it that he would want to prohibit at least some forms of torture, and all forms of mutilation, against the guilty as well as the innocent—either that or he holds the much more unusual view that all forms of imprisonment, even of the guilty, are unjustified.

relatively free individuals and families left to face the threats of modern markets and modern states with (by historical standards) comparatively weak social protections and guarantees of a place in society. A life of autonomy alone, however, need not be one of dignity. And the minimum social requisites for a life of autonomy (Talbot's basic human rights) are not an adequate account of the minimum social requisites for a life of dignity.

The core substantive chapters of the book thus really do not do a very good job answering the title question. In practice, Talbot does not even try to tell us which human rights should be universal. He contents himself instead identifying a limited (and as he presents it rather arbitrary) selection from the list of universal rights.

### The Moral Discovery Paradigm

I began my discussion with Talbot's explicit account of universal human rights. The first half of his book, however, is not about human rights at all but about the nature of moral reasoning. To the Proof Paradigm, which goes back at least to Plato, Talbot opposes what he nicely labels "the Moral Discovery paradigm" (19), a "metaphysically immodest" (30, 32) position that holds that there is a "historical-social process of moral discovery" (33). Talbot insists moral progress is not only possible (75) but real, and seen in the development of human rights ideas and practices over the past three centuries (162, 167). Understood in this way, human rights are universal and should be legally protected everywhere because they express "objective ... moral truths" (63, 196 fn. 12).

Human rights, according to Talbot, are "strongly universal" in the sense that they "appl[y] to all morally responsible beings in all possible worlds" (30), "to all possible beings with the requisite capacities in all possible worlds" (32). Human rights are "objective" (62, 63, 64, 170, 196 fn. 12, 197 fn. 23), "true from any point of view" (78, 187, cf. 49), and thus "metaphysically necessary" (32). They involve claims that an act (or acts) "really was wrong" (42, 49, 50, 77), "*really* was morally wrong" (42), "*really were wrong*" (50), "*really was wrong*" (62, twice), "*really are mistaken*" (62). "[W]e are committed to the possibility of an objective moral standpoint" (62), Talbot claims, by the implications of violations of basic human rights being not merely wrong but *really* wrong.

These are strong, even audacious, claims. Unfortunately, Talbot provides little in the way or argument or evidence<sup>14</sup> to support them.

#### *The Nature of the Claim*

Talbot "locates the source of moral objectivity not in a rational ability to discern self-evident truths, but in a fallible sensitivity we can develop to the moral rightness and wrongness of particular

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<sup>14</sup>I use the formula "argument or evidence" because Talbot is extremely skeptical of moral "argument," which he associates with the Proof Paradigm. "[P]hilosophical argument is more a matter of considering relevant examples and evaluating competing explanations of them than it is drawing deductive conclusions from antecedently justified premises. For this reason, I think of this book as a whole as an extended explanation rather than as an argument" (38). Even accepting this, we still need to be offered reasons and evidence for taking his claims seriously. In practice, however, Talbot's central claims are largely unsupported by explanatory evidence that is directly on point (see also note 33 below).

cases” (62). He suggests that “moral judgments about particular cases reflect a sensitivity to objective rightness and wrongness”<sup>15</sup> (62). Human beings, Talbott contends, have a capacity to “become sensitive to objective and universal moral truths about which particular acts and practices are right and which are wrong” (63).

In a footnote to the last quoted passage, however, Talbott admits that “I simply take it for granted that we do have these abilities” (196 fn. 11). This is an unfortunately accurate account. The following analogy with science is the closest thing that we are given to an argument for moral objectivity.

A. “[I]f there were no objective truth about what it is rational to believe, there would not really be any good reason to accept a scientific theory on the basis of experimental evidence” (196 fn. 12). This certainly is not true. There are, for example, a variety of very good instrumental reasons for relying on experimental evidence, as well as the argument that this is what scientific knowledge is by definition.<sup>16</sup> “Good reasons,” in science no less than morality, extend well beyond objective validation.

B. “[A]nd if there were no objective truth about what it is rational to do in at least some situations, there would be no truth about how best to proceed to test a scientific theory” (196 fn. 12). Let’s grant this. It shows only that objectivity is not even an attribute of scientific knowledge. Scientific knowledge is validated instead by reference to essentially constitutive rules of scientific practice that establish what counts as scientific knowledge, independent of any possible relation to objective truth. We may have reason to believe that our scientific theories provide an inferential warrant for claims about “the world,” but “objective truth” simply is not the domain of many scientific theories.

C. “The practice of science would be ultimately arbitrary” (192 fn. 12). If arbitrary means “just as easily could have been any of number of other ways, including the opposite” this is simply wrong. The practice of science, although certainly conventional, is *not* arbitrary. We have a variety of good reasons to support the practice and its products. In some—but only some—accounts of science, this includes a claim of some sort of correspondence to an external material reality. But even when this is the inference to the best explanation, it is not the basis for universal legislation “from any point of view.” If scientific realism establishes a certain kind of objectivity for some claims about the natural world, it does not insist that these claims are objective in the sense that they are true “in all possible worlds.”<sup>17</sup> “The resistance of the world” is a very different matter from “true in all possible worlds.”

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<sup>15</sup> Certainly this cannot be true of all particular moral judgments. But Talbott gives us no real guidance as to the range of applicability.

<sup>16</sup> In much the same way he describes pragmatists and deconstructionists as holding that “there is no point in believing anything to be true” (191 fn. 5). Unless “true” stipulatively means objectively true, this simply is false. There are all kinds of good reasons for believing something is true other than correspondence to an objective reality entirely independent of human subjectivity and inter-subjectivity.

<sup>17</sup> I leave aside Talbott’s admission that “In our moral observations there is no corresponding role played by an objective moral world. In our moral observations there is only our moral response to an objective physical world” (196 fn. 12). Even allowing that our moral observations are indeed a response to an objective physical world provides no basis for holding those responses, or even our extended reflections on them, to be themselves (approximately) objective. The fact that “there is widespread agreement on the experimental observations that a successful scientific theory is expected to explain, but there is substantial disagreement over moral observations” (64) pretty much destroys any possible case for

D. “The alternative is to believe that we are sensitive to objective truths about what it is rational to believe and what it is rational to do in some situations” (192 n. 12). That is definitely not *the* (only) alternative. And I will suggest below that at least some of the other alternatives are inherently more plausible and more closely fit the realities of moral practice.

Or consider Talbott’s claim that “anyone who agrees that the European colonizers acted wrongly is committed to the possibility of a universal moral standpoint from which to make reliable, universal, particular moral judgments” (49). This simply is not true. There are a variety of particularistic perspectives from which the European action can be considered wrong. And even a universal perspective need not be “objective,” unless we have stipulatively defined it as such.<sup>18</sup>

Even weaker is Talbott’s insistence that the phenomenology of particular moral judgments “does not rule out the possibility that our moral feelings themselves reflect our sensitivity to universal, objective moral rightness and wrongness” (64). Perhaps it is not ruled out. But then a whole range of other things aren’t ruled out either. And there are a host of at least equally plausible accounts of our moral judgments.

“I believe that there is an objective moral standpoint from which it can be seen to be wrong” (170). This is a perhaps interesting biographical fact. Unfortunately, Talbott gives us not even the hint of a reason why we should share this belief. The most he offers is a not very well elaborated attempt to “explain how there could be such a standpoint and how human beings can aspire to attain it” (49). But the fact that there *could* be such an objective universal moral standpoint is no evidence that there is (there could be all sorts of things that we have good reason to believe do not exist). And the fact that we can aspire to it is no guarantee that anyone in the foreseeable future will in fact attain a single piece of such knowledge.

In fact, Talbott admits failure. “Anyone who claims there are strongly universal fundamental moral principles ought to be challenged to identify at least one. Here I have to acknowledge my epistemic limitation and admit I am unable to do so” (33).

We are thus asked to accept on faith—simply take it for granted—that we have a mysterious faculty that discerns objective truths about the moral and the natural world. I at least am reminded of the scholastic idea of *synderesis*, a faculty that discerns the first principles of natural law. In any case, the evidence for Talbott’s objective truths seems not very different from past evidence for ostensibly self-evident truths, which in practice have proved to be, as Talbott rightly insists, anything but self-evident.<sup>19</sup>

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moral objectivity (at the same time that it roots scientific knowledge ultimately in agreement among practitioners).

<sup>18</sup> “Even to think it appropriate to morally criticize the Western Europeans’ intolerance of native cultures, one must ... accept at least one strongly universal moral principle.” (43) Again, this is only one possible way to criticize intolerance.

<sup>19</sup> In passing, consider Talbott’s claim that “[t]he American Revolution represents the discovery of a design for a government based on the recognition that we have no direct rational insight into self-evident principles of justification” (36). The document that touched off that revolution, however, claimed that “we hold these truths to be self-evident....”

The fallibility of our moral knowledge<sup>20</sup> is for Talbott merely a temporary epistemic problem. There really is a body of objective moral truths. And although admittedly we have the greatest difficulty accessing them, he insists that we are increasingly approximating that objective truth. I agree that we can(not un)reasonably talk about moral progress associated with the rise and spread of human rights ideas and practices. I can see no evidence, however, that this moral progress is indeed a matter of closer approximation to objective truth.

### *Coherence or Correspondence?*

Talbott, it seems to me, is still trapped in a variant of the Proof Paradigm. Objectivity stands in for deduction in assuring that truth is a matter of correspondence to a timeless and placeless foundational warrant. But there is another conception of truth that is not only metaphysically more modest but much more closely fits his equilibrium account of moral reasoning.

Moral principles, like scientific theories, he writes, “only have to be reasonably reliable” (28). And “reasonably reliable” certainly need not mean “roughly approximates objective truth.” That in fact is quite an *un*reasonable standard of reliability, especially given Talbott’s admission of his inability to state a single objective moral principle.

Talbott continues, “On the equilibrium model, the goal is to have one’s beliefs make the most sense, all things considered” (30). But making sense, *all* things considered, need require no reference to objective truths. Quite the contrary, the insistence on at least rough correspondence to an external objective truth will generally impede the process of achieving reflective equilibrium.

We need to take seriously the fact that “knowledge does not progress by rational insight into the truth” (122). The whole point of an equilibrium model, at least as I see it, is to replace appeals to correspondence to an objective reality, however that is to be ascertained, with appeals to the coherence of a body of principles and practices that we reasonably believe we have a variety of good reasons to accept as correct, valid, true, or useful.

“The main goal of normative moral theory is to articulate the principles that explain why particular actual or hypothetical social arrangements, practices, or actions are justified or not justified” (22). These principles “are epistemically justified primarily by their role in explaining epistemically justified particular moral judgments” (32). It may seem circular to say that particular moral judgments are epistemically justified by epistemically justified moral principles. But that is the essence of an equilibrium model.<sup>21</sup>

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<sup>20</sup> I must admit to remaining perplexed as to how our knowledge can be simultaneously objective and fallible in Talbott’s rather strong senses of those terms. At the very least, much as “fallibilism of a priori insight seems to give up much of the motivation for the Proof paradigm,” (192 n. 6) the fallibilism of allegedly objective claims seems to me to give up much of the motivation for the claim of objectivity.

<sup>21</sup> The circularity is not fatally vicious if we can demonstrate a process of reasoning by which principles have been tested against cases and cases explored to yield principles. This, however, requires presenting evidence at least of the equilibrium, and preferably at least illustrative evidence of the equilibrating process. Unfortunately, Talbott does no such thing in the case of human rights. He shows only that his incomplete list can be linked with autonomy. Even in the realm of pure coherence, we would still need an argument/evidence/ground for choosing autonomy. But as we saw above, it is simply asserted. And for an argument of objectivity, Talbott’s largely unsupported assertions are not even in

Equilibrium is about the coherence of the overall structure. Such coherence warrants particular judgments of a particular kind. Objectivity is a very different kind of warrant. If some nodes in the nexus of equilibrated principles and practices happen to be objectively warranted (whatever that might mean), so much the better. It might even add to our confidence in the structure. But such correspondence lies fundamentally outside the domain of an equilibrium model, representing instead the intrusion of a certain kind of Proof Paradigm.

### *The Moral Point of View*

“When I take the moral standpoint, I attempt to look at my actions from the point of view of everyone who might be affected by them and attempt to find a course of action that no one could reasonably object to” (82). “The moral standpoint requires us to evaluate actions and practices from the point of view of others and to respond to reasonable objections others might make to them” (83). “Empathic understanding and reasonable agreement behind a veil of ignorance...is the right kind of standpoint from which to reach universal moral truths” (168). The moral point of view, as Talbott and I understand that term, requires us to treat everyone equally; not just to take others into account but to take them into account equally. “To attain a universal moral standpoint on a particular issue requires moral training (to develop a sensitivity to right and wrong), empathic understanding, and a lack of bias (from one’s interests and desires)” (86).

Let us grant that empathy provides a certain kind of knowledge of another being. It is a *huge* leap from this to say that the best empathetic understandings rest on objective truth. And Talbott provides no real support to encourage us to take this leap.

Likewise, the veil of ignorance removes “morally arbitrary” features from the calculus. What is left is morally relevant. But this simply need not mean objective. Treating everyone equally is no guarantee of objective truth. Neither is concern for others.

Morality, like science, is a matter of engaging in a certain kind of reasoning. Moral reasoning takes the nature and interests of others into account in particular ways (in the Kantian formulation, always treating others as an end, never as a means only). It is, like science, a social practice that generates a distinctive kind of judgments and practices. It may or may not result in principles and practices that accurately transcribe an asocial objective reality. Whether it does or not, however, is essentially irrelevant to their moral status, which is established by considerations of equilibrium; that is, coherence rather than correspondence.

Talbott uses as examples of moral principles the Golden Rule, the principle of utility, and human rights. To this list, let us add Kant’s categorical imperative. All are in one way or another about universalizability in the sense of not making an exception for oneself (or anyone else). This is what “we” (now) understand morality to be. Those who have another understanding of morality—particularly understandings that deny the fundamental moral equality of all human beings and the

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the ballpark of what would be necessary. Talbott provides very little in the way of well-explored illustrations or explanations that directly address the objectivity of moral values in general. And he provides absolutely nothing in the way of support for the claim of reflective equilibrium in his discussion of human rights.

necessity of counting each equally in our moral calculus—are engaging in a different social practice, not flying in the face of objective reality.<sup>22</sup>

I am acutely aware that these comments take the form of assertion rather than argument. Given the nature of this essay, that must do. I think that my account of morality understood in equilibrium terms is at least as plausible as Talbott’s appeal to objective truth. It certainly is metaphysically more economical. And it seems to me to be a more accurate description of actual moral practice. For all the talk of objectivity, there is, as with the older language of self-evidence, precious little of it to be discerned in actual moral practice. We do, however, regularly see real appeals to a great variety of other good reasons, to other warrants for reasonable belief, and arguments based on premises that have no discernible connection to an objective reality.<sup>23</sup>

Finally, let me conclude this discussion by noting that when developing his argument for his list of universal rights, Talbott in practice does not make a single reference to objective truths. I did not leave this dimension out of my account of his argument in the preceding section. It is not there. A reader interested in universal human rights is thus left wondering what the first hundred pages of this book are doing here. If the author himself does not rely on them in answering the title question, why not just skip this problematic metaphysical baggage?

### **“Universal” Human Rights**

I agree with Talbott that we are “able to formulate plausible universal moral principles” (34). If I am even close to right about the nature of moral reasoning under an equilibrium model, however, “universal” must mean something very different from “based on objective moral truths.” My alternative account would run something like the following:

Moral and political principles or practices can plausibly be said to be universal when they can reasonably be held to be right in a particular sense. This sense is roughly that, after subjecting these principles and practices to our most intensive rational scrutiny, we are sufficiently comfortable to claim that you too should accept them as right, in the sense that we will (reasonably in our view) treat you as having the burden of proof to show otherwise. We advance the reasoning that justifies this position. We remain open to arguments to the contrary. We treat apparent counter-examples with the greatest care and respect. But for now we can see no good reason not to apply these principles, practices, or judgments equally to “ourselves” and to “others,” both “here” and “there.”

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<sup>22</sup> I am puzzled by Talbott’s account of one such historical example. He argues that the traditional Hindu caste system “seems to provide support for transcultural norms of justice governing the fair distribution of the benefits and burdens of social life” (46); “the Hindu justification of the caste system satisfies what have been thought of as Western norms of justice” (46). It is a complete mystery to me how this could possibly be true when the system also rejects all of his basic rights.

<sup>23</sup> Talbott’s account also suggests that there is a single form of the good life—not in its details, to be sure, but in its general form. “[T]he discovery of basic human rights is a process of discovering what kind of life is a good life for human beings” (17). I at least find it wildly implausible that, even in fairly general terms, this is the same in all possible worlds, terrestrial and extraterrestrial alike, past, present, and future. Sticking just to this world, I cannot imagine that the good life for members of societies organized as hunter-gatherer bands is identical to the good life for citizens of modern nation-states.



In other words, universal moral principles or practices are those which, given the state of our knowledge and our current degree of moral development, we are convinced are both proper and necessary, right, for an “us” that includes not only those in our particular moral community but a wide range of individuals, groups, and communities outside it. If this “us” approximates the full class of “normal” members of the species *Homo sapiens*, these principles, practices, and judgments merit being called universal in some significant sense of that term. If they happen to apply in other, or even all other possible, worlds—to little green men or Talbott’s cockroach people (169-170)—that may be a good thing. It is not, however, necessary to them being considered universal.<sup>24</sup>

International human rights law provides striking support for this sense of universality. Virtually all states accept the authority of the Universal Declaration of Human Rights. For the purposes of international relations, “human rights” today means, roughly, the rights in the Universal Declaration. Those rights have been further elaborated in a series of widely ratified treaties. As of July 14, 2006, the six core international human rights treaties (on civil and political rights, economic, social, and cultural rights, racial discrimination, women, torture, and children) had an average 166 parties, which represents a ratification rate of 85 percent.<sup>25</sup> This is particularly impressive because, as Talbott rightly notes, “agreement on moral observations should not be expected when some observers have powerful interests or desires biasing them in one direction and others do not” (71). And yet states, which typically have an interest or desire to except themselves from universal human rights norms, have in the vast majority of cases not exercised the option of non-participation in the global human rights regime—although of course most states continue to violate those norms regularly and with impunity.

Does this “international legal universality” reflect anything beyond fashion and the pressures of the victorious side in the Cold War? Elsewhere I have argued that human rights are also universal in the sense that they represent the most effective mechanism to protect human dignity in a world constantly threatened, as ours is, by modern markets and modern states (Donnelly 2003: ch. 4). In addition to this essentially functional universality, I have also argued (Donnelly 2003: §3.2) that there is an emerging international overlapping consensus on the Universal Declaration of Human Rights understood as a Rawlsian political conception of justice.<sup>26</sup>

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<sup>24</sup> Talbott insists that principles that apply only to “subjects who are members of the species *Homo sapiens* and to other subjects who happened to participate in forms of life (or lifeworlds) recognizably like those of the members of the species *Homo sapiens*” (31-32) are only “weakly” universal. My willingness to accept an even weaker sense of universality is connected with my views that human rights are an historically contingent conception of human dignity (Donnelly 2003: ch. 4, 5) and not necessarily applicable today to at least some communities of indigenous peoples (Donnelly 2003: 215-217). In other words, the universality of human rights, as I understand it, is not independent of either time nor place; it is, as I try to argue, (Donnelly 2003: 98, 106, 107; forthcoming) a relative universality. Only if one sees universality as ontological or metaphysical—which Talbott does—is this seeming paradox deeply problematic. And in any case, I have tried to argue it is the only sense—or rather senses—in which human rights are plausibly held to be universal.

<sup>25</sup> Ratification data is available at <http://www.ohchr.org/english/countries/ratification/index.htm>.

<sup>26</sup> Rawls (1993: xliii-xlv, 11-15, 174-176, 385-396; 1999: 31-32, 172-173) and Bielefeldt (2000) make similar arguments for overlapping consensus universality, illustrated by a discussion of recent trends in Islamic thinking on human rights. See also Pectush (2003), which deals with South Asian views. For a looser account of cross-cultural consensus, see An-Na'im (1992).

Talbott claims that “the overlapping consensus model cannot support truly universal human rights” (189 fn. 6). If by “truly universal” he means objectively valid in all possible worlds, this is stipulatively true. But objectively valid in all possible worlds simply is not the way “universal” typically is used in discussing universal human rights, at least in international relations over the past half century.<sup>27</sup> The Universal Declaration, for example, presents itself as “a common standard of achievement for all peoples and all nations”—not necessarily for all time and in all places, but for us, now.

One of the great virtues of universal human rights, as we ordinarily understand that term, is that they do *not* appeal to any particular foundation, beyond the admittedly vague notion of “the inherent dignity of the human person.” They are thus compatible with a great variety of both foundational and non-foundational comprehensive doctrines. They are, in other words, a subject of overlapping consensus.

International human rights law does no more, but also no less, than state our best shared understanding of the minimum conditions for a life of dignity in the contemporary world, knowing what we know about human beings, the good life, and the standard threats posed to them by contemporary states, societies, and economies. I have argued (Donnelly 2003: ch. 3) that the most plausible defense of these norms is in terms of equal concern and respect. Talbott believes that they reflect an approximation of objective moral truths. Others see them as expressions of the principle of utility,<sup>28</sup> a reflection of (Thomist) natural law,<sup>29</sup> a modern updating of the precepts of the Koran,<sup>30</sup> etc.

The reasons why universal human rights “should be legally protected everywhere” are in the contemporary world multiple and variable. Different individuals and groups have come to a similar place through very different paths. Human rights “make sense” to different people in different way—not just across cultures and civilizations but within them. For example, contemporary Western utilitarians and neo-Thomists disagree about just about everything at the level of comprehensive doctrines—Thomists see utilitarianism less as a moral theory than as a category mistake—and yet most today endorse human rights as what Rawls calls a political conception of justice.

Why does any of this matter? Like Talbott I think that human rights are anything but self-evident. And I think that it is desirable that our accounts of our moral practices be, in so far as it is possible, descriptively accurate.

Whereas there is strong empirical support for overlapping consensus, functional, and international legal universality, there is little or no evidence for ontological or metaphysical universality. I do not begrudge Talbott his beliefs and assumptions—particularly when they lead him to what we agree is the right conclusion. But they are no reason for others to adopt ontological or metaphysical universality, let alone to insist that this is *the* ground on which human rights should be justified.

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<sup>27</sup> In Donnelly (forthcoming), I survey the leading senses in which the term is regularly used.

<sup>28</sup> See, for example, Lyons (1977, 1982, 1994); Frey (1984); Hardin (1986); and Brandt (1992).

<sup>29</sup> See, for example, Maritain (1943); and Finnis (1980).

<sup>30</sup> See, for example, Mawdudi (1976); Said (1979); and Bhatti and Gule (1996).

I also have a fundamentally pragmatic concern with arguments of ontological universality. Insisting that human rights *really are* objectively valid in all possible worlds when we are able to present no compelling evidence of this objective validity risks making the human rights that we do assert appear groundless. Talbott's admission that he can present no real evidence of metaphysical universality risks presenting universal human rights as without adequate warrant.

Talbott claims that "we can discern enough of [the] shape [of objective moral principles and judgments] to understand why, in combination with what we know about human beings and human societies, they will require that certain basic human rights be universally respected" (35 cf. 30-31). This seems to me obviously wrong. By his own account we cannot state a single strongly universal moral principle. We have incomplete knowledge of human beings and human societies, and no knowledge of the other beings or societies in all possible worlds that Talbott holds ought to be governed by human rights. On this basis, it seems to me irresponsible to believe that we can legislate not just for an ideal Kantian kingdom of ends but for all possible political communities.

It might be nice if we were able to tie human rights to objective moral principles—although I doubt even that; the underlying vision of moral life and practice seems to me fundamentally mistaken. But until we can do so, we should understand universality in plausible, if more limited, senses for which we can in fact present a substantial body of evidence.

If this makes truth depend in some fundamental way on a particular kind of consensus, so be it. Talbott does not like it. Many share that dislike. I certainly understand it. But wishing for objectivity doesn't create it. And until we can in fact come up with considerable evidence of (close approximation to) objective truth, we need to work with the kinds of "truths" and "universalities" that are currently available to us.

"Which human rights should be universal?" is indeed an important question, perhaps the most important philosophical question that can be asked about human rights. Talbott's effort to answer it has many virtues. And his argument for moral progress, whatever its success or failure, is well worth taking seriously. Nonetheless, his two principal grounds for answering this question, moral objectivity and autonomy, even on his own account, do not provide a list of universal human rights. The list generated from autonomy is radically incomplete. And appeals to moral objectivity, I have argued, get the story of universality fundamentally wrong.

## **Culture, Intervention and Well-Being: Some Reflections by Kok-Chor Tan**

A plausible defense of universal human rights must respond to the challenge of cultural relativism on the one flank, and the charge of moral imperialism on the other. In his well-written and carefully argued book, *Which Rights Should be Universal?*, William Talbott does a fine job of navigating between these two poles. Talbott warns against the infallibilistic and overly-confident attitude of the moral imperialist on the one side, but rejects "the wishy-washiness" of the moral relativist on the other. He urges a certain "epistemic modesty" in our moral judgments (against the imperialist) while defending a certain "metaphysical immodesty" about the universal scope of morality (against the relativist). This means combining an attitude of fallibility regarding one's

present moral judgments with the commitment to the idea of universal moral truths (15-16). This book is an exemplary study of how this epistemic modesty can go hand in hand with a metaphysical immodesty to order to defend an account of human rights that is at once culturally sensitive but universalistic in aspiration.

Because I share Talbott's universalistic aspirations, my commentary will be in the spirit of identifying challenges for further discussion and consideration. To this end, I will raise three different general headings for discussion in ascending order of abstraction (there are of course many other interesting and important considerations that Talbott's book invites that I will not be able to cover here). The first concerns cultural rights. The question is: should the list of universal human rights include the right to a cultural community and identity? The second issue concerns Talbott's "minimal legitimacy interpretation of rights" in which protection of universal human rights provides the minimum condition for state legitimacy (9). I want here to urge a sharper distinction between the conditions of legitimacy on the one side, and the conditions for permissible intervention on the other. This distinction highlights two different kinds of considerations that Talbott, it seems to me, runs together at times in his discussion. The third point concerns the notion of well-being that grounds Talbott's (consequentialist) theory of universal rights. Is the notion of well-being endorsed here a uniquely liberal notion, and if so, does it not face the Rawlsian worry that grounding a doctrine of human rights on this ideal will make that doctrine too controversial and thus reasonably rejectable by societies who do not affirm liberal values?

### **A Human Right to Culture?**

Given Talbott's attempt to show that his theory of human rights is not morally imperialistic, it might strike some readers as an oversight that the right to national self-determination, or more specifically the right to a cultural community of one's own, is not included in his list of universal rights. Indeed, one might say that the failure of most conceptions of human rights to incorporate some notion of cultural rights has fueled the (mis)perception that human rights have a hidden Western imperialistic agenda. To be sure opponents of human rights, as Talbott very nicely points out, often have other self-serving motives.<sup>31</sup> Still, it is worth asking whether the idea of human rights can in fact speak to this real concern that many people have about cultural membership.

A general reluctance to endorse these rights is perhaps understandable given that self-determination and cultural rights can be turned against the rights of individual members of societies, and historically such group-based claims have been invoked for the purpose of restricting individual freedoms. Yet, just as the misuse and abuse of the language of universalism in the name of colonialism does not imply a rejection of universal morality, so the potential misuse and abuse of cultural rights should not imply a wholesale rejection of these rights. So it is worth contemplating for a moment whether one can make sense of cultural rights. And to take on the more challenging case, let us consider whether there is a human right to a cultural community beyond that of a right of self-determination understood as formal political independence (and hence reducible to civil and political rights).

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<sup>31</sup> See, for example, chapter 8.

Cultural rights are often referred to as the “third generation” of human rights—the first generation being the common civil and political rights, and the second generation pertaining to economic and social rights. Many commentators believe that a more progressive account of human rights would include social and economic rights as among basic human rights, such as the right to food, a basic level of economic well-being and so on.<sup>32</sup> Talbott’s list of universal rights is thus progressive in this respect in that it includes this second generation of rights. But does progress in our thinking and practice of human rights call for the inclusion of the third generation of rights?

In contemporary liberal political philosophy, there has been a great growth of interest in the idea of cultural rights since Will Kymlicka’s *Liberalism, Community and Culture* (1989)<sup>33</sup> Since liberal multiculturalism offers a normative individualist defense of cultural rights, it might be helpful to call on its analytical framework in examining whether human rights can similarly ground the notion of peoples’ rights. Kymlicka argues that (a) if cultural membership is an important Rawlsian primary good in that it provides individuals with “the context of choice” within which to form, pursue and revise their conceptions of the good life, and (b) if persons of minority cultures do not enjoy the same security of membership in a pluralistic society because of unavoidable state-led nation-building policies that unavoidably favor majority cultures and their practices, then liberal justice requires that special provisions be made for minorities to correct for their disadvantaged situation. On this view, mere toleration of minority cultures, or benign neglect, is not an adequate response as a matter of justice. Justice for minority cultures requires *special protection* of their identities when the cultural marketplace does not constitute a fair and level playing field. These special protections will take the form of special minority cultural rights. These minority rights can include cultural exemptions from certain laws (such as dress codes), special provisions to facilitate integration into public life (publicly funded language training, language assistance in courts, right to essential services in non-majority language, etc.), and even limited self-governing rights in the case of minority nations (e.g., indigenous groups in America). To be sure, the liberal multiculturalism position in its detailed implementation is not without its opposition and is very much a subject of ongoing debate.<sup>34</sup> But if the basic case for liberal multiculturalism in the domestic setting can be made, can the considerations in its favor be extended to the international domain to ground a universal human right to a cultural identity?

Perhaps an extension along the following lines is available. Without going into the necessary details here, one might argue that due to certain background and institutional global inequalities, countries differ in political dominance and economic strengths and influence, and consequently the national cultures of some countries fare more poorly than others. It is well-known that the cultural products of countries with greater economic and political clout enjoy a certain global dominance that cultural products of weaker nations do not. For example, the UNESCO report, *Developing Countries Losing out in Cultural Trade* notes that “while globalization offers great potential for countries to share their cultures and creative talents, it is clear that not all nations are able to take advantage of this opportunity... Without support to help these countries participate in this trade, their cultural voices will remain marginalized and isolated.”<sup>35</sup> The reasons why this is the case are

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<sup>32</sup> Henry Shue’s contribution to our philosophical understanding in this regard is influential. See Shue (1996).

<sup>33</sup> See also Kymlicka’s *Multicultural Citizenship* (1995).

<sup>34</sup> See, for example, Blake (2000); and Okin (1999).

<sup>35</sup> See Otchet (2005).

numerous and mutually reinforcing, ranging from the fact that developed countries are better able to promote and market cultural products globally to more subtle ones like how cultural products and ideas from richer societies are often associated with affluence, progress and modernity that can hold appeal for many of the world's poor. Moreover, different economic capacities of countries mean that countries are not all equally capable of protecting and maintaining their language, cultural practices and traditions, as well as cultural tangibles like historical cultural sites. I don't mean to suggest that global cultural inequality can be reduced to and fully explained by economic inequality, but only to note a general and well-documented correlation between global economic inequality and inequality in the cultural marketplace.<sup>36</sup>

If secure cultural membership is an important good for individuals, then a concern for individual well-being can ground a concern with protecting their cultural communities, especially if cultural communities are under threat because of the global institutional order we impose on each other.

In the global domain, these cultural rights are sometimes referred to as the rights of peoples or peoples' rights. See, for instance, the *Universal Declaration of the Rights of Peoples* proposed by the UNPO (Unrepresented Nations and Peoples Organizations).<sup>37</sup> What class of special rights do peoples' rights include that are not already covered by Talbott's list? In addition to the more legalistic and formal rights such as the right of national self-determination, peoples' rights cover more specifically cultural rights, such as the right to assistance in the restoration and maintenance of cultural heritage sites, cultural exception policies that exempt cultural products from free trade norms and agreements, clearer policies on the restitution of cultural objects and artifacts, greater cultural cooperation between countries and so on. These rights are cultural rights in that they offer special protections to peoples whose cultural identities are under pressure in an imbalanced global cultural marketplace.<sup>38</sup>

Grounding and justifying peoples' rights in terms of human rights will allow for a more systematic understanding of people's rights. Affirming these cultural rights as human rights will galvanize them and offer them greater affirmation and normative force. In turn, showing how human rights can support peoples' rights will counter the worry that the idea of universal human rights is a predominantly Western liberal notion because of its narrow focus on individuals and apparent failure to appreciate the importance of culture and community.

To be sure, some may object that the idea of people's rights is at odds with the normative individualism underpinning the idea of universal human rights. If some national cultures are oppressive of individual freedoms and liberties, would the protection of these cultures not compromise the commitment to individual rights? The "Asian Values" opposition to human rights, a topic that Talbott deftly examines in some detail, is such a case in point. There are two responses to this worry. First, the universalist can say that the rights of peoples do not include the right of a people to oppress their own members. The aim of people's rights is to protect a people against other peoples; specifically it is to ensure that all peoples enjoy reasonable protection of their culture in the face of background imbalances that affect unequally the security of their respective cultural identities. The special rights of peoples do not extend to the rights of a people as a collective to

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<sup>36</sup> For one discussion on language rights, culture and justice, see Van Parijs (2002).

<sup>37</sup> Online at [http://www.algerie-tpp.org/tpp/en/declaration\\_algiers.htm](http://www.algerie-tpp.org/tpp/en/declaration_algiers.htm).

<sup>38</sup> I discuss "The Rights of Peoples" in greater detail in *Toleration, Diversity and Global Justice* (2000).

repress the freedom of its members.<sup>39</sup> To put the point plainly, only cultural practices that do not violate individual rights enjoy any claim to special cultural protection afforded by specific peoples' rights. Thus the alleged contradiction between the idea of people's rights and individual rights is greatly mitigated once we understand people's rights to be normatively derivative of and conditioned by individual rights.

Some may think that the above reasoning means that liberals must accept the extinction of a great number of national cultures that are currently not liberal in character. But this objection invites the second response, which is that few cultures should be presumed to be irremediably rights-violating in the sense that any internal reformation in a liberal direction must imply the culture's extinction.<sup>40</sup> What standards of rights criticize is not a people's culture in its entirety, but only its specific cultural practices. No cultural identity is static and fixed for all time and members; liberal multiculturalism recognizes that cultural identity is dynamic and fluid, always evolving. Thus, in most cases, liberalizing a people's cultural practice is consistent with its maintaining its cultural identity as a distinct people.<sup>41</sup> A liberal political culture pertains to the background public political and social institutions of a society, and the regulation of these institutions by liberal principles is consistent with the permitting and supporting of a range of distinct ethno-religious cultural practices within the rules of institutions. Admittedly, if a culture cannot maintain itself other than by violating the liberties of persons, then this culture will enjoy no protection. But its passing will be without regret.

Cultural rights should not be seen solely as a means of empowering states, though it will be true that states are entitled to claim cultural protection on behalf of the culture group(s) that they represent. Cultural rights, on the contrary, are rights also claimable by minority groups *within* states, and in fact the *Declaration of the Rights of Peoples* is primarily motivated by the need to protect minority nationalities and indigenous groups from abuses by their own state governments. It is well known that many of the most serious current abuses of rights are abuses against ethnic minorities by their own states.<sup>42</sup> Intra-state ethnic conflicts cannot be reduced to failures to respect basic individual rights of the sorts Talbott identifies. Often this can be due also to what Charles Taylor would call a failure of "recognition".<sup>43</sup> The wrongs committed against minority cultures in the severe cases that we so often read about are not just the wrongs of economic deprivation and deprivation of civil and

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<sup>39</sup> See Kymlicka (1995), especially chapter 8.

<sup>40</sup> See Taylor's discussion of the presumptive worth of cultural ways of life in "The Politics of Recognition," in Gutmann (1994).

<sup>41</sup> Talbott's own examples of foot-binding and Sati are apt here. The elimination of these cultural practices did not compromise Chinese and Hindu cultures respectively. Cultures can withstand considerable liberalization and human rights reform internally without having to forfeit their distinctive cultural identities. A question arises as to who is in the position to determine a culture's tradition and identity. Members of the elite of a cultural community may claim that they have the correct interpretation of what their cultural way of life is, and may insist that the non-liberal practice in question is indeed an inherent part of the cultural tradition. But this raises the issue of how a cultural identity is to be interpreted, and the burden of proof is, it seems to me, on conservative elites who assert that only they have the knowledge and authority to interpret their society's culture. On the liberal multicultural perspective, members of a cultural community are to collectively determine their community's cultural ideals, not outsiders, and also not a select segment of their own society. The last means, by default, that a cultural community has to allow for some form of individual free expression and participation if its claim that it is a self-determining community is to have any standing. I discuss this further in Tan (2000: ch. 6). See also Talbott's discussion on this point.

<sup>42</sup> Consider for example the situation in Darfur.

<sup>43</sup> See Taylor in Gutmann (1994).

political rights, although they certainly involve brute violations of basic political, economic and personal rights, but also that of the destruction of minority cultures and the forceful removal of communities from their homelands. Consider for example, the case of state-sponsored mass migration of members of the ethnic majority into an ethnic minority region. Even when it does not directly violate the rights of persons of the minority group, such a policy can harm a cultural community profoundly. Including cultural rights as human rights will allow us to acknowledge these kinds of instances as violations of human rights and hence subject to the kinds of critical responses that any human rights violation calls for. Thus extended, the ideal of human rights can contribute to cultural protection rather than being in tension with it, as sometimes perceived.

One might respond that the right of freedom of association and the right to freedom of thought and expression, two of the universal rights that Talbot affirms, are sufficient for ensuring the rights of persons' to a culture. That is, protect individuals' freedom of association, to express themselves and their freedom of conscience, and their right to a cultural community is already assured. If, in spite of these individual rights, a cultural community cannot be sustained, it means that this cultural way of life has not won over the required number of adherents; it has lost out in the cultural marketplace so to speak, and so we will have to (albeit regretfully) allow it to pass on. To give cultural groups special rights in order to ensure their maintenance is to effectively subsidize some ways of life over others against the effects of the free choices of persons.

But, as a response to this objection, it has to be pointed out that cultural rights are not meant to subsidize cultural communities in spite of the choices of persons, but to ensure a fair and equal cultural marketplace in which cultural groups compete. Indeed, the point of the liberal multiculturalists is that protecting the standard individual rights of freedom of association and expression alone is not sufficient because cultures do not interact on a level playing field. Individual members of dominant cultural groups (those economically or politically advantaged) enjoy a security of cultural membership that individuals of minority cultures do not. It is this inequality of the cultural marketplace that cultural rights serve to correct. So cultural rights do not negate the choices of persons in the cultural marketplace; it serves rather to make such fair and free choices possible. Perhaps an analogous argument could be made in the global context: that some nationalities are disadvantaged compared to others, and a human right to a cultural identity can help correct for these disadvantages.

The above remarks are of course sketchy and in need of elaboration at various points. But I hope I have gestured at enough considerations to motivate some discussion on whether a right to a cultural community should be among Talbot's list of rights that are universal.

### **Legitimacy and Intervention**

Talbot's conception of human rights, which he calls the "minimal legitimacy interpretation of human rights" (9) provides the minimal standards of state legitimacy. That is, "human rights are the rights the violation of which can justify some sort of coercive or noncoercive response by liberal peoples" (10).

I agree that human rights provide the minimal standards of legitimacy such that a state that fails to honor human rights loses legitimacy. By this I mean that it no longer can claim sovereignty



against outside interference of some sort and criticism. But, and here is where I diverge from Talbott, whether this immediately permits intervention or any particular response has to be a distinct question. That is, the legitimacy of a state will influence the attitude that other states will adopt towards it; it will affect how other states should stand in relation, normatively speaking, to it.<sup>44</sup> An illegitimate state opens itself up to the criticism of other states and of the international community, and some revision in how other states relate to it becomes appropriate. But, whether it follows that this state may be intervened against, or for that matter what particular kinds of response are appropriate by way of expressing this critical stance towards it, is a distinct question. For an illegitimate state to be permissibly intervened against, additional considerations must be taken into account besides the fact that it is systematically violating human rights and so is illegitimate. Here the standard considerations in just war theories are relevant: is there just authorization for the intervention? Is there right intent? What is the probability of success? I do not mean here to suggest that just war theorists agree on the conditions of the just use of military means, but only to indicate that additional considerations besides that of legitimacy are necessary when determining whether an intervention is permissible or not.

In short, it is useful to make a distinction between *making the judgment* that a state is illegitimate (because it is violating human rights) and *acting on* or *enforcing* that judgment. Human rights standards speak to the first matter, that of how to judge. Whether intervention (how to enforce) is consequently warranted is a further consideration, and while human rights violation may be a necessary condition for a just intervention, it is not a sufficient one.<sup>45</sup>

The reason why it is important to understand Talbott's "minimal legitimacy interpretation of human rights" in this way is as follows: if we do not make the distinction between illegitimacy and permission to intervene, and if human rights are meant to serve as the minimal basis of legitimacy, then we might be tempted to limit the list of human rights to a very short list so as to limit the occasion for war (which is desirable in itself). That is, if the systemic violation of human rights in a country is a sufficient condition for a just intervention against it, we may be moved to limit human rights violations to some very extreme cases in order to minimize the cases in which intervention is permitted or even obligated. Disconnecting this direct and straightforward relationship between human rights and the permissibility of intervention frees us from this concern, and allows for a more robust understanding of human rights as the basis of state legitimacy without the accompanying worry that a strict universal standard of human rights paves the way to frequent intervention. This would allow us to uphold stricter standards of legitimacy without the worry that this will render many states legitimate targets of military action.<sup>46</sup>

In other words, while we should be ready to criticize human rights failures and even hold state legitimacy conditional on the protection of and respect for human rights, it is important also to recognize that the means by which human rights are to be enforced raises additional moral challenges which will have to be tackled on their own terms. One may for instance applaud the vision that liberal democracy ought to be a global ideal while condemning the forceful imposition of

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<sup>44</sup>The remarks in this line follow loosely T.M. Scanlon's (2006) method of analysis in his Seybert lectures, University of Pennsylvania, on "Blame", and also his *What We Owe to Each Other* (1999).

<sup>45</sup>For more discussion, see my *Tolerance, Diversity and Global Justice* (2000: 59-64).

<sup>46</sup>This passage adapts from the insightful discussion in Beitz (2001).

that ideal by military means on non-democracies. The criticism is not just that of efficiency, although it is likely that such forceful imposition of democracy would be counter-productive. The criticism is also a moral one; namely, that the moral costs of waging war as a means of promoting human rights must be fully taken into consideration.

In sum, I would argue, contra Talbott, for a more precisely confined understanding of the function of human rights, one that would treat the critical judgments that any human rights violations must invite as distinct from the forms of enforcement which these judgments may warrant. This is in conformity with what I take to be an uncontroversial point, namely, that the question of the standards of morality is distinct from that of how these standards may be enforced.

### Well-Being and Rights

Talbott's list of human rights suggests that effectively only liberal democratic states are legitimate states. His list included the standard liberal rights such as "a right to freedom of the press," "a right to freedom of thought and expression," "a right to freedom of association," and "political rights, including democratic rights" (163). One might complain that this is *too* metaphysically immodest for it has excessively enlarged the content of rights that are universal.

Indeed, if illegitimacy immediately means that a country may also be coerced (to reform) this will seem especially problematic for reasons I mentioned above. But even if intervention is disengaged from legitimacy in the way I suggest, there may still remain the worry that this moral expectation that all societies be liberal if they are to be legitimate is a form of immodesty and indeed a form of imperialism.

As Talbott points out early in his book, he departs from John Rawls's well-known account of human rights in that "Rawls has drawn the line between human rights...and other rights in the wrong place" (10). Talbott wants to include, unlike Rawls, the common liberal rights mentioned above in his list of human rights.<sup>47</sup>

Yet Rawls's reason for limiting human rights in this way is precisely because of a certain "epistemic modesty," a point therefore that Talbott would appreciate. This is the recognition that the liberal conception of the citizen, and the importance of political autonomy in this conception, is a conception that we cannot reasonably expect all societies to accept. That is, such matters are open to reasonable disagreement among reasonable persons.<sup>48</sup> Because Rawls thinks that the ideal of individual political autonomy is not a value that all societies can be reasonably asked to affirm, it would be unreasonable for liberals to insist that all societies organize their political institutions on the basis of that idea.

Talbott argues that he avoids Rawls's challenge from reasonable pluralism and reasonable disagreement over the value of autonomy because he takes individual well-being to be the fundamental value and the value of autonomy to be only derivative of it (i.e., autonomy is valuable

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<sup>47</sup> See Rawls (1999).

<sup>48</sup> Indeed Rawls stresses that the liberal individual is not even a conception of the person that we can reasonably expect everyone in a liberal society to endorse, and hence his belief that liberal justice is to be understood strictly as a political conception, and his emphasis on political autonomy as opposed to ethical autonomy. See Rawls (1993).

because it promotes well-being). The idea here, as I understand it, is that the importance of personal well-being, unlike personal autonomy, can be universally affirmed by all, and instead of attempting to defend autonomy as a value in itself which is philosophically problematic, it can be empirically and historically shown that autonomy is instrumentally necessary for well-being. So by turning away from a metaphysically-loaded ideal like autonomy to a more widely shared and verifiable ideal like individual well-being, Talbott hopes to have in hand a non-controversial grounding for rights. Yet it is not clear to me if Talbott's appeal to the idea of well-being does avoid relying on some controversial claims about human nature that falls prey to the Rawlsian objection.

On the well-being approach, one can treat autonomy as having instrumental value only, or as having intrinsic value as well. If one argues that autonomy is intrinsically valuable, then one has to say something about how individual freedom is constitutive of a person's well-being; that is, how it matters to a person that the life she lives does not just achieve certain ends that she cares about but that she has freely chosen both the ends and also the means of attaining these ends. For instance, in order to have a utilitarian account of individual liberty that is not *merely instrumental* for the fulfillment of well-being, Mill was obliged to understand utility "in the broadest sense, grounded on the permanent interests of man as a progressive being" (Mill 1976 [1859]: 14). That is, Mill needed to rely on some notion of human nature, in particular the fact of human's perfectibility, in order to defend a principle of liberty that is not merely instrumental for the purpose of promoting utility (and hence abrogable when utility demands it). Yet the idea of human perfectibility is not an uncontroversial theory of human nature.

Talbott recognizes this, I believe, and his own defense of autonomy does not ground well-being in the "permanent interests of man as a progressive being" like Mill. For Talbott autonomy matters (and hence the human rights attending it matter) because individuals' judgment of "what is good for them are generally reliable and are generally more reliable than their government's judgment about what is good for them" (128). Hence respecting the autonomy of persons can better contribute to their well-being. And this instrumental relationship between autonomy and well-being, Talbott argues, has been historically proven. But so described, this defense of autonomy is rather contingent—one can imagine a society in which limiting personal autonomy in fact contributes to personal well-being in different ways (because say it raises the quality of life of citizens materially). Or one might say, extrapolating loosely from some communitarian thinking, that personal autonomy can undermine well-being if what is really good for the person is not her freedom to form, pursue and revise what she thinks is valuable for her, but to come to appreciate her station in society and its duties.

So it seems to me that the attempt to ground human rights on well-being does not fully escape the Rawlsian worry. It must rely on some notion of well-being that is not in a sense a liberal one, or it can only ground a rather instrumentalist understanding of personal autonomy, in which case it is not clear if it can serve as a robust enough grounding for human rights. Perhaps the strategy is not to avoid the Rawlsian challenge but to take it head-on and try to argue that a full defense of human rights should not avoid making foundational philosophical and moral claims.

## Democracy and Human Rights

by Charles R. Beitz

One of the many virtues of Talbott's work is its sympathy for the aims of the human rights movement without any of the theoretical dogmatism found in so much contemporary writing about human rights. It is based on a wide-ranging critical appraisal of the modern history of thought about its subject. With clarity and economy, it sets forth a comprehensive and plausible position about the basis and content of what Talbott regards as the core of any reasonable doctrine of human rights.

Talbott thinks of human rights as conditions of "minimal legitimacy." A "minimally legitimate" society is, in his non-Rawlsian sense, a "decent" one. It may not be just, but its decency means that it is capable of becoming more just over time (13). The standards of minimal legitimacy are the nine human rights—more accurately, clusters of rights—defended in the book. Eight of these constitute what Talbott calls "the social basis for autonomy" (137). They include security and subsistence rights as well as children's rights, rights to education, freedom of thought, expression and association, and a right to a sphere of personal autonomy free from paternalistic intervention.

The ninth right is a right to democratic institutions together with an independent judiciary to enforce the whole package of rights. I want to focus on this ninth cluster of rights. The idea that there is a human right to democratic institutions—or to "democracy," for short—is both new and controversial. Before the end of the Cold War, it would have been difficult to argue that international human rights doctrine included an unambiguous right to democracy.<sup>49</sup> Even today there is a dispute—not only about the positive law of human rights but also about the normative question of whether human rights law ought to include a right to democracy.<sup>50</sup> I myself have been sympathetic to this idea (Beitz 2001), but I have become doubtful that the case can be made with as much confidence as I once believed. Perhaps the case can be made, but it is hardly straightforward. I will say a few words for a summary of the position defended in Talbott's book (mostly in Chapter 7) and then pose two questions which I think would be illuminating to address.

Talbott rejects two kinds of arguments sometimes made in support of the proposition that there should be a human right to democracy—those that proceed from a concern about individual autonomy and those based on considerations about procedural fairness. Instead, he endorses a third argument holding that democratic institutions are justified by the results they tend to produce. He thinks there are both "consequentialist" and "non-consequentialist" versions of this argument—that democracy produces more ("appropriately distributed") well-being and that it promotes "substantively just results" (141). I am not sure I agree that the three kinds of arguments divide as neatly as Talbott suggests, but on the whole I concur that autonomy-based and procedural arguments are insufficient to account for the moral distinctiveness of democracy. A persuasive account should reserve a large space for considerations about results, provided that "results" are construed broadly, as including not only the content of the government's legislation and policy but

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<sup>49</sup> "[I]t is, so far at least, axiomatic that international law does not guarantee representative, still less democratic, governments" (Steiner 1988: 55).

<sup>50</sup> See for example Roth (1999: ch. 8), and Cohen (forthcoming) in a festschrift for G. A. Cohen.

also the features of public culture that well-functioning democratic institutions encourage and support.<sup>51</sup>

A results-oriented argument for democracy must be clear about the nature of the desirable results that democracy can be expected to produce and about the mechanism by which it is expected to produce them. Talbott's view about this is that democratic institutions are best at solving two central problems of effective government; the first is the "reliable feedback" problem, where institutions should ensure that public officials get the information they need to make good policy. The second is the "appropriate responsiveness" problem: institutions should maximize the chances that officials will respond suitably to this information. Talbott's argument that democracy is better than any alternative at solving these problems stands in the tradition of John Stuart Mill.<sup>52</sup>

As I said, I pose two questions: the first concerns the empirical basis of Talbott's argument; the second concerns the reasons why it matters whether we accept it.

As I understand him, Talbott thinks the argument about reliable feedback and appropriate responsiveness is persuasive regardless of the economic and social circumstances of the society in question. Mill, of course, explicitly rejected this position and until recently, anyway, most people who have studied political institutions in developing societies have tended to agree with him.<sup>53</sup> They have thought that the performance of democratic (or any other) institutions depend on the social, cultural and economic context. Of course this does not mean we should reject the view in the unqualified form urged by Talbott, but it does suggest we should have some evidence for it.

Talbott's only direct evidence is the Sen famine study.<sup>54</sup> That study concluded that no independent democratic country with a reasonably free press and an active opposition has ever suffered a substantial famine. Talbott is not alone in thinking that this might demonstrate some general truth about democracy—perhaps that in an electoral democracy with an active opposition, where citizens have the means to communicate their interests, public officials have an incentive to take these interests seriously and respond to them effectively (150). The famine study itself does not, however, support this generalization. A central element in the original study was a comparison of India and China. The study found that democratic India dealt with famine more successfully than authoritarian China. But it also found that authoritarian China did better in combating endemic deprivation (Drèze and Sen 1989: 214). What does this show? The short answer is that we have no right to generalize the hopeful findings of the famine study without more systematic evidence about the policy performance of democratic as against other regimes under a range of background circumstances. Talbott gives us none<sup>55</sup> and contemporary social science is equivocal.<sup>56</sup> So I would

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<sup>51</sup> I will not say more here about my reasons for taking this view. I have tried to work out a broadly results-oriented account in *Political Equality* (Beitz 1989: ch. 5).

<sup>52</sup> Arguments of a similarly instrumental form have also been given by Shue (1996) and Sen (1999).

<sup>53</sup> See, for example, Lipset (1959), Almond and Verba (1965: 368-70); Huntington (1968: ch. 1); and Dahl (1971: chs. 3 and 5).

<sup>54</sup> To be accurate, Talbott cites Sen (1999), which refers to the study. The original study is Drèze and Sen (1989).

<sup>55</sup> Due to lack of time, I pass over Talbott's interesting discussion of results from experimental game theory. I would simply note that it is a long stretch from the results of laboratory experiments at the micro-level to reliable generalizations about political behavior at the macro-level, and then a further stretch to social and cultural settings vastly different from those in which the experiments took place.

<sup>56</sup> The most comprehensive recent study of which I am aware is Przeworski, *et. al.* (2000). Their findings are complex and

like to hear more about the empirical basis of his optimism about democratic institutions. What is the evidence that they will produce the desirable results he hopes for, regardless of the social, cultural and economic background?<sup>57</sup>

My second question is more theoretical. It concerns the significance of the claim that there is a universal human right to democratic institutions. “Human rights” is the name of a political enterprise originating in the settlement of World War II and grown today into a highly elaborate political practice. The objects called “human rights” in this practice have several defining features: they are protections of important human interests; they formulate protections that the institutions of states should embody and make effective for their people; and, in the words of an American court, they are matters “of international concern.”<sup>58</sup> The last of these features is essential. I agree with Talbott that it would be excessively narrow to think of human rights, as Rawls does, as values whose violation justifies outside coercive intervention (7). But, I do not see how we can avoid referring to a more inclusive idea of international political action in giving meaning to the notion of “international concern.” This might range from public monitoring and reporting about a regime’s compliance with human rights standards, to diplomatic pressure, to support for domestic forces of reform. It might also include coercive intervention, but this is a limiting case. However we understand the idea of international action, the basic point is that human rights are standards for institutions whose violation provides reasons for international action. They are not simply abstract desiderata. Presumably this practical, action-guiding function should play some role in our thinking about which values count as human rights. The second question for Talbott is how this action-guiding role figures into the justification for considering democracy as the subject of a human right.

This question matters because it is hardly clear that we want a regime’s failure to live up to democratic norms to be understood to constitute a rationale for outside interference. This is for several reasons. One is pragmatic. It seems obvious that outside actors often lack the position, the resources, the detailed understanding of the domestic political environment and the sustained political commitment needed to be able to engage successfully in the business of regime change. Furthermore, to judge from recent history, such efforts face a substantial likelihood of miscalculation and unanticipated harmful consequences. If the forms of action available to outsiders are not likely to be effective in promoting democratic change or if they are likely to produce harmful

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in some respects do not address the points on which Talbott thinks that democracies perform better than other types of regime. But it is worth noting that on the question of economic performance (for example, growth rates, rates of investment, growth of capital stock, rates of employment), these authors find that democracies perform better only in countries with per capita incomes above about \$3,000/year. Below that level it appears that there is little to choose between democracies and authoritarian regimes (Przeworski, *et. al.* 2000). See also Geddes (1999).

<sup>57</sup> One reason for pressing this question is that we now have the advantage of many years of so-called “democratic transitions” in formerly authoritarian countries, and the beginnings of comparative social science data about the performance of authoritarian and transitional democratic regimes. I cannot defend this claim here, but I think any fair reading of this evidence would have to conclude that the record of so-called transitional democratic regimes is at best mixed. Moreover, there is little reason to believe as a general matter that democratic transitions are likely to consolidate in well-ordered democratic institutions. Of course one can always reply that these transitional regimes are not really democratic, so that evidence of their performance does not count against the instrumental argument for democracy. That is fair enough, but it raises the further troubling question whether “really” democratic institutions are feasible in these societies as they now exist.

<sup>58</sup> *Filartiga v. Pena-Irala* (1980). For views similar to that in the text see Donnelly in Dunne and Wheeler (1999: 71-102) and Nickel (2006: ch. 3).

unintended consequences, then we might wonder whether the recognition of a human right to democracy has any constructive point.

There is also a deeper reason to press the question. We should distinguish between the ideas of collective self-determination and democracy.<sup>59</sup> The first is related to the second as genus to species. Speaking crudely, a society is self-determining if its institutions include mechanisms through which its members can communicate interests and demands to public officials and if public officials, in turn, give good-faith consideration to this information in making public decisions. A society is democratic if there is some institutional connection between the expressed political preferences of its individual members and the outputs of public decision-making.<sup>60</sup> A democratic society is self-determining, but a self-determining society need not be democratic (Rawls's idea of a decent hierarchical society is an example, but it would be a mistake to take that idea as paradigmatic). We need not say that a self-determining but non-democratic society is as attractive morally, or as just, as a rights-respecting democracy. On the other hand, as I have defined it, a self-determining society is plainly different from a gang of thieves: it is a coherent social form in which public policy is responsive, albeit not by democratic means, to the interests of the governed. It is an empirical matter whether such a regime can exist. Assume for the moment that it can. If one holds that there is a human right to democracy and if one grants as I have claimed that human rights should play an action-guiding role in foreign policy, one seems committed to the view that interference to promote democracy in a self-determining but non-democratic regime would be morally acceptable. But this is counter-intuitive: the commonsense view seems to be that outside efforts to promote democracy in such a society would constitute an objectionable interference with the political liberties of its people. That might of course be wrong, but if it is, we need an argument. It would be interesting to know if Talbott believes such an argument can be given. For the possibility this suggests is that we may overreach in holding that there is a human right to democratic institutions. It could be that the proper political focus of a doctrine of human rights should be a principle of collective self-determination instead.

The two questions I have raised are related. Claims about the contents of human rights doctrine are claims about the grounds on which international political action may be justified in order to bring about internal changes in a society—that is, human rights are matters of international concern. To sustain the argument that human rights doctrine should include some particular right, one must establish not only that it would be a bad thing to be deprived of the substance of the right, but also that international action to defend against threats to the right, or to help establish conditions in which the right can be enjoyed, would be justifiable. Any such argument, in turn, should establish both that our reasons for believing the deprivation to be a bad thing are reasonably general—that is, that an appreciation of their force does not depend on culturally specific beliefs or background assumptions that apply selectively—and that there are forms of international action available that would be both feasible and justifiable. The questions I have raised go to both elements of the required justification. I am not sure, myself, how to best answer these questions. But it seems clear that a persuasive justification of the claim that there is a human right to democracy should say more

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<sup>59</sup>The distinction in this form is drawn by Cohen (forthcoming). It is implicit but plainly visible in Rawls (1999). Cohen's formulation is the provocation of the remarks in the text.

<sup>60</sup>Here I borrow from Brian Barry, who writes that in any democratic procedure "the preferences of the citizens have some formal connection with the outcome..." (1989: 25-26). I mean this as a necessary but not sufficient condition.

on both points than Talbott says in his admirable book. As a democrat, I hope his position turns out to be right.

## **Afterword**

**by Jack Donnelly**

This symposium has been something of an experiment for *Human Rights & Human Welfare*—and, although as a participant in it I probably lack objectivity, it seems to me to have been a successful experiment. *HRHW*'s mandate is to “review” books and other publications. We carry out that mandate now in a great variety of ways, the “traditional” review essays now being supplemented by shorter book notes, topical research digests (annotated bibliographies), and the newly launched Roundtable, which discusses recent pieces in the semi-popular periodical literature. Symposia, such as this one, are not likely to become a regular periodic feature of *HRHW*. We hope, though, that they will be recurrent irregular events, because they permit a different kind of engagement with the literature on human rights.

In this particular case, several authors critically engaged with a recent theoretical work from a number of very different perspectives. Jamie Mayerfeld provided an extremely useful introductory overview, which I hope encouraged at least some readers to pick up Bill Talbott's book. At the very least, it makes clear why the book merits the attention it received in the succeeding essays. Those essays pursued a wide range of largely critical arguments, engaging some of the more striking and contentious of Talbott's claims. Most notably, they have provoked a spirited defense and further elaboration by Talbott.

In the end, readers must decide for themselves what the lessons of these debates are. In my case, I come away from these discussions with a clearer appreciation of both the difficulty of the underlying philosophical issues and the fragility of many of the leading answers to those questions.

In the literature on human rights, it is common to take most philosophical issues as having been adequately addressed, or at least successfully “bracketed,” by the body of international human rights law rooted in the Universal Declaration and the Covenants. For many purposes, this is not merely adequate but desirable, allowing us to circumvent theoretical debates and focus immediately on more practical issues at hand. But taking the philosophical issues to be “beyond debate” also has costs. Not least, we often appear to know more, more deeply, than we really do.

Talbott's book, and the discussion it has provoked here, reminds us of that very forcefully. From the 1948 Universal Declaration of Human Rights through the 1993 Vienna World Human Rights Conference, and beyond, universality has been a central attribute of human rights as the international community has come to understand that idea. It is but a small exaggeration to say that in most international discussions “universal human rights” has come to mean, roughly, the rights in the Universal Declaration. Talbott, however, raises the question of whether the list in the Universal Declaration is the “right” list. Perhaps even more importantly, he opens the question of how we can know the answer to that question. Whether one agrees or not with Talbott's formulations and



answers—those who have read my essay above know that I largely disagree—he asks vital questions that deserve careful scrutiny.

I am not naive enough to believe that good practice requires good theory. But I am not cynical enough to believe that good theory makes no contribution to good practice. The kind of theoretical inquiries that this symposium represents are of considerable intrinsic intellectual interest. And by forcing us to revisit and re-question commonplace assumptions, they just might also contribute to improved, more effective practice.

A symposium such as this one allows us to bring together a number of scholars with different perspectives to reflect on a book of interest and significance and, just possibly, get a better handle on understanding human rights and the contemporary world. Even if the reader is left with more questions than answers—perhaps especially if more questions are posed than adequately answered—bringing together many voices to explore a limited range of important issues fits centrally within the mission of *Human Rights & Human Welfare*. We hope that you have profited from and been provoked by this exchange of ideas in what is for us a new format.

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