How are Human Rights Universal?

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I. THE CONDITION OF “UNIVERSALITY”

On the traditional view, human rights are universal because they belong to all human beings as such, solely in virtue of their humanity. In this chapter, I explore the meaning of that claim and consider two reasons some people find it hard to accept. The first is the appeal of relativism. That appeal is all the greater now, when cultural diversity is more present than ever in one’s neighborhood, on television, and across the internet. It’s a short step from identifying differences in cultural values to identifying justice itself as culturally constructed. The second reason for doubt is also a response to the radically diverse ways of life in the world, but a simpler one: a belief that human rights universality is implausible. Even if there are moral universals, one might think them too few or too vague, and the settings of their operation too diverse, to generate anything as specific as human rights.

Both objections are compounded by the timelessness of humanity-based rights. They are, in Tom Paine’s words, “the rights of all generations of men [which] cannot be monopolized by any.”¹ That includes cavemen, and such a vision is hardly credible. No one believes that health care and collective bargaining were human rights in the Stone Age, least of all the cavemen who lacked any notion of rights. The example is absurd and corrosive. If cavemen didn’t possess human rights, then all human beings don’t have these rights simply by virtue of being human. And if human rights don’t apply to the deep past because circumstances were so different, why should they apply to a people today whose circumstances remain greatly different, such as nomadic tribes, or societies that select their leaders via signs of reincarnation?

These relativist and skeptical critiques may lead some to the view that there are no universal human rights, and others to take refuge in eternal moral laws that, like geometry, apply everywhere including the Stone Age. This chapter puts forward a more realistic account of human rights universality and explains why neither of the critiques undermines it. I begin by defining terms, however, given the multiple meanings attached to both “human rights” and “universality.”

HUMAN RIGHTS

The objections above operate most directly against a particular conception of human rights: human rights as moral mandates. These are not the legal rights of statutes and treaties, but moral rights of the kind Gandhi, King, and Mandela invoked to oppose unjust laws. These rights do not depend on cultural or legal recognition, but on “the moral question whether there is a decisive justification of including these forms of inviolability in the status of every member of the moral community.”²

My focus on moral rights runs against the tide of recent scholarship that embraces a “political” or “practical” notion of human rights that emphasizes the norms and functions of human rights in international law and practice. Rawls’ seminal version in The Law of Peoples (1999) held that a right qualifies as a human right if its systematic or widespread violation might justify outside military or economic intervention against it.³ Beitz, Raz, and other theorists have proposed criteria and methodologies that are broader in different ways but still locate the “heart of human rights,” as Buchanan calls it, in its international political function.⁴

Buchanan rightly rejects the “mirroring view,” according to which international human rights laws are justified in so far as they reflect or help achieve pre-institutional moral rights. International human rights laws can be justified on other bases, and even if they reflect moral rights, many more elements are necessary to justify their codification into law. But he also decries the use of the “political” conception “imperialistically” as the one that captures the essence of human rights.⁵ I myself do not see how that hegemonic view can be correct, given the immense importance of moral

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³ In Rawls’ interpretation, human rights norms mark the outer limits of a country’s internal autonomy: so long as a government observes the small list of rights that fit Rawls’ functional definition, no other country may justifiably intervene militarily for any purpose but self-defense. Rawls, The Law of Peoples (Cambridge, UK: HUP, 1999), 79-80.


⁵ Buchanan, ibid., 16-18. Buchanan describes Raz and Beitz as conceptual imperialists in not allowing for moral human rights, and Griffin in not considering that there are other than moral conceptions. Another “non-imperialist” is Jean Cohen, who adopts a political conception while recognizing it as only one part of a broader concept of human rights. Cohen, Globalization and Sovereignty: Rethinking Legality, Legitimacy, and Constitutionalism (Cambridge, UK: Cambridge Univ. Press, 2012), 159-222.
rights to the contemporary human rights practice that is its concern. Human rights conventions that clash with an entrenched cultural practice (for example, the Convention on the Elimination of All Forms of Discrimination Against Women, which prescribes an egalitarian model of marriage quite alien to many cultures) can’t be responsibly drafted, approved, or ratified without reference to the moral stakes — self-determination, equality, individual autonomy, religious liberty, harmony, and so on. Moral rights are also what the mobilization of shame, frequently identified as the chief means of human rights enforcement, depends on.

Identifying human rights too closely with an international human rights system also obscures the full extent of their significance and power. What drew millions of people to join Gandhi, King, and Mandela was their demand for justice, not international concern or intervention, and they defeated the armies arrayed against them on the strength of it. It would be a mistake to think that Rawls’ parsimonious list of human rights, which he limits to those appropriate to its international function, captures the meaning of human rights, or its importance beyond statecraft. The political and moral conceptions simply address different, although overlapping, human rights concerns.6 It is the non-exclusive moral conception of human rights I explore here.

UNIVERSALITY

Human rights claim universality. Were they not prescriptively universal, they would have no basis for overriding the self-determined choice of cultures or democratic majorities to reject them. But precisely what is it that is universal about human rights?

The foundational answer is that human rights are universal because they belong to every human being as such, not merely those having the requisite sex, ethnicity, nobility, caste, talents, or other feature. (As universality is a formal concept that can be applied to any arbitrarily selected group, the implicit further assumption is that human beings comprise the appropriate group; increasingly, this is denied by people who think it species-ist, as discussed in Chapter 2.) All human rights impose co-relative obligations, and these obligations are also universal, tautologically. If all human beings have the same rights, then every society must respect these rights, whatever its mores, laws, conventions, or preferences. This universality is thus not to be equated with unanimous belief, the sense in which one might say that belief in a flat earth was once held universally. Consensus-based rationales for human rights approach this, but I take human rights to be moral claims about constraints that all societies should respect, whether or not they do.7 They are prescriptively, not descriptively, universal. Because human rights impose universal moral obligations about which individuals and cultures might be wrong or right, they can equally be described as objective moral obligations.

Moral objectivity sounds implausible to many people who think that means human rights exist as “furniture of the universe,” platonic forms, divine commandments, or some other moral realist metaphysic that exists apart from humanity. Looking for that kind of metaphysical grounding is fanciful — “the effort of a blind man in a dark room to find a black cat that isn’t there,” as Morris and Felix Cohen described it8 — but all I mean by moral objectivity is that there are correct answers to some moral questions for all human beings. Such answers need not be mystical in any way; they might derive from universal human interests, for example. As Korsgaard says, “normative claims are not the claims of the metaphysical world of values upon us: they are claims we make on ourselves and each other.”9 But in a postmodern era where any claim to objectivity is suspect, attaching human rights to an objectivist premise must be argued for, and I do so in part IV.

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6 Put too crudely, the moral conception is primarily directed to the question, What moral rights and obligations govern a state’s treatment of its people? (or some less state-centric version). Paradigmatic political conceptions are chiefly directed to the question, When is international action in response to human rights violations warranted? (an inquiry that brings in matters irrelevant to the first question, such as the value of international peace, the apportionment of scarce international resources, the collateral consequences an intervention may have, and the legitimacy of the international system), or to other questions concerning the functional contributions of human rights in a global system.

7 Morally arbitrary preferences may be part of a justification for coercion if they are the outcome of a fair process, such as majority rule in a legitimate state.


9 Christine M Korsgaard, Creating the Kingdom of Ends (Cambridge University Press, 1996), 301.
Human rights impose universal moral obligations about which individuals and cultures might be wrong or right, they can equally be described as objective moral obligations.
dangers or institutions that didn’t exist in ages past – the right to vote, to education, to clean air, and to government assistance of any kind are examples. The idea of human rights is about practical action in the world, and it is a bad idea if it can’t incorporate any of the features of that world.

Human rights universality does not demand such uniformity, however. Rather, it mandates variant expressions of human rights in terms appropriate to the context in which they operate. This should be uncontroversial because all general principles work this way. Moral principles “cannot be applied to all men in the same way, on account of the great variety of human affairs,” says Aquinas. Legal principles are the same: good-faith adjudicators must seek to respond to the unique circumstances before them with fidelity to principles that may be centuries old.

Yet, in the case of universal human rights, the facticity of their application is more likely to go missing. One reason is that contextually varied human rights strike some people as incompatible with their grounding in humanity alone. On this basis, they would say that informed consent before surgery can’t be a human right; it can’t attach solely in virtue of one’s humanity because it also requires the existence of a kind of medicine that is parochial to modernity. But this is a mistake. What belongs to all human beings as such is not the specification of a right to informed consent (which is indeed contingent on circumstance), but a right of self-ownership that lends the specification its normative force. The latter is what belongs to all human beings as such. Specifications are not designed to be binding until the end of time, but to provide operational rules that make sense in the world to which they apply.

This is especially true of the specification of human rights obligations, as these exist as means for realizing rights – “duty for duty’s sake is absurd, but rights for their own sake are not,” says Mackie – and there may be many different means to an end. This explains why all human beings possess human rights equally but are not all equally obligated to respect or fulfill those rights. A right to adequate nutrition may obligate the state rather than its constituents individually, and a right to a fair trial may obligate the state in one way and its citizens in a different way. Such divisions of labor are acceptable if obligations are instrumental means of realizing rights, and because societies may divide labor in different ways, who bears the societal obligation is neither preordained nor standard among them.

The permissible flexibility of obligations goes well beyond divisions of labor, of course. If obligations are chiefly means to the end of realizing rights, we should expect these obligations

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11 If this is less recognized in international human rights law, it may be in part because the international legal system lacks a similarly well-established authority whose rulings can bridge the gap between underlying human rights norms and their contextual applications. One can envision the most law-like current human rights institution, the European Court of Human Rights, taking root to the point where contextual interpretation and universality are taken to be complimentary rather than contradictory.


13 When the criticism is aimed at the inclusion of this right in the two treaties, a further assumption is that a human rights convention should be treated as a codification of moral rights and provisions that may be derived from them, rather than as a political and legal document aimed at implementing policies as well. If we adopt the latter view, it is not obvious that activists and legislators should forsake their capacity to effect desirable goals through that instrument.


15 The state, however, is a special case; it exists everywhere with monopolies of power that afford it a unique potential to threaten or assist constituents, so much so that it is sometimes said that human rights obligate governments only; but we should not assume that human rights (as a species of justice rather than law) are confined to safeguards against or assistance by the state. Although human rights conventions and other laws operate exclusively against governments, which are given the responsibility of safeguarding human rights against individuals who would infringe them, as a moral matter there is no reason to assume that a right to life or to liberty can’t impose particular obligations on individuals, corporations, or civil society directly as well. See Samuel Moyn, Not Enough: Human Rights in an Unequal World (Cambridge, MA: Harvard Univ. Press, 2018).
to change as a given society’s institutions and material development change. It would betray the human right at stake to ignore more effective means that develop over time or new threats that warrant new obligations. (For example, a universal right against discrimination based on irrelevant characteristics may, in an age of genetic testing, require implementation through obligations on custodians of such information to keep them private and secure.) Obligations must also take account of shifts in the impact and message of their application if they are to safeguard the universal interests they exist to serve. A universal right against racial discrimination may suggest quotas in a rigidly hierarchical culture but colorblindness in an egalitarian one.

**IMPLICATIONS**

We must therefore dismiss the most aggressive notion of universal norms—a single, one-size-fits-all list of obligations binding everywhere. But if universality does not imply such uniformity, what it does connote is much more elusive. Given that the protections of human rights are only realized through the obligations they impose on others, and that these obligations must vary according to the time and place of their application, how much remains of the “universality” every human right asserts? To say every society is bound, but by different obligations, may seem like pretty weak tea. And as we go back through history, even as far back as the Stone Age, the idea that a common core of rights can be manifested in different but related formulations may appear increasingly implausible.

There are two possibilities. One is that there are no human rights because they are premised on a domain of universal morality that doesn’t exist. Nihilism is one version of this view. Cultural relativism is a more surgical version because it credits morality locally while rejecting the global reach universal human rights require. The moral thing to do is what the culture defines it to be.

The alternative universalist response must also embrace disparate specifications responsive to context but tie them to a deeper moral level that binds universally—the respect due to autonomous agency, for example, or the preconditions of human flourishing. For our purposes, I will assume the somewhat more generic universalist version that, however contextually specific its terms, a human right reflects some morally compelling interest that is common to humanity and entitled to deference.

These relativist and universalist alternatives differ radically on the possibility of global justice and human rights, but both present serious difficulties for human rights theory. The relativist critique renders “global justice” an oxymoron, of course. But the universalist defense confronts its own problems, even if we assume that all human beings do share some morally compelling interests that could underpin universality. Now the worry is not that there aren’t moral universals, but that one can’t reason from them to applications tailored to the particular context. To be sure, “contextualization” inherently resists reduction to principles, and is opaque to any kind of scientific method. When it strains to incorporate radically dissimilar circumstances in the world, it may seem less a rational process than a faith-based aspiration. Yet the specifications it generates must be determinate enough, and faithful enough to the underlying interest, to warrant overriding conflicting cultural convictions developed over centuries by those who must live them out—a very high bar.

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16 See Joseph Raz, On The Nature of Rights, 93 Mind 194, 199-200 (1984) (“The existence of a right often leads to holding another to have a duty because of the existence of certain facts peculiar to the parties or general to the society in which they live.”). Tasioulas describes such contextualization as a threshold across which universal interests may become duties. “This threshold involves feasibility constraints as to what is possible to secure through the imposition of duties, as well as what would be excessively burdensome so to secure. In both cases, judgments of possibility and burden can be made more tractable and practically relevant by being indexed to broadly contemporary conditions.” John Tasioulas, “Philosophizing the Real World of Human Rights: A Reply to Samuel Moyn,” in Human Rights: Moral or Political? (A. Etinson, ed., Oxford Univ. Press, 2018), 88 at 98.

17 “Interests” as used here are construed expansively to include such intangible and non-fungible interests as autonomy, equal treatment, or other facets of one’s moral status. The interest-based account is ordinarily contrasted with choice-based accounts that conceive rights as entailments of a human being’s moral status and autonomous agency; on the latter view, rights are independent of a person’s interests and may disserve them. I mean to avoid that issue to the extent possible here. John Tasioulas has offered something like this capacious interest-based account in “On the Foundations of Human Rights,” in Philosophical Foundations of Human Rights 45 (Cruft, Liao, and Renzo, eds., Oxford, UK: Oxford Univ. Press, 2015), http://ssrn.com/abstract=2555277. As for interest-based accounts of rights more generally, Joseph Raz’ version holds that “x has a right if and only if x can have rights, and other things being equal, an aspect of x’s well-being (his interest) is sufficient reason for holding some other person(s) to be under a duty….The interests are part of the justification of the rights which are part of the justification of the duties. Rights are intermediate conclusions and arguments from ultimate values to duties.” Raz, “On the Nature of Rights,” 93 Mind 194, 195 (1984).
The remainder of this chapter explores the viability of the universalist premise of human rights in light of both challenges.

II. RELATIVIST OBJECTIONS

Sophisticated treatments of relativism date from ancient Greece, but the theory found new relevance when a global justice system actually came into being in the post-war years. Before then, international law had concerned itself only with inter-state relations, leaving states virtually unconstrained in how they exercised their "internal sovereignty" over their people unless governed by treaties they chose to sign. With the adoption of the Universal Declaration of Human Rights in 1948 and the human rights conventions that followed, states were now subject to a global standard of justice governing the treatment of their citizens.

Relativism has been a counterpoint in that political arena from the beginning. It was deployed by the American Anthropological Association to oppose the Universal Declaration of Human Rights, on grounds that standards and values are relative to the culture from which they derive. Even the nature of the physical world, the colors we see, the sounds we hear, are conditioned by the language we speak, which is part of the culture into which we are born. Man is free only when he lives as his society defines freedom.

Although the American Anthropological Association later abandoned this view, realist objections continued and became especially vocal from the 1970s through the 1990s with the advent of second-wave feminism and its reflection in human rights treaties like the Convention on the Elimination of All Forms of Discrimination against Women (1981). The 1993 Vienna World Conference on Human Rights is remembered for its strong relativist pushback, now intertwined with an assertion of "Asian values." These were described as values that, compared to the West, attach much more importance to family, community, and economic security, and much less to individual choice and authenticity. No doubt these delegates were not themselves relativists and believed these values to be universally superior. But by putting them in cultural and geographic terms, they squarely presented the conference with the question of relativism.

That question confronts human rights today in a great many contexts – gender-based laws, headscarf bans, child marriage, polygamy, clitoridectomy, blasphemy prosecutions, and stoning punishments are some contemporary examples. It is inevitable, given the wide gulf between human rights and the billions of individuals whose identities are wrapped up in contrary traditions. Human rights conceive of human beings as free and equal in a world where many cultures remain hierarchical, communal, and role-based. Where the UDHR mandates spousal equality, for example, Sharia law prescribes different rights based on gender and religion and confines men authority over women. There will be many more iterations of such conflicts, as massive migration, social media, resurgent fundamentalism, and populist propaganda continue to deepen ethnic divisions and diminish ideals of impartiality.

Korsgaard says, "normative claims are not the claims of the metaphysical world of values upon us: they are claims we make on ourselves and each other."

A. THE RELATIVIST IDEA

As stated above, a universal human right (in its moral incarnation) claims to be an objective moral right. It must be if its two central claims are to make sense. First, by definition, human rights are transcultural norms, and therefore claim to be objective in the sense that they are correct even if many cultures believe they aren’t. Second, like all moral claims, human rights purport to be binding, and if they comprised merely contingent cultural or individual preferences, they could not properly obligate those with contrary ones.

But this premise of moral objectivity must contend with the fact that societies have developed so many different moral codes. One rejects polygamy, another embraces it; one confines women to the home, another deems that unjustly discriminatory. These differences reflect the diverse moral goods that different cultures venerate. They may emphasize or exclude liberty, conscience, welfare, equality, duty, honor, social harmony, purity, liberation from suffering, or
submission to god, to name some among many. In theory, mutually exclusive moral cultures are consistent with moral objectivity, as objective truths are independent of whatever people happen to think them to be. But this diversity, at the least, casts doubt on the claim’s plausibility, and many philosophers have thought it sufficient evidence to rebut the objectivist claim entirely.22 On any but the most metaphysically implausible view of morality, objective moral principles must be discernible by human beings, so one would presume that equally rational peoples would converge on those answers, but to a significant degree that is not the case. There is no equivalent mystery, however, if moral convictions register, not as objective morality, but something non-universal – for example, subjective attitudes, as emotivists claim;23 or the power of elites to “universalize” their own beliefs, as theorists from Thrasymachus to Foucault argued;24 or socially approved habits, as Ruth Benedict believed.25 Such causal explanations might seem morally nihilistic since they seem to replace the categorical moral ought with a contingent and morally arbitrary is. But cultural relativism presents an alternative: it seeks to avoid so extreme a conclusion while accommodating such genealogies. To describe how it claims to do this, let us begin with what I consider the central idea, which is a meta-ethical one, and then distinguish some first-order ethical ideas that go by the same name.

META-ETHICAL RELATIVISM

Conceptions of fairness and morality are found in virtually all human cultures, and even in some primate societies, researchers say.26 The meta-ethical relativist’s idea is that these are empty vessels—formal categories that point to no particular norms or practices at all. It remains for each culture to construct “fairness” and “morals” in its own way. One can’t condemn racial hierarchy as unjust without qualification; whether it is unjust is relative to a given culture’s standards.

This is not what some call “descriptive relativism,” which merely asserts the uncontroversial fact that cultures embrace different basic moral codes.27 Genuine moral relativism does not simply report that some culture regards racial hierarchy as a just or virtuous practice, but that this belief is in some relative sense true. As put in fifth century Jain philosophy, “all standpoints are right in their own respective spheres – but if they are taken to be refutations, each of the other, then they are wrong.”28 The heart of moral relativism is the view that moral statements can be true, but only locally so.

Relativism is a normative take on conflicting values, but not only that. Values must be applied to facts, and as the anthropologists’ statement above implies, even cultures sharing the same values may describe the world differently enough to generate very different moral conclusions. For example, a slave-owner could combine the conviction that all human beings have inalienable rights with the belief that slaves are not fully human. Justice demands we “treat like cases alike and different cases differently,” but this can lead anywhere if there are no privileged descriptions of cases but only culture-bound interpretations of them. Depending on place and time, treating like cases alike may mean treating abortion and murder as identical wrongs, and treating different cases differently may mean assigning roles according to caste or limiting the vote to the propertied class.

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22 Edward Westermarck, Ethical Relativity (The International Library of Philosophy, 1932); John Mackie, Ethics: Inventing Right and Wrong (Penguin, 1977), 36.


24 Socrates challenges Thrasymachus’ claim that justice is merely the advantage of the stronger in Plato, Republic, Book I, 338c. Michel Foucault famously reframed so-called universal truths as “truth effects” in a system of “power-knowledge” whose functions include the production and maintenance of social discipline. Michel Foucault, Discipline and Punish 27-28, 194 (1979). However, on Nietzsche’s account, a second “slave morality” arose from the underclass in order to subvert their master’s morality. Friedrich Nietzsche, Beyond Good and Evil 118 (W. Kaufman trans., Penguin Books 1973).


26 Sarah Brosnan & Frans B.M. de Waal, Monkeys reject unequal pay, 425 Nature 297, 297–99 (2003). The researchers report that capuchin monkeys demonstrate a sense of fairness, in that their subjects would reject an ordinarily desired reward when they saw another monkey receive a more desirable reward for accomplishing the same task. Id.


In embracing morality while insisting on its cultural limits, relativism seeks to combine and reconcile (1) the obvious correlation between one's values and one's culture, suggesting that diverse cultural codes have some sort of equal standing, and (2) one's constitutive assumptions that there are truths (not just beliefs) and values (not just valuations) that one's own culture may be transgressing. These are usually seen as contradictory. If morality is a social construction that could have been otherwise, it seems morally arbitrary. Relativism's solution is the concept of "local truth" or "true-for." Whether there is any conceptual space between "truth" and "belief" that allows for this is something we will discuss shortly.

THREE "RELATIVISMS"

The relativist view just described is meta-ethical because it is a claim about the nature and meaning of moral claims, not a moral claim itself. Nevertheless, one could argue that meta-ethical relativism inflicts two first-order ethical casualties. First, it strips human rights of its rationale as a mandate of global justice. Global justice entails trans-cultural principles of justice, but there can be none if justice is always a local construction. Second, it contradicts the categorical content of any particular human right. A human right against enslavement is a claim that slavery is wrong everywhere, whereas according to meta-ethical relativism, whether slavery is wrong is contingent on the cultural framework. It's quite difficult to pry the two propositions apart. Call this ground for dismissing human rights the impossibility objection: meta-ethical relativism renders the universal and categorical elements of human rights impossible.

There is another kind of relativist objection to the universality of human rights – not that it is impossible, but that cultures ought to be left alone to act and live by their own lights. This is a first-order moral claim, not a meta-ethical theory. If this is relativism, as it is commonly labeled, it is of an entirely different sort, as it presents tolerance as a universal objective claim. It is, however, fatal to the universality of human rights. Call this ethical relativism and its objection to universal human rights the tolerance objection.

In Part IV, I discuss a third view – variously identified as relativist, pragmatic, or postmodern – that emerged as a powerful influence near the end of the 20th century and expresses a common view today. It rejects the claim that human rights can be transcultural objective norms, but unlike other relativist views, it also claims that appeals to objectivity are unnecessary; therefore, it can claim to be an ally of human rights. Call this view the pragmatic objection (for its prominence in some pragmatist circles).

B. THE MIRAGE OF META-ETHICAL RELATIVISM

Meta-ethical relativism's idea of local truth is a difficult one. Navigating it is like trying to exit a hall of mirrors: there are only dead ends, all springing from the theory's incoherence. Here are three.29

1. Self-refutation. Versions of this argument date back to Plato. It begins with a question to the relativist: Is relativism "objectively true" or only "true for you"? The first answer appears self-refuting on its face. But the second answer is no better. The interrogator can follow up with "well, relativism isn't true for me," reducing the second answer to the incoherence of "relative relativity." If moral relativism is itself relative to some condition, and moral universals exist in the absence of that condition, moral universality is relative.

2. Cultural "fit" is a necessary part of the local truth idea. It opens up some kind of conceptual space between "truth" and "belief" – a space that can't exist on the common view that a true belief is one that corresponds to reality. Cultural fit allows for an alternative coherent conception of truth, whereby a belief is true by virtue of its coherence with other settled beliefs. This appears to allow for local truth – "local" because truth can be relative to a culture’s other beliefs, and "truth" because of the possibility that beliefs are mistaken (do not fit" in the right way).

For cultural fit to be a meaningful interpretive criterion, it must be an extra-cultural one that can be applied to all cultures. Yet relativists should be skeptical of that possibility: if their theory rules out a global standard of justice, why doesn’t it rule out a global standard of coherence as well? The philosopher Hilary Putnam argued that it does and that because no such standard can exist for the relativist, she cannot distinguish someone's "being right" from "thinking he is right," which is to say he cannot have any concept of truth at all, even local truth.30

Now, these first two objections might be dispatched by an argument that only first-order moral judgments are relative. A claim that patriarchy is unjust would be relative to culture, but the meta-ethical claim that "all moral judgments are relative," and the coherence criteria it suggests could be absolutely true without self-contradiction. This works in principle: that people share a universal logic need be no more debilitating to meta-ethical relativism than that they share the powers of speech or sight. But at least, relativists would owe us an explanation of why this is true – why moral standards are relative to culture, but standards of coherence are not.

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29 For a more comprehensive treatment of these and other anti-relativist arguments, see Blumenson, “Mapping the Limits of Skepticism in Law and Morals,” 74:3 Texas Law Review (1996): 523-576.

3. Why relative to culture? We have been discussing cultural relativism. There are other possible frameworks, however. One may ask: Why relative to culture rather than language (Sapir’s view), or upbringing, or one’s motivations? Why relative to the actor’s culture rather than the evaluator’s, or some entirely different touchstone? These questions can’t be avoided by a theory that some framework justifies values. That is no claim at all without identifying what that framework is, and why.

The cultural relativist does identify the framework but can’t explain it. To do so, she would have to show why it is cultures that have this value-creating property, but that is foreclosed because relativism rules it out. Any justification of a particular framework would necessarily (1) rely on extra-cultural normative grounds and (2) transform conflicting moral standards into diverse circumstances that are relevant to the framework’s single normative standard. Thus, relativism disappears with the choice of a framework. This makes “cultural relativism,” “subjective relativism,” the like oxymorons, and the more general idea of moral relativism a kind of mirage that always remains out of reach.

C. THE FUTILITY OF ETHICAL RELATIVISM

The term relativism is also attached to the quite different idea of ethical relativism. This is a first-order moral claim mandating tolerance for another culture’s practices. There are two separate arguments for this view. The first is by inference from the meta-ethical relativist’s impossibility objection: if global justice is impossible, cultures must be left alone to act and live by their own lights. This is a seductive but faulty inference. The other route to tolerance has no meta-ethical element; it is simply a moral conviction to be argued for in the same way as other such convictions. I consider each separately, in that order.

Let us suppose that, contrary to our discussion above, the meta-ethical concept of local truth is viable. Is the inference from that to a first-order ethic of tolerance tenable? No, because meta-ethical relativism provides no more reason to prefer that ethic than an ethnocentric one.

As an example, consider how an American relativist should regard the Qawama laws in Saudi Arabia that dictate male authority and female submission, assuming that, for the American and her culture, justice demands gender equity. She won’t find an answer in the meta-ethical idea of local truth because, like the duck-rabbit optical illusion, it suggests two opposing views simultaneously. Her gender equality norm is simultaneously both a cultural discourse and a moral proposition (truth claim), and which portrayal she favors makes a difference. If our American relativist looks at the equality norm as her own cultural discourse, she has no grounds to reject her own cultural truth, including universal rights. According to meta-ethical relativism, there is nothing beyond that discourse with which to assess and reject it, and in particular, no transcultural rule that one’s moral discourse must announce its own culturally constructed history. This view suggests not tolerance but ethnocentrism.

If the relativist instead sees the gender equality norm as a universal truth claim, she may think she must reject it as false. Universal principles of justice can’t exist if justice is a purely cultural construct; therefore, the Saudi laws cannot be universally unjust. But even this is not so clear, because while meta-ethical cultural relativism holds that truth is relative to culture, it doesn’t indicate whose “local truth” that is and rules out any extra-cultural moral argument that would. If it is the appraiser’s rather than the actor’s, she will say that the Saudi laws violate a universal moral constraint.

The other kind of ethical relativism asserts an ethic of tolerance and non-interference towards other cultures more directly. Although commonly described as cultural relativism, in effect it is indistinguishable from the cultural absolutist’s claim that every culture should be the final arbiter of its practices.

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3 Edward Sapir, quoted in J. M. Penn, *Linguistic Relativity Versus Innate Ideas* (The Hague: Mouton, 1972), 23 (“no two languages are ever sufficiently similar to be considered as representing the same social reality”).

32 I leave aside the issue that showing this would require what Hume argued was impossible, deriving an *ought* from an *is*. Hume, Treatise on Human Nature, Book III, Part I, Sec 1.

33 As a parallel example, consider the ethical theory of instrumentalism, which evaluates reasons for action in terms of the agent’s aims. Although instrumentalism is an agent-relative doctrine, it does not give the relativist what she needs because it privileges one moral norm— that people should act in ways that further or facilitate their ends— against all potential alternatives.

Where the relativist sees cultures as black holes beyond evaluation, the universalist sees them as diverse settings to be taken into account through contextualized applications of universal norms.

As an ethical principle, unlimited tolerance is highly dubious. Tolerance is not the supreme or only value. It is not plausible that one should always tolerate even the most morally repugnant conduct, such as genocide.

That criticism is contestable, but the naiveté of this ethical relativist version is not. It imagines a self-identifying, monolithic black box it calls "culture." But cultures are far from homogenous and can be themselves sliced into thick or thin subcultures. For example, the Pakistani “culture” is a tapestry that includes feminists organizing against Sharia laws that other Pakistanis support, ideals at odds with social practices, and laws that contradict both. One can’t derive moral direction from a Pakistani cultural framework without some additional theory that identifies which of these counts as the relevant, value-creating one.

The theory most ethical relativists seem to hold is, whatever emerges as the prevailing view is what counts – a theory to end all judgment save one, the judgment in favor of the status quo. But why should we think that whatever is the case is always identical to what should be the case?

Some are unsatisfied with that hidebound interpretation struggle to identify a different subcultural referent. An example is Margaret Radin’s argument for relativism that takes “the commitment to embodied perspective very seriously indeed, and especially the commitment to the perspective of those who directly experience domination and oppression.”

This is more appealing than the status quo theory, but still bad ethics. If one can identify oppression in other cultures in order to defer to the moral vision of its victims, one can also identify oppressive practices by otherwise victimized groups, and “embodying their perspective” in such cases would be a moral mistake. It makes clear moral sense to enhance one’s moral judgment by listening to excluded voices, but no sense to outsource it to some mythical, value-creating subculture.

III. THE CHALLENGE OF DIVERSITY

Relativism fails to state a coherent claim, but its rejection of global justice across diverse cultures can be captured in a more challenging way. Recall that where the relativist sees cultures as black holes beyond evaluation, the universalist sees them as diverse settings to be taken into account through contextualized applications of universal norms. The skeptical objection is that this is fantasy. Contextualizing human rights norms, spelled out, applies abstract, open-ended interests and norms to radically diverse circumstances, reckons with multiple considerations by “balancing” them, and then discounts these calculations by the assessor’s estimate of the degree of her ignorance and incomprehension. The complaint is that such a process can’t produce anything as determinate and specific as a set of customized human rights. “Contextualization,” then, is a non-rational endeavor that ascribes false moral authority to one political position among many.

This is a more difficult claim to refute. It is more plausible than relativism (even the universalist must admit that human rights are subject to a great deal of indeterminacy), and the burden of proof is steeper. Instead of finding fatal flaws in relativism’s affirmative theory, the universalist must defend her own, at least to the extent of showing it superior to skepticism about it.

Of course, there are many other possible grounds for skepticism about the universality of human rights. One may doubt that there are any universal moral norms to contextualize, or that people whose beliefs reflect their culture could have access to them, for example. The final part of this chapter addresses such doubts.

A. CONTEXTUALIZATION AND INDETERMINACY

As described earlier, universality does not imply a one-size-fits-all formulation of human rights applicable to all times and places. As circumstances and cultures change, so will the impact and meaning of specifications devised in an earlier time; then they too must change to maintain fidelity to the universal norms that justify them. This is particularly obvious in the case of human rights obligations, as they are instruments for the realization of rights, and the most efficient means will vary greatly in different times and places. But it is also true of rights themselves. The substance of a right may be conveyed in terms ranging from the most abstract to the most concrete. The latter – specifications, implementations, and adjudications – may be expressed in many different, but not unlimited, ways.

One-size-fits-all human rights are self-defeating, but should one have more confidence in the universality of rights whose specifications differ to suit the context in which they apply?

If contextualizing a principle followed determinate rules as logic does, we could see if the rules were correctly applied. But a process that focuses on particularity and nuance cannot easily be reduced to rules or principles. There are rare syllogistic cases that can be (killing a person for sport is one), but most human rights principles must be applied to circumstances that are as varied as all the societies in the world. Although cogent arguments can be made, like recognizing a family resemblance, the answer may often

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depend on the “feel” of the case. This does not discredit contextualization in principle; relevant factors may not be reducible to rules but may still be cognizable intuitively. But it may prompt one to wonder whether such intuitions support a truly fruitful process or just the appearance of one.

B. DOWNSIZING THE PROBLEM

Humanity-based rights invite particularly strong skepticism because they encompass all of human history. That conjures the *reductio ad absurdum* of the caveman standing on his rights. There are other putative grounds for universal human rights that are not timeless. For example, if human rights are seen as protections against collective power, they could not precede some tribal social order. Many theorists today adopt a synchronic definition of human rights universality, according to which human rights are responses to the challenges of our time. Raz, Tasioulas, Habermas, and Beitz understand human rights universality in this way, or more broadly as protections against threats that arise under “conditions of modernity.”

As a pragmatic matter, synchronic universality is attractive. We may have more moral acuity when human rights considerations flow directly from our world of mass media, genetic engineering, schools, hospitals, courts, nation-states, international markets, global threats, and so on. We need not then tailor rights relevant to our era to fit a Procrustean bed of timelessness. Problems of relativism and contextual indeterminacy remain, but on a smaller scale.

But what is the reason we moderns are rights-bearers if human dignity is not? According to Joseph Raz, there is no principled reason, but the pragmatic justification is sufficient. It can’t be entirely sufficient, though, because it leaves a void that will certainly play out in practice. One would expect human rights opponents to question why human rights have the moral privilege to overrule their electorates, for example. Nor can a synchronic conception be insulated from inquiries into human nature: to know what the challenges of our time are requires some sense of what a human being is. (Is a state’s deployment of technology that reduces crime by surveilling all persons such a challenge? Can one answer that question without considering whether human beings have an interest in privacy that stands apart from their circumstances?) “It is not possible, without inconsistency, to defend human rights with one hand and deconstruct the idea of humanity with the other,” Tzvetan Todorov wrote. One can, however, imagine a different kind of pragmatic argument for a synchronic approach that does see human rights as humanity-based but, to the degree possible, focuses on our own times because that is the category of most interest to us: the contemporaneous world in which all our decision-making and action occurs. The idea would be that synchronic human rights need not address rights at earlier times to be intelligible, in the way that human rights need not rule out animal rights to be intelligible.

Although also applying a time-bound qualification to human rights, Bernard Williams offered a reason for it that incorporates the skeptic’s concerns but also limits them. On his account, moral assessment becomes impossible as the cultural values become too opaque for the assessor to comprehend. People can evaluate a different way of life, he argued, only if adopting it is a “real option” for them, in the sense that they could “live inside it… and retain their hold on reality.” In other cases, such as the way of life of a Bronze Age chief or a medieval samurai, one can only observe its practices as historical phenomena beyond ethical evaluation. Williams’ “real option” criterion reflects his view that ethical knowledge cannot be reduced to abstract principles but resides in thick descriptive/evaluative concepts (like “obsequious,” “chaste,” or “daring”) whose sense flows from participation in a particular way of life. The theory is a roughly synchronic one because Williams also claimed that, given the advent of truly global interconnectedness, all cultural confrontations today are real options, so the entire contemporary world is amenable to ethical understanding and appraisal.

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18 Aharon Barak takes this position, arguing that the “without society, rights have no meaning. Implicit in the establishment of society is the acknowledgment of its authority to prevent its members from acting solely according to their will or interest.” Aharon Barak, “Proportionality and Principled Balancing,” *Law & Ethics of Human Rights* 4, no. 1 (2010): 1-18 at 3.


41 Ibid. at 156-160, 163-164.
Synchronic human rights need not address rights at earlier times to be intelligible, in the way that human rights need not rule out animal rights to be intelligible.
Williams called this cognitive boundary a “relativism of distance,” but what makes the idea interesting is the way it departs from relativism. A cultural relativist treats all cultures as beyond judgment, but Williams’ conception doesn’t disable judgment across diversity in this way. It asserts limits to our comprehension and competence as evaluators but also embraces ethical evaluation in less alien cases. Where Williams went wrong was hedging this theory to such an extent that it is difficult to see the principle at work in many cases. He avoids cultural relativism in the contemporaneous world by deeming it a single global culture, but given his theory of thick ethical knowledge, one still wonders why we would be able to understand and evaluate the most intractable, tightly woven traditional societies today and not older ones that may have been virtually identical. Williams might respond that we would be able to understand both, by virtue of a second exception: considerations of justice may be “a central element of ethical thought that transcends the relativism of distance.”42 But this exception greatly undermines the intuitive appeal and significance of the relativism of distance idea.

These strained assertions suggest that the “real option” limitation is too formulaic to adequately address our concern, the problem of contextual indeterminacy. Williams was right to emphasize the limits of moral discernment regarding certain extremely dissimilar cultures, but identifying them as those cultures where the assessor would lose her “hold on reality” is too facile.43 The same can be said against the earlier synchronic universality claims. Both downsizing endeavors are too binary to acknowledge that indeterminacy is a matter of degree, and results from more factors than ignorance or place in time.

As an example, consider the contemporary practice of coercive arranged marriage. At first look, this seems antithetical to the strong interest competent adults have in personal autonomy. In the West, most people would say that exercising control over one’s life, subject to limits imposed by the interests of others, is a right, and this includes choosing one’s spouse and other intimate relations. Traditional societies place less value on individual autonomy and more on honorably fulfilling one’s communal roles,44 but assume the modern ethic is universally valid. It is still the case that traditional societies have been built on communal identities, and that in itself makes “taking account of context” perplexing. In much of India, for example, marriage is not just a union of two people, but a multi-generational alliance of families. A woman who marries becomes part of her husband’s extended family, each of whose members bear responsibility for the welfare and support of the others. In that context, marriage is an integral part of a larger kinship system with far-flung reciprocal obligations. It is arguable that the norm of autonomous choice that attaches to a self-regarding partnership is not applicable when so many others also have interests at stake, making arranged marriages permissible; it is also arguable that the norm does apply if the closest or most significant relationship within this kinship system is the married couple. One may doubt either answer has a sufficiently determinate link to the norm to have any justificatory force.

In this case, uncertainty partly stems from multiple factors relevant to the autonomy norm, a problem that doesn’t disappear because the question is contemporaneous. It also stems from the conceptual vagueness of the universal norm. Vagueness is built into such norms generally, as they must be independent of non-universal institutional, cultural, and economic contingencies.45 Moreover, whatever one decides the autonomy norm demands, that still must be balanced against other norms – particularly a people’s right to self-determination.

Given all these sources of uncertainty, we would expect to find great differences of opinion and a never-ending struggle among them – which is what we have. In practice, this doesn’t relieve a human rights council from the burden of deciding a case before them, nor does it necessarily warrant deciding one way or the other (though legal and other factors might), since there are putative rights on both sides. (Is it interference with a cultural or democratically instituted practice that requires clearer cases, or inference with a person’s autonomy that does?) But it does seem obvious that there are many cases that challenge one’s moral discernment.

This doesn’t justify skepticism about universality or the project of human rights tout court, however, as there are also cases about which one has much more confidence. It is not too difficult to understand that a right to physical integrity that prohibits assault may today also prohibit harmful pollutants. Nor is it speculative that a system of

42 Ibid. at 166-167.

43 In work published posthumously, Williams somewhat modified the grounds for his relativism of distance. Rather than rely on the border between “real” and “notional” confrontations, he emphasized that “the past is not within our causal reach. So far as human rights are concerned, what matters is what presents itself in our world, now.” Bernard Williams, “Human Rights and Relativism,” in In the Beginning Was the Deed: Realism and Moralism in Political Argument, ed. Geoffrey Hawthorn (Princeton, NJ: Princeton University Press, 2005), 62-74, at 69. That ground seems to me incompatible with the relativism of distance because conduct undertaken yesterday and undertaken in feudal times are equally beyond judgment on that argument. It also assumes, wrongly, that judgments of past conduct have no import for contemporaneous decision-making.


45 According to Charles Beitz, the universal norm’s independence from contingencies also limits their content, and therefore restricts the range of derived rights the context may call for. C. Beitz, The Idea of Human Rights (Oxford: Oxford Univ. Press, 2009), 44-45, 56.
slavery directly violates a person’s interest in autonomy and liberty, or that genocide violates the rights to life and nondiscrimination. Writing about all forms of moral skepticism, Richards says, “I myself do not see how it could make more sense to believe that nothing (e.g., not even typical cases of genocide or torturing children) is morally wrong than to believe that at least some things are morally wrong.” Uncertainty about some moral claims is no argument against others.

Some things are easy to see as universally unjust because there are some fundamental universal human interests they violate without plausible justification. These include, for example, interests in life, nutrition, shelter, health, freedom from pain, and in less tangible interests that are elements of a distinctively human life, such as knowledge, sociability, self-expression, self-direction, and equal moral status. These are not socially constructed, but basic, intelligible, and shared across humanity. They provide a route to understanding and moral judgment across even the most dissimilar cultures. This explains why, to paraphrase Ernest Gellner, no anthropologist has ever returned from a field trip saying, “I couldn’t understand anything about them.”

IV. THE LIMITS OF SKEPTICISM

The relativist and indeterminacy objections are conceptually distinct. The former denies moral universals; the latter says even if there are, they are too few or too vague, and the settings of their operation too diverse, to justify human rights claims. But both arrive at the same conclusion: they reject the premise that human rights are universally valid or, in different words, morally objective. Now I want to explore some considerations that make the wholesale rejection of moral objectivity unreasonable – beyond the limits of rational skepticism.

To see that limit, let us consider the human right against enslavement. This is among the best cases against anti-universalist skepticism, given the strength and certainty of the moral conviction offered as a fatal counterexample. To such a case the skeptical response must be: however certain one is that enslavement is universally unjust, one can’t know whether this certainty arises from the truth of the conviction or is illusory. People are also certain about abortion, but in opposing ways. So even the most powerful intuitions or arguments don’t indicate whether they are, or merely seem, true. Moreover, there is nothing else that can; as Dworkin said, “there are no arguments for the objectivity of moral judgments except moral arguments...[W]e can give no sense to the idea that there is anything else we could do in deciding whether our judgments are ‘really’ true.” The objectivity of an experienced moral certainty is not amenable to direct proof, any more than the question of whether we are brains in a vat or digital code in someone’s hard drive.

However, that doesn’t end the matter. The question remains: is one’s moral sensitivity a window on truth, or is it not? In the absence of non-moral evidence, one must presume the answer. Are there any non-evidentiary reasons to choose one answer over the other?

Put in these terms, many today would choose the skeptical answer. Claims to objectivity, universality, and impartiality are badly suspect in our postmodern age, not only for misrepresenting what is in actuality a culturally partial viewpoint but also for legitimating that viewpoint as “neutral” or “universal” rather than imposed. In the human rights arena, this view might produce a view of human rights universality as the rhetorical successor to the mission civilisatrice of imperialists in the past. The conclusion is that we should stop claiming we have a view from nowhere and admit that the moral standards we apply are simply our standards.

But do we really have this choice? If, as Stanley Fish argued, “everyone experiences her convictions as universally, not locally, true,” our ability to deny that there are any universal moral truths is limited: we can create anti-universalist theories, but we can never put them into practice. There are other inert theories of this sort. An obvious example is the theory of causal determinism. Even if our choices are dictated by past events and conditions, that can’t tell us what to choose, nor can it relieve us from having to choose; therefore, it can’t unseat the assumption of free will with which we live our lives. Someone who believes we can abandon that contestable assumption transgresses a limit on skepticism about free will: the inescapability of one’s own agency.

Now, this is also the rational limit on skepticism towards universality: our agency constrains us to endorse our own moral awareness as a window on moral truth. This makes relativist and skeptical claims that we should withdraw that endorsement possible in theory but useless in practice.

Let me offer two examples—the limits on skepticism imposed by rational, and then moral, agency. For the first, consider a theory that denies the integrity of contextualizing universal principles to diverse settings, on the nominalist ground that there is no objective line separating relevant factors from irrelevant ones; everything serves as the context for everything else. That makes every case unique. There are no generalizations to be drawn, including generalizations about the impact of particular circumstances. Some philosophers known as Cambridge Contextualists presented theories in this vein.

I do not know whether nominalism of this sort makes theoretical sense, but clearly, it has no practical application in life. It runs up against the inescapability of our rational agency: we would not be thinking beings if we saw everything as one-of-a-kind by every metric. In his story *Funes the Memorious*, J. L. Borges imagines a teenager burdened with this cognitive malady. Funes remembers every detail of everything at every individual point in time. “It was not only difficult for him to understand that the generic term dog embraced so many unlike specimens of differing sizes and different forms; he was disturbed by the fact that a dog at three-fourteen (seen in profile) should have the same name as the dog at three-fifteen (seen from the front).” Borges then writes, “To think is to forget a difference, to generalize, to abstract. In the overly replete world of Funes, there were nothing but details, almost immediate in their presence.” Without generalizing from experience, one can’t learn, reason, or decide—only react.

Of course, this does not describe human existence. We never look at the world and see only innumerable one-offs incomensurable with everything else. We have learned, for survival or otherwise, to discern relevant similarities and differences across cases. That is what taking context into account means, and why there is no alternative.

To further unpack the skeptic’s dilemma, let us now consider moral agency and the bounds it imposes on skepticism about moral universals (whether based on relativism, implausibility, or something else). A revealing example, because it transgresses those bounds and thereby nullifies itself, is the now one-hundred-and-fifty-year-old pragmatist effort to drop our “unnecessary” reliance on claims of universality and objectivity (although by no means a unanimous pragmatist view). Oliver Wendell Holmes, a first-generation pragmatist, argued we are fully justified in trying to change the world to our liking, but that “hardly warrants our talking much about absolute truth...instead of saying that they ought to be, I merely say they are part of the kind of world that I like, or should like.” The Scandinavian pragmatist Alf Ross argued the point more acerbically, I am against this rule, because it is unjust. What he should say is: This rule is unjust, because I oppose it. To invoke justice is the same thing as banging on the table: an emotional expression which turns one’s demand into an absolute postulate.

That tradition was brought up-to-date, and quite influentially, by Richard Rorty. In his essay *Human Rights, Rationality, and Sentimentality* and other writings, Rorty renounced any interest in the objectivity of human rights but argued it is unnecessary in any case. We would do better, he argued, to “realize the relative validity of [our] convictions and yet stand for them unflinchingly.” On all of these accounts, talk of “injustice,” “universality,” and “objectivity” is just rhetoric we can abandon at no cost. Although this is a very widely held view, I think that is clearly false (especially on the pragmatic criterion with which it is offered), and a good demonstration of why there is no legitimate anti-universalist, anti-objectivist alternative.

**To the question, what is a fair way to resolve a cultural conflict? The answer there is none is not a decent option.**

### **A. THE USES OF OBJECTIVITY**

Suppose we replace the claim that slavery is unjust or violates a universal human right with the suggested alternative, a statement like “we oppose slavery.” What is lost in this translation from the objective right to subjective preference? Obviously, the two statements convey different meanings. To speak of the “competing preferences” of a slaveholder and a slave is to speak in the language of the market, not justice. If we are at all concerned about the injustice of slavery, we would have no words to say so.

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50 According to William James, “universal conceptions...may be as real for pragmatism as particular sensations are...If they have any use they have that amount of meaning...On pragmatistic principles, if the hypothesis of God works satisfactorily in the widest sense of the word, it is true.” W. James, I. Skrupskelis, and F. Bowers, *Pragmatism: A New Name for Some Old Ways of Thinking* (Cambridge, MA: Harvard Univ. Press, 1978), 131, 143.


Of course, the idea is that we don’t need to have this kind of conversation. We can still explain why we oppose slavery, and that’s enough. We can describe the suffering, abuse, debasement, and other horrors that come with slavery and can illustrate them in stories and films. These considerations may well be persuasive to others. Nothing more is gained then by claiming that slavery is objectively wrong and slaveholders are morally bound to liberate their slaves.

One can’t persuade the Gestapo by driving them up against an argumentative wall, Rorty said. This is true as far as it goes, but the futility of arguing moral claims with the most immoral is not evidence that moral objectivity is useless or unimportant. Suppose such claims have no purchase on some people and do only on morally motivated people with an abiding worry about treating someone unjustly; someone with that sentiment would still need a language to articulate what that treatment would be. That the Gestapo would remain unmoved does not nullify your reflections on the morality of its actions, or your own.

Moral objectivity is the premise that underlies all reflection on whether one’s dealings with others are fair or merely willful. In the human rights context, the question often takes the form of whether a human rights intervention is justified or is an instance of cultural imperialism. That the country in question has a greatly dissimilar value system doesn’t obviate the need for an answer to this question. To discern it requires identifying the border between acceptable diversity and moral constraints, a border that can only be seen through an objective and impartial lens. “Relative validity” can’t recognize it.

It would be easy to dispense with the concept of objectivity if it were no more than “banging the table,” or esoteric metaphysical backup for value judgments that can stand on their own. But as this discussion shows, the premise of objectivity is a necessary part of the value judgment.

B. THE DEPLETED ALTERNATIVE

What’s left to decide cultural conflicts if we dismiss the possibility of a transculturally just resolution and treat them as no more than a clash of competing wills? The only ethical question then is whose wishes should prevail, ours or theirs? And the only possible answer is a commitment to either ethnocentrism or deferential relativism. But that choice of dogmas is no way to express one’s moral sensibilities or navigate cultural conflicts. To the question, what is a fair way to resolve a cultural conflict? The answer there is none is not a decent option.

I close this discussion with a brief excursion into this alternative, anti-universalist world as it would exist in practice. We have already seen that relativism is useless to a decision-maker, so let us focus here on the alternative Holmes, Ross, Rorty, and numerous other pragmatists and postmodernists propose. This is the ethnocentric alternative, according to which we need no justification for pressing our own agenda; we just need to stop caring whether it has transcultural validity.

The most extensive model comes from Rorty, the pragmatist philosopher who explicitly claimed that human rights would do better severed from its objectivist premise. In rejecting that premise, his model mandated a new way of thinking: we are to think of morality as a summary of our practices, not a justification for them; truth as a “compliment” paid to beliefs one accepts; irrationality as a deviation from the community, and so on. There is no need, he thought, to “ask about the relation between the practices of the chosen community and something outside that community.” Should we seek to discern truth and morality by reference to such a mediating, ethnocentric framework? One response might be: how can we not discern them through our own cultural framework? But this would misconstrue the


58 Ibid. at 199.

59 Ibid. at 21, 30. See also id at 23, 29, 30 (identifying pragmatism as ethnocentric); Richard Rorty, Contingency, Irony and Solidarity (Cambridge, UK: Cambridge Univ. Press, 1989), 59-60 (we should identify morality with our practices); Richard Rorty, “Human Rights, Rationality and Sentimentality,” in On Human Rights: The Oxford Amnesty Lectures, eds. Stephen Shute and Susan Hurley (New York: Basic Books, 1993), 111-134, at 117, 126 (arguing that we should make our culture more self-conscious and powerful, and identifying himself as a Eurocentric intellectual); Richard Rorty, Philosophy and the Mirror of Nature (Princeton: Princeton Univ. Press, 1979), 361 (objectivity ‘should be seen as conformity to the norms of justification...we find about us [rather than] a way of obtaining access to something which ‘grounds’ current practices of justification in something else’).
question, which is whether we should identify truth and morality as, and aim for, cultural correctness. The only sensible answer is that we have no reason to shackle our judgment in this way, somehow replacing our interest in valid judgments with an interest in conforming ones. Nor can we, because, in Hilary Putnam’s words, it is “a presupposition of thought itself that some kind of objective ‘rightness’ exists.” That puts these proposals beyond the reach of anyone who would act on them. They make the most fundamental distinctions we rely on – between knowledge and belief, impartiality and bias, fairness, and power – incomprehensible.

We can trace the problem back to its root: the decidedly un-pragmatic conflation of two viewpoints that serve independent needs. These are the first-person internal viewpoint of an agent acting, and the third-person external viewpoint of a witness observing. Through the first lens, one sees reasons to be weighed in making a decision; through the latter, behavior, sometimes in predictable patterns. Quite clearly, these two viewpoints cannot substitute for each other. An observer may be able to treat truth as a “compliment” paid to beliefs one accepts, for example, but an agent who tried to do so would find himself chasing his tail. It is similarly impossible for an agent to treat “everything – our language, our conscience, our community – as a product of time and chance [and] chance as worthy of determining our fate” (Rorty). To think of one’s commitments as socially constructed is more likely to prompt the question of whether to change or maintain them. That question is ever-present for an agent – some argue personhood is defined by the ability to ask it – and the answer must be in terms of values worth valuing, not just descriptive genealogies.

Of course, the second behavioral lens casts a very large cloud over the first; it suggests I only think I’m deciding who I will vote for, when a sociologist may already know. With regard to my argument, however, that deep philosophical problem is immaterial. What is relevant, and I believe indisputable, is that the agent’s first-person viewpoint is ineliminable. It’s the attempt to replace it with the observer’s third-person lens that sends practical reasoning off the rails: one can’t act from any but the agent’s viewpoint, after all.

There is some irony in the pragmatist origins of this “post-metaphysical” practice. Pragmatists believe that propositions should “be tested by their consequences, by the difference they make – and if they make none, set aside.” Instead, Holmes, Ross, Rorty, and their like-minded colleagues allowed theory to blind them to the way extra-cultural standards function in a person’s life and came up with a revisionist discourse so divorced from the human experience of agency and choice that it can’t be used. This is the kind of case T. S. Eliot must have had in mind when he described pragmatism as true but “of no use to anybody.”

I have just argued that one has good reason to endorse the reality of one’s own moral sensibility, and in practice, no ability to presume otherwise. This may strike some people as the epitome of ethnocentrism, so let me clarify why it is the opposite.

By moral sensibility, I mean one’s capacity to imagine the world from an impartial standpoint that assigns equal value and importance to each person, oneself included. As Nagel says, the impartial standpoint, and the moral dynamic it generates, ineluctably confront us as moral agents. Unless we are sociopathic, we understand that our preferences may be unjustified and that our relationships do not reduce to a choice between deferring to another’s will and imposing our own. We experience first-hand the difference between coercing and persuading someone, between manipulation and fair treatment. Whether or not we are guided by these distinctions, they present us with a problem of fairness that is impervious to refutation or justification.

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60 Richard Rorty, Contingency, Irony and Solidarity (Cambridge, UK: Cambridge Univ. Press (1989), 22 (second emphasis added).

61 Harry Frankfurt makes this claim in his celebrated essay “Freedom of the Will and the Concept of a Person,” Journal of Philosophy 68, No. 1 (Jan. 14, 1971): 5-20. Frankfurt equates personhood with the presence of what he calls a “second order volition” – a desire to have a particular desire prevail as his will. He calls those without second order volitions, such as animals, very young children, and certain adults, “wantons”. Id. at 5. See also Charles Taylor, “Responsibility for Self,” in Free Will, ed. Gary Watson (Oxford, UK: Oxford University Press, 1982) 110, 112 (distinguishing between “weak evaluations,” in which I evaluate an object according to how well it fulfills my desires, and “strong evaluations,” which take place at a non-instrumental, second order level – essentially, what desires should I have?); Thomas Nagel, The View From Nowhere (Oxford, UK: Oxford University Press, 1986)(investigating the method of and prospects for attaining a view from no particular perspective).

62 Richard Posner, “What Has Pragmatism to Offer Law,” in Pragmatism in Law and Society, eds. M. Brin and W. Weaver (Boulder, CO: Westview Press, 1991), 35. Attributing the idea to Charles Pierce, one of pragmatism’s founders. William James wrote that if “there were any part of a thought that made no difference in the thought’s practical consequences, then that part would be no proper element of the thought’s significance.” William James, “Philosophical Conceptions and Practical Results,” University Chronicle Vol. 1, No. 4 (September, 1898), 287-310 at 290.


What’s left to decide cultural conflicts if we dismiss the possibility of a transculturally just resolution and treat them as no more than a clash of competing wills?

Ethnocentrists seek to shed this moral sensibility, not endorse it. The post-modernists and pragmatists we have been discussing, who say one’s preferences are the only moral justification needed, are ethnocentrists. Rorty rejects the quest for an objective moral truth as an effort to escape from humanity into the mind of God.\textsuperscript{65} We have seen it is the other way around: that quest is quintessentially human, while the alternative “post-metaphysical” discourse would leave us in a non-human world of causes rather than reasons – not “I oppose slavery because it’s unjust,” but at the root, “I’m against slavery because I’m a twentieth-first century American.”

\textbf{V. THE TRUTH IN THESE CRITIQUES}

Relativism and skepticism that reject universality tout court are a kind of cognitive mirage, theories that dissolve in the attempt to use them. There’s something wrong with denying that universality and objectivity are possible for human rights while assuming the opposite in our decision-making about most everything else. That assumption is an ineliminable ingredient of fairness, and there is no reason to abandon that ideal in global or intercultural cases.

There are, however, important truths embedded within these claims. One is their stress on the highly diverse beliefs, practices, and circumstances in the world, and their great – and greatly under-appreciated – relevance to moral judgments. Diverse values among cultures are not antithetical to moral objectivity, but they demand separating the latter from the certainty and dismissiveness that often come in its wake. Respect for persons at the root of human rights demands respect for their diverse beliefs as well, but not the blank check issued by relativists and skeptics. It is a pluralist ideal that recognizes there are many morally permissible ways to act, but also morally intolerable acts in which, in the right domain, human rights exist to rule out.

(In this way, human rights are primarily protections against injustice, not mandates that add up to an affirmative vision of justice.) Pluralism is a philosophy that emerges from a practical problem: the need for individuals with diverse views and values to understand, respect, and reach an agreement with each other.

The second important truth in these critiques is the recognition of our positionality. It is certainly true that we all see from somewhere, encumbered by our particular histories and interests, and this forecloses achieving fully impartial judgments. That much is clear. What is in dispute is whether that provides a reason to give up seeking a wider, more impartial view. It can’t, if positionality matters, as it emphatically does. If locating ourselves in history and recognizing our positioned perspective are morally important, it is only because they are necessary elements of acquiring a more just and inclusive view. That effort is not futile, even if we can never arrive at the final destination. What is futile is relativist and skeptical critiques that leave no room for this basic moral aspiration.

\textsuperscript{65} Richard Rorty, \textit{Philosophy and the Mirror of Nature} (Princeton: Princeton Univ. Press, 1979), 308, 377. See also Maurice Merleau-Ponty, “The Philosopher and Sociology,” in \textit{Signs}, trans., R. Mc Cleary (1964), 98, 109 (“As long as I cling to the ideal of an absolute spectator, of knowledge with no point of view, I can see my situation as nothing but a source of error. But if I have once recognized that ...[history] contains everything which can exist for me, then my contact with the social in the finitude of my situation is revealed to me as the point of origin of all truth, including scientific truth”).