

## The Universality of Human Rights: A Response

By William J. Talbott

I want to thank my critics for their excellent comments.<sup>1</sup> Before I try to respond to them, let me say something about the project that I intend to be contributing to. In my book, I ask the question: which rights *should be* universal? The book is the first of two volumes that try to answer it. In the first volume, which is the only one that has been published so far, I focus on the big picture and outline, in general terms, a list of nine basic rights. I provide both consequentialist and non-consequentialist rationales for the rights on my list. In the second volume Human Rights and Human Well-Being (forthcoming), I explain why I favor the consequentialist rationale over the non-consequentialist rationale, I specify more precisely the contours of the basic rights, and I consider which other rights should be universal.

One way of understanding my book is as an attempt to continue the Enlightenment project of identifying universal rights that all governments should guarantee for their people, but without the Enlightenment epistemology. The Declaration of Independence famously says: “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.” In my book, I discuss why the drafters claimed that those rights were self-evident, when, in retrospect, it is clear that their claims were not self-evident. To say that a proposition is self-evident is to assert that no one could reasonably disagree with it. At the time the Declaration of Independence was written, the prevailing model of justification for a belief was based on proof in mathematics, so I refer to it as the *Proof Paradigm*. Justification according to the Proof Paradigm required ruling out all reasonable disagreement. Of course, at the time during which the Declaration of Independence was written, there was lots of reasonable disagreement about universal human rights. We know that the Declaration’s contents were not self-evident, not even to the drafters, because many of them held slaves and defended slavery. Furthermore, from our historical vantage point, we know that which rights governments should guarantee their people is not self-evident, because we can see how our understanding of them evolves over time. Locke, Kant, and Rousseau were the main philosophical advocates of universal rights for men (at least, white property-owners), but none of them extended those rights to women.

The Enlightenment philosophers made some big mistakes. This is enough to show that there was something wrong with their epistemological paradigm, the Proof Paradigm. Because they thought they had a source of infallible moral knowledge, I say they were *epistemically immodest*. In my

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<sup>1</sup> This forum is based on an “Author Meets Critics” session at the APSA Annual Meeting on August 31, 2006 in Philadelphia, PA. I am grateful to Professors Ackerly, Beitz, Donnelly, and Shue, for their participation in that session and for their contributions here. I am also grateful to Professor Tan for his contribution to this forum, which is based on his participation with Professor Shue at a symposium on my book Which Rights Should Be Universal? (2005) at the University of Washington, April 10, 2006. Finally, I am grateful to Professor Mayerfeld for his excellent précis of my book, which he presented at the APSA session and which he graciously offered to include here.

book, I emphasize the importance in moral inquiry of epistemic modesty, of acknowledging that we may be mistaken.

However, many philosophers today would not stop with epistemic modesty. They would insist that there was also something wrong with the Enlightenment metaphysics—with the idea that there are fundamental moral principles that apply *strictly universally*—to all moral beings or all rational beings in all possible worlds. I call this *metaphysical immodesty*. For many philosophers, it seems obvious that if we give up the Enlightenment’s epistemic immodesty, we will see that we must give up its metaphysical immodesty also. If we no longer claim to have *a priori* access to truths that hold in all possible worlds, then how could we possibly have any way of being justified in believing any moral principles to be universal in this strong sense?<sup>2</sup>

In my book I build on the work of Mill, Rawls, and Habermas to outline an alternative to the Proof Paradigm as a model for reasonable moral belief, the Moral Discovery Paradigm. On the Proof Paradigm, reasoning is top-down, from moral principles to particular moral judgments. On the Moral Discovery Paradigm, reasoning is primarily bottom-up, from particular moral judgments about actual and hypothetical cases to the moral principles that best explain them. Because reasoning can go in both directions, I refer to the model of reasoning as an *equilibrium model*. Because the particular moral judgments concern actual and hypothetical cases, fully adequate explanatory principles would be true in all possible worlds, that is, *strictly universal*. Because our particular moral judgments are themselves fallible and because there is no way for us to survey all possible particular cases, any principles that we formulate will be fallible.

When Rawls (1971) first articulated the equilibrium model for moral reasoning, it seemed that he was using it to support a metaphysically immodest, and strongly universal theory of justice. However, Rawls quickly corrected this impression and in his later work made it clear that his liberal theory of justice was parochial, not universal (1993). So my use of the model is closer to Habermas than to Rawls. Habermas has consistently held that the fundamental moral principles are context-transcending (Habermas 1993: 24). Like Habermas, I believe that though moral reasoning takes place within a particular context, it can lead us to conclusions that transcend the context in which it takes place.

On this picture, Enlightenment philosophers, represented by the Proof Paradigm, and most religious traditions have seriously misunderstood moral reasoning. According to both the Proof Paradigm and to most religious traditions, moral reasoning proceeds from infallible moral principles to conclusions about particular cases. This is a mistake. In fact, moral development can occur because moral principles are subject to revision in the light of judgments about particular cases.

As I see it, this process of moral development has been going on for millennia. During that time, one of the main questions that has been raised is about how to morally justify the use of coercion, especially a government’s coercion of its people. Although the Western tradition is now often thought of as a human rights tradition, this is a misconception. Until the 17th century, the Western tradition was largely a tradition of absolute autocrats. There is a standard justification for autocratic

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<sup>2</sup> Kripke (1940) argued that some statements can be known to be true in all possible worlds on the basis of experience, but his account only applies to statements of a very special kind (e.g., the statement that the standard meter bar is one meter in length) and does not have any application to knowledge of fundamental moral principles.

governance that can be found in all autocratic traditions. It is paternalistic. Autocratic governments coerce their people for their own good.

This justification has seemed so obvious that it required centuries of accumulated experience of government abuse of its autocratic powers for the idea of individual rights to begin to take hold, first, simply as a corrective to particular government abuses of its power. But, over time, there developed an alternative conception of government legitimacy, based on the consent of the governed. As I see it, we are part of an historical process of discovering that paternalistic justifications for autocratic governments fail and uncovering the conditions for legitimacy of coercive governments. What is necessary for legitimacy if paternalistic justifications of autocracy fail? Just to require the consent of the governed is not enough, because, for example, an autocrat who controls education and the media and who limits freedom of expression and association can easily acquire the consent of his subjects, without thereby legitimating his government. The basic human rights are those that are necessary for citizen consent to legitimize a government.

What are those rights? There were two strategies I might have followed in answering that question. The *descriptive strategy* would have been to simply review the history of the development of rights to show how at each stage (e.g., rights of white male property owners, rights of white male non-property owners, rights of non-white males, rights of women) paternalistic justifications for oppression were challenged and rights came to be acknowledged. I could have pointed out that some rights (e.g., rights against slavery) seem to have been accepted worldwide, whereas others (women's rights to education and to career opportunities) have not. On the descriptive strategy, I would have simply left it open whether women's rights were truly universal, to be decided by future developments in the historical process of moral development that plays such a large role in my account.

In my book, I did not adopt the descriptive strategy. Instead, I followed the strategy followed by Locke, Rousseau, and Kant, which I refer to as the *prescriptive strategy*. One of my sources for the prescriptive strategy is Jack Donnelly, who emphasizes that the concept of a human right provides a standpoint from which to criticize existing laws (Donnelly 2003: 12). I would only add that the concept of a human right also provides a standpoint from which to criticize existing human rights documents and whatever the existing "overlapping consensus" on human rights may be. I signaled that I would be employing this prescriptive strategy, by using "should" in the title of my book.

In the book, I used the history of the development of rights as the basis for an explanation of it that could then be used to attempt to project where the historical process is going—at least, if potentially distorting influences are not too great. For example, having seen that rights typically develop in response to paternalistic justifications for treating groups of normal, human adults as less than fully competent judges of their own good, I inferred that all such justifications will fail. But that implies that many governments that, on paternalistic grounds, today treat women as second class citizens are mistaken and that they should change. So rather than just report on progress to date, in the book I make moral claims about how the process *should* develop in the future. One of the conclusions then is that, even though rights to education for both men and women are not now universally guaranteed, they should be.

The prescriptive strategy is the most commonly encountered one in the philosophy of human rights, for the simple reason that philosophers of human rights have tended to challenge the moral

legitimacy of existing governments. If Locke, Rousseau, and Kant had merely reported on the progress in the establishment of human rights at the time they were writing, there would have been very little for them to say and the historical process by which the idea emerged that government legitimacy depends on respecting basic rights would have been greatly retarded. Although Locke, Rousseau, and Kant were in the grip of an epistemological paradigm that required them to think that anyone who disagreed with them was unreasonable, in fact they made important contributions to the reasonable disagreement about human rights that has, over time, led to a consensus on the importance of guaranteeing at least some rights for government legitimacy.

Because I insist on the importance of bottom-up reasoning in philosophy, it is appropriate for me to end this introduction with an example. When Mary Wollstonecraft wrote *A Vindication of the Rights of Woman*, she only claimed to be extending certain arguments that Rousseau and other advocates of rights for men had used to argue for rights against paternalistic government despots to apply them to rights for women against the paternalistic despots in the home. This simple idea enabled her in 1796 to project where the process of the development of human rights would lead. Since even today, in 2007, there are advocates of human rights who limit them to the public sphere and not the family, Wollstonecraft's projection has not yet been completely vindicated. But it is happening. Recently, the U.N. Secretary General (2006) classified violence against women as a human rights violation. It took no great imagination for me, in my book, to project security rights to include women's rights against domestic violence. But even to make such a projection required me to adopt the same prescriptive strategy that Wollstonecraft employed in her book.

The main conclusion of my book is that, given what we now know about human beings and human societies, there is a package of nine basic rights that governments must guarantee to their citizens with normal cognitive, emotional, and behavioral functioning as a condition of moral legitimacy.<sup>3</sup> The nine rights can roughly be divided into those that are necessary to *develop* the capacity for good judgment, understood as the ability to make reliable judgments about one's own good (rights to security, subsistence, what is necessary for normal psychological development, and education); those that are necessary to be able to *exercise* good judgment (rights to security and subsistence again, plus rights to freedom of the press, freedom of thought and expression, freedom of association, and a sphere of autonomy free of paternalistic interference); and political rights (democratic rights and an independent judiciary to enforce rights).

### **Minimal Legitimacy, Cultural Rights, and Cultural Imperialism: A Response to Tan**

I am very grateful for Kok-Chor Tan's contribution to this forum. His sympathy with my overall project makes him sensitive to important questions that I need to think through more fully. I am glad to have an opportunity to address them here.

Tan raises three questions. I begin with the second.

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<sup>3</sup> I do not mean to imply that human beings without normal cognitive, emotional, and behavioral functioning should have no rights, only that their rights are different. For example, I do not believe that the severely brain-damaged should be guaranteed the right to vote.

*Minimal Legitimacy.* On my account, the basic human rights are the rights that a government must guarantee its citizens to meet a moral standard of minimal legitimacy. Because I wanted to contrast my more expansive list of basic human rights with Rawls' meager list,<sup>4</sup> I utilized his way of conceiving of minimal legitimacy: For Rawls, a minimally legitimate people is entitled to the respect of liberal peoples, which not only rules out coercive intervention, but rules out intervention of any kind, even offering financial incentives (Rawls 1999: 85). I suggested that an alternative name for this conception would be the *generalized intervention* interpretation of human rights, because human rights would be those rights that are necessary for a people (or state) to be entitled to a right against coercive or non-coercive intervention.

Although I do not think that it is inaccurate to equate minimal legitimacy with a right against both coercive and non-coercive intervention, I no longer think that it is the most perspicuous way of explaining legitimacy. I have been persuaded by discussions with Professor Tan that legitimacy is much better understood in terms of a government's moral right to act on behalf of its people. Reidy (2006) has made a similar proposal for understanding Rawls' minimal legitimacy account. As Reidy puts it, in a legitimate state or polity, the acts of government have the moral status of acts of collective self-determination, and thus are entitled to a certain kind of respect from outsiders. The question then is, what rights are necessary for government acts to have this status and thus to be entitled to respect?

As I mentioned in the introduction, the standard way of stating this condition is in terms of some kind of consent. My list of nine basic human rights is intended to capture the conditions under which the consent of the governed brings it about that the government's acts are morally binding on the people, because its acts represent them in a morally significant way. It is important to emphasize the difference between this normative standard of legitimacy and the actual standards that are currently enacted in international law. In international law today, dictators can sell their country's natural resources and the sale is legally binding on their citizens. In international law today, dictators can borrow money to build new palaces and their debts are legally binding on their citizens even if the dictator is later deposed or dies. I agree with Pogge (2002) that international law should be changed to prevent dictators from legally binding their citizens in these ways. From a moral point of view, there is great potential for improving international law.

There is very general agreement that for a government to be able to morally claim that its acts represent the collective self-determination of its people, it must satisfy some kind of condition of actual or hypothetical consent. My nine basic rights are an attempt to articulate the conditions under which actual consent carries with it this moral force. I do not believe anyone could ever have arrived at such a list *a priori*. I think the list of basic human rights has been discovered in response to governments that have claimed to represent their people and have claimed to have the consent of their people, when it is clear that they do not. Thus, for example, in North Korea, Kim Jong Il's control of the educational system, the media, and individual expression make it almost certain that

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<sup>4</sup> Here is Rawls' list: "the right to life (to the means of subsistence and security); to liberty (to freedom from slavery, serfdom, and forced occupation, and to a sufficient measure of liberty of conscience to ensure freedom of religion and thought); to property (personal property); and to formal equality as expressed by the rule of natural justice (that is, that similar cases be treated similarly)" (Rawls 1999: 65).

he would be elected in a landslide, if elections were held in North Korea. But such an election would confer no moral legitimacy on his government.

This account of legitimacy has an important implication for what have been called “group rights of self-determination.” On my account, claims by governments or other leaders to morally represent their people depend on whether their acts as leaders have been validated by individual acts of self-determination in some sort of democratic system that guarantees the basic human rights. For this reason, I think that, from a moral point of view, there are no irreducibly group rights of self-determination. Acts of group or collective self-determination get their legitimacy from individual acts of self-determination of the members of the group. This provides a framework for discussing Tan’s first question, to which I now turn.

*Cultural rights.* All of the rights on my list are individual rights. Citing Kymlicka (1989 and 1995), Tan argues for adding some third generation cultural rights to the list. Like Kymlicka, Tan suggests that cultural rights need not conflict with individual rights, but may augment them in important ways. So I set aside the potential for conflicts and focus my attention on whether there is a need to recognize cultural rights that go beyond the individual rights on my list. It will be useful to have a term for referring to rights of a group that go beyond the individual rights of the members of the group. I will refer to them as *robust group rights*. If there are any third generation human rights, they would be robust group rights. Should we endorse any such rights?

I am not persuaded that we should. Before I explain why not, let me acknowledge that I do not have any strong conviction on how to answer this question. Given my way of distinguishing basic from non-basic human rights, I see no reason to include cultural rights as basic human rights. This does not imply that they should not be regarded as human rights at all. As I have mentioned, there are lots of rights on the Universal Declaration that should be universally respected, though they do not qualify as basic human rights by my criteria. However, I am not convinced of the need to endorse any cultural rights or other robust group rights as universal human rights. Let me explain why.

From my earlier discussion of legitimacy, it is clear that I do not endorse a robust group right of self-determination. To be able to claim to morally represent a group, leaders must be able to trace their authority to the individual acts of self-determination of the members of the group. This implies that leaders who have not been selected by an appropriate sort of democratic process do not have the moral authority to speak for the groups that they claim to be leaders of. There may be all sorts of pragmatic reasons for granting them the legal authority to do so, but from a moral point of view, something important is missing.

Are there any other robust group or cultural rights other than rights of self-determination? The examples where the case for robust group or cultural rights seems strongest are the examples of various aboriginal peoples. In these examples, it does seem to me that there typically are rights of joint ownership (e.g., of hunting areas, natural resources, cultural artifacts, and the remains of ancestors. Even if these ownership rights are not basic human rights in my sense, they are important rights).

However, examples of aboriginal peoples raise other urgent moral concerns. In almost every case, their ancestors have been subjected to the most severe violations of their basic human rights, especially their security rights, by colonial peoples. Duties of corrective justice that are owed to the

descendants of the aboriginal peoples whose rights were violated translate into compensation rights, broadly understood, of their descendants. I think of these compensation rights as individual rights, but I can see why someone might think of them as a group right. Certainly, they do not conflict with the basic individual rights on my list. I see no need to add such rights to the basic human rights, because they are part of corrective justice (i.e., part of the answer to what is owed to compensate for past rights violations, not part of the answer to the question of what basic rights are owed to everyone).

But there is one problem that, according to Tan, calls for the recognition of cultural rights. This is the potential for a majority culture to threaten the existence of a minority culture simply by the power of the majority to enact its will into law. Tan mentions the possibility of state-sponsored mass migrations of ethnic minorities. I agree with Tan that this is an important issue, but I do not believe that it requires recognizing cultural rights as a special category of rights.

Instead, I would address the issue as part of the last item on my list of rights, political rights. In my book, I specify political rights as requiring democratic rights. In the not yet published second volume, I discuss the content of democratic rights more fully. Let me briefly summarize the approach that I take in the second volume. I make a consequentialist case for democratic rights as promoting the life prospects of all citizens. In the default case, I argue that this justifies a majoritarian political system based on one-person, one-vote, with judicial oversight to protect individual rights against majority tyranny. However, in some contexts, a majoritarian system based on one-person, one-vote will not promote the life prospects of all citizens equitably, typically because there is a majority group that will be able to effectively exercise a monopoly over the political system that it will use to consistently promote its life prospects at the expense of one or more minority groups. In such cases, the appropriate democratic rights will typically have one or more anti-majoritarian features, such as a super-majority voting requirement or non-proportional representation or other special rights to protect minority interests. So what Tan thinks of as cultural rights can enter into my account, not as a special category of right, but as constraints on an acceptable form of democratic rights. Because they enter as an exception to the one-person, one-vote default, it is easy to describe states, even multi-cultural states, where they would not come into play at all. They only come into play when there is a danger that a majority group would effectively monopolize a one-person, one-vote democratic system. For more on democratic rights, see my reply to Beitz below.

Is there a need for cultural rights that go beyond the rights that I have thus far enumerated? There would be if it were thought that cultures themselves were entitled to protection that went beyond the protection of the rights of their members, including their rights to participate in a political system that promotes everyone's life prospects. Tan is careful to argue only for "a fair and equal cultural marketplace" (Tan in "Exploring Universal Rights: A Symposium" 2007: 96), not special protections for cultures that cannot successfully compete in the cultural marketplace even when there is a level playing field. I am inclined think that appropriate democratic rights that protect minorities from majority oppression are enough to level the playing field for cultural groups. It seems to me that Tan thinks that cultures are entitled to additional protection. I am not persuaded. But I agree that this is an important question and I look forward to further discussion.

*The Challenge of Cultural Imperialism.* Although I take great pains in the book to explain how my view avoids cultural imperialism, Tan suggests that I may not have completely avoided it. There are

two ways to state the challenge: First, the *Rawlsian challenge*: There are reasonable forms of non-liberalism and thus, liberals should respect the legitimacy of some non-liberal governments or polities. Second, the *challenge of non-liberal well-being*: Being autonomous is not necessary to well-being and there may be some kinds of well-being that are better achieved without autonomy.

First, let me address the Rawlsian challenge that there are reasonable forms of non-liberalism. The simple reply to the Rawlsian challenge is that it misunderstands my position. But the misunderstanding is partly my responsibility, so let me first say what my position is and then why the Rawlsian challenge is based on a misunderstanding. Liberals generally think that there is a kind of consensus of opinion that legitimates government coercion. A government that guarantees the nine basic rights on my list will only stay in power so long as its policies are approved of by at least a majority of its people.

This seems to open the door for a parallel defense of the legitimacy of at least some non-liberal governments. If majority support legitimates a liberal government, why does it not also legitimate a non-liberal government? In my book, this issue is raised by two examples that I discuss in detail: first, Bartolomé de las Casas, who in objecting to the treatment of the native population by the Spanish colonists had to oppose a consensus of his fellow countrymen. Second, the example of women who seem to endorse oppressive practices, for example, women who subject their daughters to female genital cutting. In the book, I discuss how oppressive practices can be conventionally enforced or supported by socially enforced, self-serving justifications, to illustrate how an individual can be epistemically justified in opposing a consensus in favor of the practice.

Unfortunately, my discussion of those examples and related examples in the book may have given the impression that I think that everyone who disagrees with me is engaged in self-serving rationalization or is otherwise unreasonable. I need a new term for this kind of attitude. I will say that anyone who believes of a given issue that there is only one reasonable position on it regards the issue as *epistemically closed*. Nowhere in the book do I assert anything that implies that my specification of the basic human rights is epistemically closed. But nowhere in the book do I explicitly deny that interpretation of my position either. I do so now. I do not regard my specification of the basic human rights to be epistemically closed. There is reasonable disagreement on how to specify them.

In the introduction to this essay, I distinguished between the descriptive and the prescriptive project in human rights in order to enable me to explain how unreasonable I would have to be to regard the issue of the specification of the basic human rights as epistemically closed. Those who only try to report on the current state of worldwide consensus on human rights might be under the impression that there could be no reasonable disagreement with what they have to say. But those who, like me, aim to contribute to the prescriptive project in human rights would have to be extremely arrogant to think that there could be no reasonable disagreement with what we have to say.

Perhaps it might be thought that acknowledging the possibility of reasonable disagreement with my position somehow undermines the position itself. As a liberal, I believe that only a certain kind of consensus confers moral legitimacy on a government's action. What kind of consensus? A consensus based on guarantees of the nine basic rights on my list. But I also acknowledge that there is no consensus on the nine basic rights on my list. Does that admission undermine my position? Does my own account require that I give it up if it is not a consensus view?



The answer is negative. My account of the nine basic rights is an account of the objective conditions of the moral legitimacy for governments. Its truth does not depend on its being a consensus view. Contributors to the prescriptive project aim to contribute to developing a consensus on human rights, not merely to report on one. There would be no consensus on any human rights if in the past there had not been advocates of human rights who opposed a contemporary consensus against them.

Although my view does not undermine itself, its logical structure does deserve more attention. I plan to discuss it more fully in the second volume. Here I can just outline the logic of my position briefly. I believe that individual autonomy and moral discovery are both social achievements that depend on the social process of the free give-and-take of opinion. Although my goal in everything I write is to do the best job that I can of making a reasonable contribution to that social process, my commitment is ultimately to the results of that process, not to my own current opinion. Thus, not only do I acknowledge my own fallibility in the abstract, but I believe that the social process of the give-and-take of opinion will, over time, identify and correct my mistakes. The process only works if enough of the participants develop and exercise their own judgment. My account of the basic rights is ultimately an account of the objective conditions necessary for the process of the free give-and-take of opinion to yield epistemically justified results. If I am correct, the objective conditions for the process to yield justified results must themselves be discovered by the operation of the process itself (or of a close enough approximation to it to yield reliable results).

I have already acknowledged that the specification of the basic human rights is not epistemically closed. I should add that almost nothing else in my book is either. I do not believe that absolutely everything in the book is subject to reasonable disagreement. Some of the particular moral judgments in the book—for example, on whether it was wrong for the Spanish colonists to rip native babies from their mothers' arms and feed them to dogs—seem to me to be beyond reasonable disagreement. But when I move from making particular moral judgments about such extreme cases to proposing principles to explain those particular moral judgments, I do expect there to be reasonable disagreement.

It seems to me that one of the most unfortunate results of Rawls' work has been to create the illusion that it is possible to do the philosophy of liberal rights (1993) or of human rights (1999) in a way that avoids reasonable disagreement. But, of course, there is lots of reasonable disagreement with both of Rawls' works. I expect reasonable disagreement with mine.

Let me close my discussion of the Rawlsian challenge by explaining why I think it undermines itself. The Rawlsian challenge would require that the philosophy of human rights be done in a way that avoids all reasonable disagreement. This seems to me to be a hopeless dream. The reason is simple. It is as sure as anything in philosophy that there will always be lots of reasonable disagreement about where to draw the reasonable-unreasonable distinction.

Suppose I had published my book and shortly thereafter everyone in the world accepted everything in it. This would not have been good news to me. I would not have taken it to be evidence of the truth of what I wrote, but rather evidence that, due to some sort of influence I did not understand, everyone in the world had lost their capacity for independent judgment. This would be terrible, because it would effectively end the social-historical process of moral discovery that I intended to be contributing to. Reasonable disagreement is essential for moral progress.

Second, I would like to address the challenge of non-liberal well-being—that is, the challenge that autonomy is not essential to well-being. This challenge also seems to me to be based on a misunderstanding of my view. I am quite sure that there are all sorts of well-being that do not involve autonomy. In my book, I explicitly disavow attempts to argue that autonomy is an essential part of well-being (Talbot 2005: 125, 185-186).

My consequentialist case for autonomy rights is both indirect and contingent. It is based on centuries of evidence about how governments that fail to respect basic human rights fail to promote the well-being of their people. The main claim is that autonomy rights are necessary for governments to obtain reliable feedback on how well their policies are promoting the well-being of their people and democratic rights are necessary to make the government's policies appropriately responsive to the feedback. Both of these are contingent claims. If rulers could intuitively see what would make their people most happy and if they were just naturally inclined to follow such policies, my consequentialist case for rights would not get off the ground.

Why am I so confident that non-liberal societies are not able to solve the reliable feedback and appropriate responsiveness problems? Both because rulers tend to favor their own interests over the interests of their people and because when autonomy rights are not guaranteed, it is just too easy for governments to maintain the self-serving delusion that they are promoting the well-being of their people. Without women developing their own voice and being able to exercise it, it is difficult to believe that domestic violence would ever have come to be regarded as a serious problem. Autonomy rights are the rights necessary to develop and exercise one's own voice.

Tan is correct that this sort of consequentialist defense of human rights is contingent and instrumentalist. It is natural to worry that such a defense of human rights would make them too contingent. This is a concern that I address in the second volume.

### **Objectivity without Certainty: A Response to Ackerly**

I am grateful to Brooke Ackerly for her comments. They provide me with an opportunity to explain more fully my epistemology and metaphysics. I believe there are *strictly universal* particular moral truths (i.e., judgments about actual and hypothetical cases that are true from any point of view). These strictly universal particular moral judgments provide the grounding for strictly universal moral principles (i.e., true in all possible worlds) that best explain them. This makes me *metaphysically* immodest. Because I acknowledge my *fallibility* in determining the strictly universal moral truths, I am *epistemically* modest. Ackerly congratulates me on my epistemic modesty, but is wary of my metaphysical immodesty. She encourages me to become even more modest by moving from epistemic modesty to epistemological modesty. To make that move I would have to give up my metaphysical immodesty, because I would have to give up objectivity, which for me is the idea that there is a universal moral standpoint not based on consensus. In the book I have an extensive discussion of why I think this is a big mistake.

Ackerly mentions some feminist criticisms of human rights. I think that many of the feminist criticisms of the content of human rights are important—for example, Okin's (1989) criticisms of the public-private distinction or MacKinnon's (in Shute and Hurley 1993) criticism of the invisibility

of rape as a war crime. But the feminist criticisms of objectivity seem to me to be self-undermining, in the way that, as I argue in the book, all forms of extreme moral relativism are self-undermining.

Thus, I cannot agree with Ackerly when she writes: “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” (Ackerly in “Exploring Universal Rights: A Symposium” 2007: 73). Simply to think that another position is mistaken is to adopt an objective viewpoint that attempts to transcend differences. In the book, I explain why it is necessary to adopt such a standpoint. I focus on moral judgment, but the argument is even more direct for non-moral cases. When Ackerly denies that it is possible to transcend differences, she herself is committed to there being such differences. Are they objective differences or not? If they are objective, we need a difference-transcending viewpoint just to describe them. If they are not objective differences, then what is the problem that Ackerly is exercised about? So, I conclude that Ackerly herself is committed to there being an objective, difference-transcending viewpoint, at least for some non-moral judgments.

Even if Ackerly herself is committed to some objective non-moral differences, that does not commit her to objective moral differences. The move to moral objectivity is only required if we think that it is possible to make a moral mistake or that it is possible to make genuine moral progress. Does Ackerly think that anyone has ever made a moral mistake or that the belief in genuine moral progress is not just an illusion? If so, she is committed to moral objectivity.

In my book, I devote an entire chapter (chapter 4) to explaining how we are able to adopt an objective moral standpoint. In that chapter, I use the Harsanyi-Rawls (Harsanyi 1953) idea of an original position as a model for an objective moral standpoint. Ackerly points out that the original position has been criticized by Benhabib (2002) and other feminists as obscuring difference. This is puzzling to me for two reasons. First, in the original position, each person must consider proposals from every point of view. So, for example, one objective difference between women and men that only women can become pregnant. That difference would be important to *everyone* in the original position, because they would not know whether they were male or female. So it is not true that the original position obscures difference, when it is morally relevant. Second, since it is typically the defenders of patriarchy who insist on the importance of differences between men and women, it would seem that feminists need some way of transcending differences to argue against patriarchal treatment of women.

Why does Ackerly resist the idea of universal human rights that transcend difference? I believe that much of the resistance to thinking that we could discover strictly universal moral truths is itself morally motivated. It comes from the worry that those who claim to have universal moral truths are often moral imperialists—that is, they claim to be justified in forcing others to accept their moral truths. On reflection, it is obvious that metaphysical immodesty does not entail moral imperialism. For example, it would be metaphysically immodest to hold that “Moral imperialism is always wrong” is a strictly universal moral truth. Clearly, such a principle could not be cited to support moral imperialism.

Ackerly asks: “How does the equilibrium approach process conflict?” (Ackerly in “Exploring Universal Rights: A Symposium.” 2007: 73). And later she points out the importance of conflict and power dynamics in the development of rights. Let me divide my answer into three parts,

corresponding to three ways of understanding conflict: first, the role of disagreement; second, the role of violence; and, third, the role of other forms of power.

In my reply to Tan, I emphasized the importance of disagreement in my epistemology. On my Millian view, progress in any area of inquiry will be very slow without free give-and-take of opinion. This is true of morals as well as science. So conflict in this sense plays an essential role in my view. As a matter of fact, my autonomy rights are the rights that are needed for individuals to develop and exercise their judgment so as to enable them to participate in the free give-and-take of opinion.

As Ackerly points out, violence has also played an important role in the development of human rights. The Declaration of Independence was a declaration of war. Although Article VI of the U.S. Constitution establishes a mechanism for amending it, amending it to eliminate slavery required another war.

And even where war is not necessary, other forms of power often influence the political system and thus, the rights that are generally recognized. In my book, I do not have much to say about the use of violence and other forms of power, because I think that, while they may have played a large role in determining the path that has been followed to the recognition of human rights, they are not important factors in explaining what those rights should be. Also, my book is meant to serve as something of an antidote to attempts to explain human history purely in terms of power relations or other non-moral factors. One of the important themes of the book is that moral judgment plays an important role in human history. I credit Sen (1999) as someone who has helped to make its historical role more visible. In Chapter 7 I explain how even if individuals are only willing to incur small costs to promote fairness, the tendency toward fairness over time can be practically irresistible.

When Ackerly asks “How does the theory settle the unsettled?” (Ackerly in “Exploring Universal Rights: A Symposium.” 2007: 74) she seems to be under the impression that I somehow think that my theory eliminates all reasonable disagreement. This goes beyond Tan’s impression that I was committed to there being no reasonable disagreement with my list of nine rights. She seems to think that I am committed to holding that anyone who disagrees with anything in the book is unreasonable. I hope that my reply to Tan has made it clear that I expect there to be reasonable disagreement with almost everything I say in the book. Indeed, if I were to rewrite the book now, I would change the definition of *epistemic modesty* to include not only an acknowledgment of fallibility, but also an acknowledgment of the possibility of reasonable disagreement. My account is epistemically modest in this fuller sense.

Ackerly also asks about rights for those who are not fully functioning adults. In the book, I explicitly say that although I discuss the rights of fully functioning human adults, I do not intend to suggest that human beings with significant impairments or nonhuman animals should have no rights, only that their rights should be different (Talbot 2005: 7). I also do not discuss the rights of prisoners. These are important topics, but there is a limit to how much I could reasonably take on in one book, or even two.

Ackerly raises a question about the ownership of genetic information. This, also, is an interesting question, but not, it seems to me, an issue of basic human rights. In addition, Ackerly asks about the conflict of rights between pharmaceutical companies and HIV patients in the third world. I regard the right of HIV patients to the medicines they need to be able to live a normal life as basic human right that takes priority over the property rights of pharmaceutical companies. It takes no great

moral insight to see how, in broad outline, this conflict of rights should be resolved. Some provision should be made to supply the drugs (or generic versions of them) to those infected with HIV.

I am not exactly sure what Ackerly objects to about my discussion of women's rights. In the book, I use the example of the development of women's rights as a microcosm for the development of human rights generally, because the development of women's rights has taken place in the face of an overlapping consensus against them that includes many of the best-known advocates of rights for men, including Locke, Rousseau, and Kant. Like many feminists, I emphasize the importance of empathy in moral judgment. I follow Nussbaum in thinking that empathy and other emotions are often a way of discovering important social truths.

Here is how Ackerly sums up her criticism of my discussion of women's rights as human rights: "[A]s 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" (Ackerly in "Exploring Universal Rights: A Symposium." 2007: 77). Although I do discuss justifications of autocracy, autocracy plays no role in my discussion of women's rights. There I focus on patriarchal systems of norms, the socially enforced, self-serving reasons that are offered to justify them, and the social forces that make them stable. Perhaps Ackerly disagrees with my analysis. But there can be no doubt that the object of my analysis is the everyday practices, values, and norms of a patriarchal society and the social forces, including, but not limited to, economic and political institutions, that make them stable.

As Ackerly points out, violations of women's rights have often been invisible. I agree. She mentions the example of domestic violence. In the book I focus on domestic violence as an important violation of women's rights that operates to make patriarchal social systems more stable. On my account, domestic violence is a violation of women's human rights, if their government does not provide security guarantees that protect them against it. This means that domestic violence was a human rights violation in the United States at least until the late 20<sup>th</sup> century, because in the United States police procedure called for non-intervention in "domestic disputes." Of course, it still is a human rights violation in many parts of the world.

In addition, Ackerly raises questions about whether democratic rights are truly basic human rights. I take up this issue in my reply to Beitz.

### **Human Rights and Paternalism: A Response to Shue**

Henry Shue's work on human rights has played an important role in the genesis of my own views, so I am pleased to have the opportunity to think about and reply to his criticisms. Before I discuss the main issues between us, let me address his questions that seem to be based on misunderstandings.

Shue worries that my right to subsistence is much too narrow, because I understand it as a right to an opportunity to earn a subsistence for those who are able to do so. He worries about children and the elderly and he might also have mentioned the infirm. He seems to have misunderstood the logic of the right. It is a right to subsistence *simpliciter* for those who are not able to earn it

themselves (e.g., children, the infirm, and the elderly who lack adequate savings). For adults who are able to earn their subsistence, it guarantees them an opportunity to do so. This is my understanding of the right to subsistence that Shue (1980) himself endorses. Indeed, my explanation of the right to subsistence actually quotes Shue's statement of it (Talbot 2005: 129).

The first eight rights on my list are autonomy rights. Shue raises an apparent paradox about making others autonomous when he says:

*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? (Shue in "Exploring Universal Rights: A Symposium." 2007: 78).*

I think this paradox is easily resolved. My view is not a Rousseauian one that holds that some people must be forced to be free (or autonomous). I do not know how to make sense of that idea. But it is clear that some protections are necessary for normal human beings to develop and exercise their capacity for judgment.

Shue sees that protection from irreparable harm is necessary for autonomy. However, he seems to think that protection from irreparable harm provides a better basis for distinguishing basic from non-basic human rights than my account, with its foundations in autonomy. Let me begin by acknowledging that I do not think that there is only one way of distinguishing between basic and non-basic rights. I think there are many useful ways to make the distinction. I only meant to be suggesting one.

However, I am puzzled that Shue does not acknowledge that rights that go beyond security and subsistence and the very limited liberty right that he defends in Basic Rights are needed to avoid irreparable harms. With his control of the media in North Korea, Kim Jong Il can exercise almost total control over the beliefs of the citizens of North Korea. Suppose he persuades them that the outside world is hostile to them and that great sacrifices are necessary to provide the national defense that will protect them from the hostile world. If they live out their lives in a meager existence in fear of a hostile outer world, I think that their deprivation and delusion constitutes an irreparable harm, even if they never lack for security and subsistence and a minimal liberty.

The main difference between Shue and me seems to be the proper attitude toward paternalistic intervention. As I use the term, paternalistic intervention is coercion aimed at the good of the person being coerced, regardless of whether that person agrees. It is important to note that most coercive intervention to protect human rights is not paternalistic. Intervention to prevent the killing and raping by Janjaweed militias in Darfur would not be paternalistic, because the victims do not want to be raped and killed. Intervention is only paternalistic when those whose rights are being violated do not want them to be protected.

When is paternalistic intervention justified? There is no doubt that some paternalism toward children is justified. Also, some paternalism toward adults with cognitive deficits is justified. What about normal adults? When the basic human rights on my list are guaranteed, I think normal adult human beings are reliable judges of what is good for them and so I oppose paternalistic intervention in their actions. I discuss this topic much more thoroughly in the second volume.

What about cases where the basic human rights are not guaranteed? Is paternalistic intervention to assure the basic human rights justified? Although in theory such intervention might be justified, in practice I think it is almost always a mistake. Shue quotes from my discussion of foot binding and female genital cutting. Just for the record, my position in the book is that these practices are oppressive to women. Shue points out that they are typically done to children. Since I have no objection to paternalism toward children, I might have allowed such intervention as justified paternalism toward children. However, I think intervention in such cases raises the same kind of issue as paternalistic intervention targeted at adults, because it is the mothers who have themselves undergone the procedure who are insisting on having the procedure performed on their daughters. And therefore, for the same reasons that I oppose paternalistic intervention targeted at adults, I oppose coercive intervention in these cases.

Foot binding survived for hundreds of years in China, even during periods in which it was forbidden by the emperor. It was largely eliminated in one generation by education and social action of natural foot societies. Female genital cutting is illegal in Senegal, but the law has had practically no effect on the practice. In the book, I describe how educational programs sponsored by the NGO Tostan have led to its being voluntarily renounced by one-third of the villages in Senegal that practice it. That is one of many kinds of non-coercive strategies that I endorse.

Shue concludes his comments by reminding us that many things are intrinsically good, not just autonomy. On this, we both agree. One of the novelties of my case for autonomy rights as basic human rights is that it does not depend on the claim that autonomy is intrinsically good. On my account, it is their role in solving the reliable feedback problem and the appropriate responsiveness problem that makes autonomy rights basic human rights.

### **Are Democratic Rights Human Rights?: A Response to Beitz**

I am glad to have Charles Beitz as one of my critics, because in my book, I cite him as someone who has criticized Rawls' short list of human rights for his failure to include democratic rights. If Beitz is now re-evaluating his position on the inclusion of democratic rights as basic human rights, then I need to consider carefully what he has to say.

Beitz provides a good summary of my account of the role of democratic rights in making a government a self-improving, self-regulating system that can be relied upon to receive reliable feedback about how well it is promoting the well-being of its citizens and to be appropriately responsive to that feedback. Democratic rights play an important role in my account because they are the only reliable way for assuring that a government is appropriately sensitive to citizen feedback on its policies.

Beitz raises two main challenges to my defense of democratic rights. Before I discuss them, I need to clear up one apparent misunderstanding. Beitz seems to think that my argument for democratic rights applies "regardless of the economic and social circumstances of the society in question" (Beitz in "Exploring Universal Rights: A Symposium." 2007: 101). This is a mistake. My argument for democratic rights is that, *in combination with* the other eight autonomy rights, they provide a solution to the reliable feedback problem and the appropriate responsiveness problem. Without the other eight rights, democratic rights have little value. So one issue is whether a society

that guarantees the other eight basic human rights should also be democratic. I think the answer to this question is clearly yes. Once citizens have been guaranteed the necessary conditions for developing and exercising their judgment, it is almost inevitable that they will insist on a democratic form of government and the only way to prevent them from achieving it will be to violate some of their autonomy rights.

Beitz's first main challenge is an empirical challenge to my account of the role of democratic rights in promoting well-being. Because he focuses on Chapter 7, where I explicitly discuss political rights, Beitz gives the impression that the only evidence I provide in support of my account is the evidence of Sen's (1999) work on famines. However, the main discussion of the reliable feedback problem is in Chapter 6. There I provide many examples of the failure of the Marxist states of the 20<sup>th</sup> century to solve that problem. The Marxist states provide the strongest evidence in favor of my account of the role of democratic rights, because Marxists disparaged liberal rights as "individualistic" and "bourgeois" and ridiculed the record of democracies in promoting justice. They insisted that a non-democratic form of government that was not hamstrung by respect for "individualistic" and "bourgeois" rights would be much more effective in promoting justice. The historical record does not bear them out.

In Chapter 6, I recount some of the sad history of 20<sup>th</sup> century Marxist regimes. Unrestrained by individual rights, these governments produced death by starvation and other causes on a scale previously unknown, both in absolute numbers (China) and in percentage of the population (Cambodia). It is the failed experiments with Marxist governments that I regard as the strongest evidence in favor of the importance of both autonomy rights and democratic rights for solving the reliable feedback problem and the appropriate responsiveness problem.

In any case, Beitz proposes additional evidence comparing democracies with non-democracies on economic development that he wants me to consider. He cites research that indicates that democracies may only perform better in countries with per capita incomes above \$3000 per year. One of the features of my epistemically modest position is that I must be prepared to find out that I am mistaken. However, I do not think the evidence warrants that conclusion yet. Economic development is one important element of well-being, but not the only one.

How are we to evaluate China's record in promoting well-being? If we consider China under Mao, the record is abysmal. Recently the record has been better. However, it is difficult to evaluate the record of governments that do not respect the basic rights on my list. Because there is no guarantee of freedom of expression or freedom of the press in China, the government has a great degree of control over information that it does not want to be disclosed. Nonetheless, we do have enough information to be able to reliably estimate that 100,000 members of Falung Gong that are held in government detention, many under horrific conditions. And there are an estimated 70 million Falung Gong practitioners in China who are not in government detention but are subject to arrest for practicing their religion. These are the kinds of abuses that the basic rights on my list, including democratic rights, protect against.

I think China will be an interesting test case for my theory. If I am correct, either China will have to become a rights-respecting democracy or it will become much more oppressive than it is today. The reason is simple. By encouraging market activity, China is relying on individuals to make reliable judgments about what is good for them. That is how market economies prosper. But if China's



citizens develop the capacity to make reliable judgment about what is good for them, I believe that it is inevitable that they will insist on exercising that judgment in political matters also.

This is what has happened in South Korea and Taiwan, and, as I discuss in my book, it seems to me that it is currently happening in Singapore. It seems to me that the only way that China could avoid this democratic fate would be by repressing democratic political movements and returning to its oppressive past. If so, there will be no moral defense of it. Perhaps there is another alternative. Perhaps China will develop a government that is so good at promoting the well-being of its citizens that, even after the Chinese government grants its citizens the other eight rights on my list, the democracy movement in China never becomes more than a fringe movement. If this happens I may have to write a sequel to my book in which I remove democratic rights from my list of the basic human rights.

In my book I say very little about what form democratic rights should take. That is a topic for the second volume. However, as I made clear in my reply to Tan above, I do not believe that there is a single democratic form of government that applies universally. The default rule is one-person, one-vote majoritarian government, but anti-majoritarian protections will be required when the default rule would not equitably promote everyone's life prospects, as it would not if a majority ethnic or social group would be able to monopolize political power for its own benefit and to disadvantage other minority ethnic or social groups.

Beitz's second main objection depends on the possibility of collectively self-determining societies that are not democratic. I think I understand the idea of a non-democratic, collectively self-determining society in the abstract. Has there ever been a non-democratic collectively self-determining society in our world? I doubt it. For example, it is only relatively recently that purportedly *democratic*, collectively self-determining societies have given a voice to women. How could a society qualify as collectively self-determining if 50 percent of its members lack a voice in determining it? Even if there never has been a non-democratic, collectively self-determining society, might there be one in the future? I do not want to rule out any possibilities, but I am not optimistic about this one.

Beitz suggests that basic human rights play an "interference-justifying role." He makes it clear that he allows for an entire continuum of "interference" on which coercive intervention is a limiting case. He then wonders whether the denial of democratic rights is significant enough to be "interference-justifying." On my anti-paternalist view, if there were a society whose members did not want to be democratic, it would be objectionably paternalistic to use coercion to make it democratic. But when a society guarantees the other eight basic rights on my list, I am quite confident that the people themselves will insist on some sort of democratic political procedures.<sup>5</sup> And if their government were to oppose them, there would be all sorts of interference, non-coercive and perhaps even coercive, that might be justified.

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<sup>5</sup>Even in Muslim countries, large majorities of women favor women's having the right to vote (Andrews 2006).

## Universal Human Rights without Metaphysics?: A Response to Donnelly

I am grateful to Jack Donnelly for his attention to so many of the important themes of my book. Before I address his objections, let me provide a little background. Originally, these two volumes were to have been one long book. In conversations with my publisher, it was decided to divide it into two. That this is the first of two volumes is clearly announced on the flyleaf to this volume. It is also announced in the book itself. Donnelly seems disappointed that I do not resolve all issues of universal rights in one volume. I will not be able to do it in two volumes either, but at least I will be able to address more of them.

Donnelly accuses me of failing to justify why I discuss only some of the rights that should be universal in the first volume. For the first volume, I decided to focus on the rights that I regard as most basic and to explain why they are. The explanation is that they are the guarantees that are necessary for a government to be morally legitimate. Morally legitimate is not the same as fully just. No one thinks that a government must guarantee all of the rights in the U.N. Universal Declaration to be morally legitimate. Some people do believe that a government must guarantee all those rights to be fully just. So this is an important distinction to make. In the first volume, I focus on the rights necessary for moral legitimacy. In the second, I will discuss other rights necessary for a government to be just. In the first volume, I also explain why I draw the line where I do. My nine basic rights are necessary for a solution to the reliable feedback problem and the appropriate responsiveness problem. Most of Chapters 6 and 7 are devoted to explaining why these are such important problems to solve. Donnelly may disagree with where I draw the line, but it is misleading to suggest that I do not even attempt to justify drawing the line where I do.

Also, the plan was for the first volume to focus on the metaphysics and epistemology of moral inquiry, especially human rights inquiry. Donnelly disagrees quite vehemently with my metaphysics. He seems to think that my metaphysics does not even fit with my epistemology, but I think that is a mistake, as I explain shortly.

I am a moral realist of an extreme kind, because I believe that the *fundamental* moral principles are strictly universal—that is, true in all possible worlds. Donnelly seems to be some kind of pragmatist. I would not expect to be able to persuade a pragmatist to accept my moral metaphysics. But, Donnelly denies that I even argue for my position.

This turns out to be an interesting objection, because there is a sense in which he is correct. Because I reject the Proof Paradigm as a model for reasoning, I also reject the top-down picture of philosophical argument. But in my book, I replace the top-down model of reasoning with an equilibrium model, according to which reasoning is both top-down and bottom-up. Thus, as I explain at the end of Chapter 2, it is better to think of my book as an extended explanation than as an argument in the traditional sense. Because there is always more than one potential explanation for any phenomenon, all that I can ask the reader to do is to compare my explanation with the competing explanations and consider what it makes the most sense to believe. That is what I ask the reader to do on the last page of the book.

However, even if it is true that I do not provide arguments in the traditional sense, I do provide lots of reasons for my views. I cannot repeat them all here, but I can give some indication of what kinds of reasons they are.

Let us begin with my reasons for believing that there are fundamental moral principles that are true in all possible worlds. It is true, as Donnelly points out, that I am not able to give a single example of an exceptionless moral principle—at least, not any interesting ones.<sup>6</sup> But, Donnelly says nothing about the reasons that I give for thinking that there are such principles. The main reason is that the history of moral inquiry has produced so many examples of what we would expect an exceptionless moral principle to be like (e.g., versions of the Golden Rule that are not limited by family, neighbor, religion, nationality, or species, versions of the utilitarian principle that include all sentient beings in the calculation, or some sort of universalizability principle that applies to all rational beings). Also, though not without exceptions, in most practical applications, these principles all seem to make the same recommendation, so I am confident that there is something that they are approximations of.

Although I acknowledge that there are many ways in which the analogy breaks down (Talbot 2005: 64), in the book I often explain my moral metaphysics and epistemology by analogy to science. Since Donnelly seems to be a pragmatist about science as well as morality, he will not find the analogy helpful. The analogy would be more helpful for someone who is a scientific realist. For example, a scientific realist might think that there are true physical laws, even though at the present time there is no generally accepted way of making consistent the laws of general relativity and the laws of quantum mechanics. As in the moral case, someone might think that general relativity and quantum mechanics provide us with a reasonably good approximation of what the true laws of physics are. So there might be good reason to believe that there are such things, even though we cannot now say what they are

Why do I believe that the fundamental moral principles are true in all possible worlds? Why is not truth in this world enough? The answer begins with noticing that the largely bottom-up process of moral reasoning is based on moral judgments about actual and hypothetical particular cases. We test our fundamental moral principles by actual and hypothetical cases. If we can find fundamental moral principles that explain all of the true particular moral judgments in all actual and hypothetical cases, those principles will apply in all possible worlds.

I need to apologize for an ambiguity in my use of the term “universal” that may have led Donnelly to misunderstand my position. I use the term in three different senses. Two of the senses involve the concept of *strict or strong universality*. Applied to fundamental moral principles, *strict or strong universality* means they are true in all possible worlds (Talbot 2005: 30). In the book, I explicitly say that only the fundamental moral principles are strictly universal in this sense (Talbot 2005: 30).

Applied to particular moral judgments, *strict or strong universality* means they are true from any point of view. Most people are inclined to think not only that it was wrong from our point of view for the Spanish colonists to enslave the American natives and to work them to death, but that it would be wrong from any point of view, even the point of view of extra-terrestrials with very different evolutionary background. And if extra-terrestrials were to colonize earth and enslave us and work us to death, that, too, would be wrong from any point of view. Pragmatists and other relativists think that it is a mistake to think that there is any universal moral standpoint from which it

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<sup>6</sup>I do think we are able to formulate exceptionless principles if we make them suitably narrow. For example, it is always wrong to torture and kill innocent beings merely for the fun of causing them to suffer.

is possible to make strictly universal particular moral judgments, but examples such as these provide at least some reason for thinking that there is one.

The third sense of universality that I use is the sense in which I assert that certain basic rights *should be universal*. I never use the qualifier “strict” or “strong” qualifier for this sense of universality. Here is how I explain it: “We now have sufficient understanding of the nature of human beings and of the moral constraints on how they should be treated to realize that governments everywhere ought to guarantee certain basic rights to everyone within their borders” (Talbot 2005: 3). To signal that the universality of the basic human rights is limited to this world (and others relevantly similar to it), I characterize the discovery of the basic human rights as a “partly moral, partly empirical discovery based on thousands of years of accumulated experience of human social existence” (Talbot 2005: 1). The empirical part covers the discoveries that have been made about human beings and human societies. These empirical discoveries are contingent; they are not true in all possible worlds. In addition, in Chapters 6 and 7, my account of the rationale for the basic human rights makes it clear that they are solutions to problems (the reliable feedback problem and the appropriate responsiveness problem) that clearly depend on contingent facts about human beings and human societies.

In order to explain this more fully, let me focus on the consequentialist account of human rights rather than the nonconsequentialist account, because that is the account that I will elaborate and defend in the second volume. Suppose there is some fundamental principle of justice that says that justice requires that governments pursue policies that promote the (appropriately distributed) well-being of those affected by them. This fundamental principle would be true in all possible worlds.

However, as Donnelly himself recognizes, one of the central claims of my consequentialist defense of the basic rights is the claim of first person authority—that when the eight autonomy rights are guaranteed, normal, human beings are reliable judges of their own good. No reasonable person could hold that the claim of first person authority is true in all possible worlds. On the contrary, I hold that, on its face, it has seemed so obviously false as a claim about the actual world that it was only after centuries of failed experiments with autocracies that it began to be taken seriously.

Donnelly claims that I advance little in the way of evidence or argument in favor of the claim of first-person authority, so he clearly recognizes that it depends on evidence. Contrary to what he says, I have a section on reasons for thinking that the claim of first-person authority is true (Talbot 2005: 127-129) and a shorter section in which I consider reasons for thinking it is false (Talbot 2005: 129). There is much more to be said about the claim of first person authority, and I will say much more about it in the second volume. Let me just say here that I believe that it is part of the explanation of the success of market economies, because an economy based on voluntary exchange will only be successful if people are reasonably reliable in determining which trades will make them better off.

On Donnelly’s interpretation, I would have to believe that the basic rights on my list are necessary for governments to promote well-being in all possible worlds. That would be a very strange view. For example, Donnelly quotes me as saying that my basic rights are the solution to a universal problem: That governments abuse their coercive powers. This is true, so long as one keeps in mind that I am talking about governments of human beings as we know them to be run by

human beings as we know them to be in this world. Surely there are possible worlds in which governments do not abuse their powers.

Perhaps there is a possible world where dictators know what is best for their subjects and are motivated to do whatever will be best for them. The basic human rights on my list may not be necessary in such a world. In my book, I claim that we have discovered that we do not live in such a world. In our world, the basic human rights are the only known way to solve the reliable feedback problem and the appropriate responsiveness problem. Thus, the fundamental principle of justice (stipulated to be true in all possible worlds) explains why the basic human rights are necessary for governments to be just in this world.

Because of his confusion about my uses of the term “universal,” Donnelly attributes to me views that conflict with what I actually say. For example, he correctly quotes me as saying that “[T]he discovery of basic human rights is a process of discovering what kind of life is a good life for human beings” (Talbot 2005: 17). But then he questions whether the good life for human beings is the same in all possible worlds. Of course, if there are possible worlds where human beings are different in important respects from what they are like in this world, then there is no presumption that a good life for them is the same as a good life for us. And not only do I not imply that my basic human rights would apply in those other worlds, I myself provide a counterexample of a possible world in which they would not apply. In Chapter 9, I describe a possible world in which autonomy would be such a burden that no one would want to have it (Talbot 2005: 185-186). In such a world, guaranteeing the basic rights on my list would make everyone miserable. I do not believe that the fundamental moral principles would require us to make everyone autonomous if doing so would make everyone miserable.

Donnelly thinks that my assertion that the “overlapping consensus” model of universality cannot support truly universal human rights only makes sense if I think of universality as true in all possible worlds. But I had a different idea in mind. If there are human rights that should be universal, they should apply even to cultures that do not accept them. What would be the point of claiming that there are human rights that should be universal, if the claim would be falsified by discovering a culture that disagreed? There are almost no rights that every culture agrees on. In this regard, I note that Donnelly (1999) himself argues for a human right against discrimination on the basis of sexual orientation, though he is under no illusion that all cultures agree on such a right or that there is any prospect for an overlapping consensus on it in the foreseeable future.

If I do not believe that the basic human rights should be guaranteed in all possible worlds, why is there a need for any strictly universal moral principles at all? Donnelly is content if there are some principles that we become convinced apply to “us,” where “this ‘us’ approximates the full class of ‘normal’ members of the species *Homo sapiens*...” (Donnelly in “Exploring Universal Rights: A Symposium.” 2007: 89). Because they are limited to “us” in this way, I would characterize Donnelly’s principles as *parochial*. I believe that parochial accounts make human rights too arbitrary. As I say in the book, it would make a mockery of the idea of human rights to hold that they only apply to the members of our species and to deny them to other species that have all the same capacities that we have. And yet that conclusion is compatible with Donnelly’s account of universality quoted above.

Donnelly gives the impression that I never even consider how a pragmatist might respond to my account of universal rights, but in Chapter 8 I do consider and respond to Rorty's (in Shute and Hurley 1993) account, surely the most well-known pragmatist account. There I argue that because Rorty's account lacks an objective ground for rights, its idea of progress is too arbitrary. I consider the possibility that human beings might discover cockroach people who have all the psychological capacities that humans have. However, I suppose that, as a matter of fact, the cockroach people just give human beings the willies and their desire to squish them is so strong that humans have no compunction about doing so and no hesitation in thinking that it is morally permissible to do so. I argue that even if human beings could not appreciate why the cockroach people should be guaranteed the basic rights on my list, the cockroach people themselves would be able to appreciate it. The thought experiment is successful if you are persuaded that in this hypothetical situation, the cockroach people's opinion that humans ought not to squish them would be true and the humans' belief that squishing them is permissible would be a mistake.

The example obviously did not persuade Donnelly. Donnelly perfunctorily dismisses the it (Donnelly in "Exploring Universal Rights: A Symposium." 2007: 89). Perhaps he thinks that it is merely a hypothetical example and therefore that nothing crucial hinges on it. But hypothetical examples are important in philosophy. They help us to figure out the implications of our beliefs. Although I do not expect the example to persuade a committed pragmatist, it is an example that will provide many readers with some reason for viewing progress in the development of human rights objectively and not parochially.

Donnelly takes me to task for just taking it for granted that, when not subject to certain biasing influences, my readers have the ability to make reliable moral judgments in particular cases (Talbot 2005: fn. 11). From his partial quotation (Donnelly in "Exploring Universal Rights: A Symposium." 2007: 84), a reader could not tell that I was actually making a more general point. I was making a point about objective normative judgments generally, so that, by analogy, our ability to make objective moral judgments would seem less strange.<sup>7</sup> Normative judgments include not only moral judgments, but also judgments of what it is rational (or not rational) to believe, or of what it is rational (or not rational) to do (in non-moral contexts). In all three of these areas, I believe, there are general principles that we are trying to discover by reasoning in a largely bottom-up way from particular actual and hypothetical judgments to the principles that best explain them. Because many readers will be inclined to think that at least some questions about what it is rational to believe or what it is rational to do in non-moral contexts have objectively true answers, the analogy is intended to help them see why it makes sense to think that moral questions have objectively true answers also.

Because there are limits to what I can do in one book, at the outset, I do simply take it for granted that we have this ability. In the very next footnote, I indicate how I would explain how we acquired this ability if I had the time: "I think it is plausible that evolution would have made us sensitive to all three kinds of normative truths, but the argument would take me too far afield" (Talbot 2005: fn. 12).

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<sup>7</sup>This is an example of a strategy that Mackie (1977) refers to as finding partners in guilt, when he considers how someone might reply to his arguments for moral anti-realism. In the passage quoted by Donnelly, I was pursuing just that argumentative strategy.

Donnelly fails to mention that even if, at the outset, we take it for granted that we have the ability to make reliable moral particular judgments when free of biasing influences, if we engage in equilibrium reasoning, that assumption does not prevent us from questioning that assumption later, after we have more evidence about the results of exercising that ability. As I say: “Determinations of the reliability of our particular moral judgments are themselves a product of equilibrium reasoning” (Talbot 2005: 74). I give examples of how equilibrium reasoning could lead us to conclude that we are not sensitive to universal moral truths:

*Suppose, for example, the principle that best explained each individual’s particular moral judgments was: Everyone should do what most benefits me. . . . In such a case, there would be little justification for thinking that human beings were reliable judges of objective rightness and wrongness. A better alternative would be to explain all of their particular moral judgments in terms of self-serving justifications and personal bias* (Talbot 2005: 74).

I then go on to explain why the actual course of human moral development does not warrant such a pessimistic conclusion.

This example illustrates the crucial role of equilibrium reasoning in my epistemology. Although my moral epistemology is not a pure coherence epistemology, because I hold that making reliable particular moral judgments requires sensitivity to something objective, it is fair to say my account of *reasoning itself* is a coherence account, because, for me, all reasoning involves, at least implicitly, judgments about what it makes the most sense to believe.

Donnelly thinks that there is a misfit between my coherence account of reasoning and my commitment to objective truth. He states his objection as follows: “The whole point of an equilibrium model 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” (Donnelly in “Exploring Universal Rights: A Symposium.” 2007: 86). This is not correct. One of the main reasons that I wrote the book was to show that the metaphysical issue of whether or not there is an objective moral truth is independent of the epistemological question of what makes our moral beliefs epistemically justified. In the quoted passage, Donnelly fails to distinguish those two issues.

One of the goals of the book is simply to show how it is possible to combine an equilibrium model of moral reasoning with an objective moral metaphysics. Although ultimately the case for my view will depend on whether it makes more sense than the alternatives, the first step is to show how such a combination could make any sense at all.

We know that Donnelly’s claim that about “the whole point” of an equilibrium model of reasoning is not true, because the equilibrium model of reasoning is an example of a coherence theory of reasoning. In non-moral inquiry, there are many coherence theorists about justification who also accept a correspondence theory of truth.<sup>8</sup>

In moral theory, the combination is more of a novelty, because it requires an explanation of how equilibrium reasoning could make it reasonable to believe that there are some moral principles that

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<sup>8</sup> For example, see BonJour (1985). I should note that although BonJour was a coherentist about empirical justification in 1985, he later gave up coherentism for foundationalism (BonJour and Sosa 2003).

are true in all possible worlds. One of the main goals of the book is just to explain how that is possible. Of course, crude correspondence theories make no sense when applied to moral judgment. But if, as applied to moral inquiry, moral objectivity or the correspondence theory is understood as simply the claim that there are strictly universal moral principles that we are making progress in discovering, then there is nothing about coherence reasoning that requires giving up the correspondence theory for moral truth. In my book, I try to show that equilibrium reasoning actually favors a correspondence theory of this kind for moral judgment. I cannot review all the relevant considerations here, but I have already summarized enough of them to give a sense of how the reasoning goes. My earlier discussion of how equilibrium reasoning supports the belief that we are able to make reliable particular moral judgments provides one example of how equilibrium reasoning can support a belief in moral objectivity. My use of the cockroach people example to cast doubt on Rorty's account of progress without objective truth is another example. The book is full of such reasoning.

Donnelly offers an account of moral reasoning in terms of universalizability that makes no commitment to objective moral truth. I, too, am attracted to an account of moral reasoning in terms of some kind of universalizability. I use the Harsanyi-Rawls (Harsanyi 1953) original position construction to try to illustrate the sort of universalizability that is involved. What puzzles me is why he thinks that adopting such a model involves giving up moral objectivity. Does he think that there might be other species for whom moral reasoning would take a different form? I can imagine that there might be other species who might colonize our world and enslave us and find nothing wrong with it, just as most of the Spanish colonists found nothing wrong with enslaving the American natives. What I find implausible is that there would not really be anything wrong with what they were doing. Donnelly writes as if my finding this result implausible is just a psychological peculiarity of mine, not an expression of what it is reasonable to believe. But my response is not idiosyncratic. In the book, I referred to Dworkin (1996) because he seemed to me to do a good job of articulating and defending this sort of realist position (Talbot 2005: fn. 14).<sup>9</sup>

Donnelly concludes his discussion of my epistemology by saying: "when developing his argument for his list of universal rights, Talbot 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" (Donnelly in "Exploring Universal Rights: A Symposium" 2007: 88). This is quite puzzling, since my entire account of the development of human rights is framed by my account of moral development as a process of discovery. A central element in my account of that process is that the discovery of human rights represents important progress and that guaranteeing those rights is the best way of increasing the rate of progress. I have already referred to my criticism of Rorty's account of the process, because, without anything objective for the process to approximate, his conception of what it means to make progress is too arbitrary. That is probably the most important role that objectivity plays in my account of the historical development of human rights. Here is a partial list of the way that objectivity plays a crucial role in my account of the basic human rights: first, my consequentialist defense of the basic human rights depends on assuming that

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<sup>9</sup> I could also have cited Nagel (1998).



there is a consequentialist principle that can be used by governments to justify their coercion (Talbot 2005: 116); second, my non-consequentialist defense of basic human rights just assumes that there is a non-consequentialist principle according to which respecting the basic human rights is the appropriate way to treat a being capable of autonomy (Talbot 2005: 133); third, my solution to the appropriate responsiveness problem depends on the fallible ability of ordinary people who are guaranteed the basic human rights to recognize unfairness and to be willing to incur at least small costs to promote fairness.

Of course, I realize that Donnelly would be able to offer his own alternative account of each item so that they did not involve a commitment to moral objectivity. But he cannot claim that objectivity plays no role in *my* account of them. On my account, it really is necessary that there be some objective consequentialist or nonconsequentialist principle of justice if I am to hold, as I do, that justice requires that governments guarantee their citizens the basic human rights.

On the substance of my account, Donnelly questions why I favor autonomy over dignity as the ground of the basic human rights. Let me say again that I do not believe there is only one useful basic/non-basic distinction in the theory of human rights. I would only suggest that Donnelly's dignity-based conception is better as a conception of human rights generally than as a conception of basic human rights, where the basic human rights are those that are necessary for moral legitimacy. Understood as an attempt to explain human rights generally, I find Donnelly's substantive account (*sans* the pragmatist metaphysics) quite valuable and I recommend it to my students.

It is true, as Donnelly says, that it would be implausible to think that the reason that human beings have a right against torture is that torture limits autonomy (though indeed it does). But my book is intended to be about the distinctively human rights, the rights that apply to normal human beings because of features that distinguish them from other animals. I believe that all sentient beings should have a right not to be tortured, so I do not regard the right not to be tortured to be a distinctively human right (Talbot 2005: 7, 105).

Because I believe that there is more than one way to distinguish basic from non-basic rights, I do not deny that there is a way of making the distinction that would make a right against torture more basic than the autonomy rights on my list. In the book, I simply propose one way of making the distinction, one that helps to explain why the nine autonomy rights on my list are especially important. Donnelly asserts that he searched in vain for "anything even approaching an argument [for this position] in this book. Instead, it is an unsupported assertion" (Donnelly in "Exploring Universal Rights: A Symposium" 2007: 81). This bewilders me. All of Chapters 6 and 7 are devoted to explaining why guarantees of the nine rights on my list of basic rights are necessary to solve the reliable feedback problem and the appropriate responsiveness problem for governments. In Chapter 7, I clearly explain how solving those problems is crucial to designing a government that becomes more just over time and I provide two versions of the design solution, one consequentialist and one nonconsequentialist.

To fully appreciate the centrality of autonomy in the development of human rights, it is important to consider the history of that development. As I reconstruct it, the history of the development of human rights is the history, often repeated, of overcoming paternalistically justified oppression. In each case, a crucial step is when some members of the oppressed group finally get their own voices. The basic human rights are the rights that are necessary for them to get their own

voice and for their voices to be heard by those who exert coercive power over them. Thus, autonomy rights are the main instruments for eliminating oppression. That surely is some reason for regarding them as basic human rights.

Donnelly does not understand how I can think that Hindu justification of the traditional caste system is evidence of a shared, transcultural conception of justice, since the Hindu caste system involves the denial of many of the basic human rights on my list (Donnelly in “Exploring Universal Rights: A Symposium” 2007: 88, n.22). As I explain in the book, it is not the Hindu conception of justice that is alien to Westerners, but rather the doctrines of karma and transmigration of souls. If those doctrines were true, the Hindu caste system would be justified as one in which each person’s position was deserved by their choices in previous lives. This notion of desert is clearly recognizable to Westerners. If the doctrines were true, those who were currently members of the upper castes would have earned their benefits by serving in lower positions in previous lives. Thus, over multiple lives, there would be a fair sharing of the benefits and burdens of life under the caste system. This notion of fair sharing of benefits and burdens is clearly recognizable to Westerners. Most importantly, the Hindu doctrines implied that the process of multiple reincarnation governed by the law of karma was guaranteed to result in everyone’s attaining enlightenment, assumed to be the ultimate goal of life. This element of Hinduism fits clearly with Western conceptions of justice, especially consequentialist conceptions.

Donnelly may have misunderstood my discussion of this example, because of his impression that I held that the basic human rights should be guaranteed in all possible worlds. If it were really true that there was a system of exploitation in which everyone took turns being the exploited and exploiter and it really were true that participating in that system of exploitation was the only way to reach the ultimate goal of life, I would not object to the system. As I explain in the book, societies are quite ingenious in coming up with self-serving justifications for their norms and practices that would actually justify those norms and practices if they were true or if there were good reason to believe them to be true.

There are many other issues raised by Donnelly’s essay, but this response is already long enough. Let me just say that I may disagree with Donnelly’s pragmatist metaphysics, but I agree with his pragmatism in the promotion of human rights. In the heat of philosophical combat, he may tend to overstate the degree of “overlapping consensus” on human rights—for example, by reporting the number of countries that have ratified the Convention on the Elimination of All Forms of Discrimination Against Women and ignoring the number of countries that have attached reservations to the convention that effectively eviscerate it or by failing to distinguish those countries that have ratified a human rights document from those that have actually taken steps to make it legally enforceable. No one could seriously believe that there is an “overlapping consensus” on women’s rights against discrimination in the world today. But I think Donnelly is exactly right when he emphasizes what I have called the *prescriptive role* of the concept of a human right (Donnelly 2003: 12). In the prescriptive sense, we can regard women’s rights against discrimination as basic human rights.

Donnelly and I agree that the basic human rights that I focus on in the first volume are only some of the rights that should be universal. There is more to be said and I will say at least some of it in the next volume.

## Conclusion

Let me close by expressing my gratitude to all of my critics. All of them have raised important issues that are far from settled. There is a powerful illusion in the human rights literature that somehow it is possible to define human rights in a way that avoids all reasonable disagreement. Someone who is in the grip of this illusion will find my book exasperating, since it is full of claims about which there is reasonable disagreement. This symposium is more than adequate evidence of that.

It seems to me that the longing for a position that is immune to reasonable disagreement is yet one more manifestation of the malign influence of the Proof Paradigm in Western philosophy. On the Proof Paradigm, one could only be justified in believing something that was self-evident or provable from self-evident premises. Thus, on the Proof Paradigm, reasonable disagreement was impossible. Even though Rawls explicitly rejected the Proof Paradigm in favor of an equilibrium model of reasoning, he never gave up the goal of articulating a free standing political philosophy that would not be subject to reasonable disagreement. And yet there is plenty of reasonable disagreement over Rawls, for there will always be reasonable disagreement about any interesting philosophical view.

On the alternative to the Proof Paradigm that I favor, it is the very process of reasonable disagreement that makes it possible for us, individually and collectively, to make progress in any area of inquiry, including human rights. This sort of dialog will not by itself make the world more hospitable to human rights, but it is an important part of the process.

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