Are Human Rights Universal?
The Relativist Challenge and Related Matters

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A vision of future social order is . . . based on a concept of human nature. If in fact man is an indefinitely malleable, completely plastic being, with no innate structures of mind and no intrinsic needs of a cultural or social character, then he is a fit subject for the “shaping behavior” by the state authority, the corporate manager, the technocrat, or the central committee. Those with some confidence in the human species . . . will try to determine the intrinsic human characteristics that provide the framework for intellectual development, the growth of moral consciousness, cultural achievement, and participation in a free community.

The great concern of our contemporaries for historicity and for culture has led some to call into question . . . the existence of “objective norms of morality” valid for all peoples of the present and the future, as for those of the past. . . . It must certainly be admitted that man always exists in a particular culture, but it must also be admitted that man is not exhaustively defined by the same culture. . . . [T]he very progress of cultures demonstrates that there is something in man which transcends those cultures. This “something” is precisely human nature: This nature is itself the measure of culture and the condition ensuring that man does not become the prisoner of any of his cultures, but asserts his personal dignity by living in accordance with the profound truth of his being.

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I. INTRODUCTION

The idea of human rights consists of two parts: the premise or claim that every human being is sacred (inviable, etc.), and the further claim that because every human being is sacred (and given all other relevant information), certain choices should be made and certain other choices rejected; in particular, certain things ought not to be done to any human being and certain other things ought to be done for every human being.\(^4\) One fundamental challenge to the idea of human rights addresses the first part of the idea; it contests the claim that every human being is sacred. Another fundamental challenge, the one with which this article is principally concerned, addresses the second part of the idea. According to this latter challenge, whether or not every human being is sacred—and, so, even if every human being is sacred—there are no things that ought not to be done (not even any things that conditionally rather than unconditionally ought not to be done) to any human being and no things that ought to be done (not even any things that conditionally rather than unconditionally ought to be done) for every human being. That is, no putatively “human” right is truly a human right: no such right is the right of every human being; in that sense, no such right—no such “ought” or “ought not”—is truly universal. Before addressing this challenge, which shall be referred to as the relativist challenge to the idea of human rights, a comment on the other fundamental challenge, which contests the claim that every human being is sacred, is in order.

II. ARE ALL HUMAN BEINGS SACRED?

One can contest the claim that every human being is sacred by making either of two distinct arguments:

First, one can contend that no argument for the claim that any human being, much less every human being, is sacred—neither any religious argument nor any secular argument—is persuasive.\(^5\) In particular, one can insist that after the death of God (Nietzsche)\(^6\)—or “after metaphysics has

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4. See Perry, supra note 1 (explaining that in some cases the “should,” “ought,” or “ought not” might be conditional rather than unconditional or absolute).

5. Indeed, one can contend that no secular version of the claim is even intelligible. See Perry, supra note 1 (inquiring whether there is any intelligible secular version of the claim that every human being is sacred).

6. See, e.g., Friedrich Nietzsche, The Will to Power 147 (Walter Kaufmann ed. & Walter Kaufmann & R.J. Hollingdale trans., 1967) (“Naiveté: as if morality could survive when the God who sanctions it is missing! The ‘beyond’ absolutely necessary if faith in morality is to be maintained.”).
collapsed” (Habermas)—sacredness (inviolability, etc.) of human beings cannot be predicated plausibly.

Second, one can contend that not every human being is sacred, but only some human beings—the members of one’s tribe, for example, or of one’s nation.

Typically, the claim that only some human beings are sacred takes the form, not that only some human beings are sacred, but that only some persons are really human beings; in particular, it takes the form that some (other) persons—women, for example, or persons of African ancestry, or Jews, or Bosnian Muslims, etc.—are not truly human or, at least, that they are not fully human and that therefore they lack the sacredness characteristic of those who are truly and fully human. But to accept that every human being is sacred while insisting that women, or persons of African ancestry, or Jews, or Bosnian Muslims, etc., are not really human beings—that they are not truly human or that they are not fully human—is to reject the claim that every human being is sacred and to accept instead the competing claim that only some human beings are sacred. This is because the first part of the idea of human rights—the claim that every human being is sacred—is the claim that every member of the species homo sapiens is sacred (or at least every born member); it is the claim that the sacredness of a human being (homo sapien) does not depend on his or her “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” (This language appears in Article 2 of the Universal Declaration of Human Rights and is repeated in both the International

7. See Jürgen Habermas, Transcendence from Within, Transcendence in this World, in HABERMAS, MODERNITY, AND PUBLIC THEOLOGY 226 (Don Browning & Francis Schüssler Fiorenza eds., 1992). Habermas argues:

   Who or what gives us the courage for such a total engagement that in situations of degradation and deprivation is already being expressed when the destitute and deprived summon the energy each morning to carry on anew? The question about the meaning of life is not meaningless. Nevertheless, the circumstance that penultimate arguments inspire no great confidence is not enough for the grounding of a hope that can be kept alive only in a religious language. The thoughts and expectations directed toward the common good have, after metaphysics has collapsed, only an unstable status.

   Id. at 239.


Covenant on Economic, Social and Cultural Rights\textsuperscript{10} and in the International Covenant on Civil and Political Rights.\textsuperscript{11}) To insist that women, or persons of African ancestry, or Jews, or Bosnian Muslims, etc., are not truly human—that, instead, they are pseudohumans—and, unlike true humans, are not sacred, is to say that only some human beings (\textit{homo sapiens}) are sacred.

Cast as the claim that only some persons are human beings, the claim that only some human beings are sacred has been, and remains, quite common. According to Nazi ideology, for example, the Jews were pseudohumans.\textsuperscript{12} There are countless other examples, past and present:

Serbian murderers and rapists do not think of themselves as violating human rights. For they are not doing these things to fellow human beings, but to \textit{Muslims}. They are not being inhuman, but rather are discriminating between the true humans and the pseudohumans. They are making the same sort of distinction as the Crusaders made between humans and infidel dogs, and the Black Muslims make between humans and blue-eyed devils. [Thomas Jefferson] was able both to own slaves and to think it self-evident that all men were endowed by their creator with certain inalienable rights. He had convinced himself that the consciousness of Blacks, like that of animals, “participate[s] more of sensation than reflection.” Like the Serbs, Mr. Jefferson did not think of himself as violating human rights.

The Serbs take themselves to be acting in the interests of true humanity by purifying the world of pseudohumanity.\textsuperscript{13}

As emphasized later in this article, Martha Nussbaum’s important work is quite helpful in responding to the second basic challenge to the idea of human rights, the relativist challenge, which is the principal subject of this article. The relativist challenge is addressed to the second part of the idea of human rights; therefore, Nussbaum’s work is quite helpful in defending the second part of the idea. Her work is not helpful, however, in defending the first part of the idea, the claim that every human being is sacred. The point here is a general one: Nussbaum’s work illustrates that even the most persuasive rebuttals of relativist arguments typically fail to address challenges to the fundamental claim that all human beings are sacred.


In a recent essay critiquing "skepticism about practical reason in literature and in the law," Nussbaum asserts that "the good of other human beings is an end worth pursuing in its own right, apart from its effect on [one's] own pleasure or happiness."\textsuperscript{14} (It is clear that by "other human beings" Nussbaum is referring not just to \textit{some} other human beings but to \textit{all} other human beings.) But why is the good of every human being an end worth pursuing in its own right? Nussbaum does not say. She merely reports, in the final paragraph of her essay, that "it seems to be a mark of the human being to care for others and feel disturbance when bad things happen to them."\textsuperscript{15} Now, few will deny that it seems to be a mark of the human being to care for \textit{some} other human beings—\textit{the} members of one's family, say, or even of one's tribe or nation or race or religion. But it is not a mark of all human beings—it is not a mark of "the human being" as such—to care for \textit{all} other human beings. The real world is full of what Primo Levi called "us-ism":

Those on the Rosenstrasse who risked their lives for Jews did not express opposition to anti-semitic policies per se. They displayed primarily what the late Primo Levi, a survivor of Auschwitz, called "selfishness extended to the person closest to you . . . us-ism." In most of the stories that I have heard of Aryans who risked their lives for Jews to whom they were married, they withdrew to safety, one by one, the moment their loved ones were released. Their protests bring home to us the iron limits, the tragically narrow borders, of us-ism.\textsuperscript{16}

Consider, too, Richard Rorty's point:

Plato got moral philosophy \textit{off} on the wrong foot. He led moral philosophers to concentrate on the rather rare figure of the psychopath, the person who has no concern for any human being other than himself. Moral philosophy has systematically neglected \textit{the much more common case}: the person whose treatment of a rather narrow range of featherless bipeds is morally impeccable, but who remain indifferent to the suffering of those outside this range, the ones he or she thinks of as pseudohumans.\textsuperscript{17}

Rorty's "much more common case" is also much more common than the person at the other extreme from the psychopath: someone who cares deeply about the authentic well-being of every human being. We sometimes mark just how \textit{uncommon} such persons are, in the real world, by calling them "saints."

\textsuperscript{15} \textit{Id.} at 744; see also Martha C. Nussbaum, \textit{Compassion: The Basic Social Emotion}, 1996 Soc. Phil. & Pol'y 27 (1996).
\textsuperscript{16} Nathan Stoltzfus, \textit{Dissent in Nazi Germany}, Atlantic Sept. 1992, at 87, 94.
\textsuperscript{17} Rorty, \textit{supra} note 13, at 123–24 (emphasis added).
If it were a mark of every human being to care for every other human being (and to feel disturbance when bad things happen to any other human being), the "why" question would be merely academic. But because very many human beings—indeed, perhaps most human beings—have not in the past cared for, nor do they today care for, every human being, the question is both practical and urgent: why is the good of every human being an end worth pursuing in its own right? In her essay, Nussbaum stands mute before that question. One answer—the answer that informs the international law of human rights—is that the good of every human being is an end worth pursuing in its own right because every human being is sacred. As I suggest elsewhere, there might be no intelligible secular version of that answer—that is, no intelligible secular version of the conviction that every human being is sacred.\(^\text{18}\)

Again, two arguments against the idea of human rights address the first part of the idea. According to one of the arguments, neither any religious nor any secular support for the claim that any human being (much less every human being) is sacred is persuasive; according to the other argument, only some human beings are sacred (or, equivalently, only some persons are human beings). Neither argument is addressed here. (If the conviction that every human being is sacred is inescapably religious, then meeting either argument would require a religious counterargument.\(^\text{19}\)) Instead, the principal argument addressed in this article challenges the second part of the idea of human rights. According to the argument, even if argüendo every human being is sacred, it does not follow and in fact is not true that there are things that ought not to be done to any human being or things that ought to be done for every human being.

**III. WHAT THINGS OUGHT/NOT TO BE DONE FOR/TO EVERY HUMAN BEING?**

Why might one who believes—or, at least, who accepts argüendo—that every human being is sacred also believe that there is nothing that ought not to be done to any human being and nothing that ought to be done for every human being? Imagine that you reject the proposition that human beings are all alike in some respects such that there are things that are good and things that are bad for every human being; things that serve—that enhance, that are friendly to—the well-being (or some aspect of the well-being) of every human being and things that disserve—that diminish, that are hostile to—

\(^{18}\) See Perry, supra note 1.

\(^{19}\) See Perry, supra note 1.
the well-being of every human being.20 ("Good" and "bad" obviously admit of degrees: Some things serve our well-being, and some things disserve it, much more radically than some other things do.) You believe that although some things are good and some things are bad for some human beings, nothing is good and nothing is bad for every human being.21 In particular, you believe that even if every human being is sacred, there is nothing—there is no practice—that ought not to be done to any human being, because while a practice might be bad for some, even many, human beings, no practice is bad for every human being. Similarly, you believe that there is no practice that ought to be done for every human being, because while a practice might be good for some, even many, human beings, no practice is good for every human being.22

20. See generally L.W. Sumner, Welfare, Happiness, and Ethics (1996) (providing an important argument about the nature of well-being (welfare)).

21. Something, G, can be good for someone in the sense that G serves her well-being even if she does not believe that G serves her well-being—indeed, even if she believes that G diserves her well-being—and does not want G. Similarly, something, B, can be bad for someone in the sense that it diserves her well-being even if she does not believe that B diserves her well-being—even if she believes that B serves her well-being—and wants B. In short, human beings can be mistaken about what is truly good for them, or about what is truly bad for them, or about both.

22. Let me pause to forestall a possible misreading. I do not mean to suggest that the fact that something is good for every human being somehow entails that it ought to be done for every human being. That something, B, is bad for every human being—that it diserves the well-being of every human being—does seems to entail (that is, in conjunction with the premise that every human being is sacred it seems to entail) that B ought not to be done, or at least that it conditionally ought not to be done, to any human being; it seems to entail, that is, that no one ought to act for the purpose, or at least that there is a strong presumption against anyone acting for the purpose, of doing B to any human being. See Perry, supra note 1. However, that something, G, is good for every human being—that it serves the well-being of every human being—does not entail that G ought to be done, or even that it conditionally ought to be done, for every human being: it does not entail that someone (or someones) ought to act for the purpose, or even that there is a strong presumption in favor of someone acting for the purpose, of doing G for every human being (or every human being lawfully within the jurisdiction, or every human being who is a citizen, etc. For example, G might not be something, like "help in trouble" (see infra note 40 and accompanying text), that someone can bestow on another human being. Or it might not be something that anyone can reasonably be thought to be required to bestow on another person just because the other person is a human being (and therefore sacred). Or, G might be something that every human being can achieve, if at all, only for himself or herself, or something that every human being is better off achieving for himself or herself, or, at least, something that the community is better off requiring everyone to achieve for himself or herself. In any event, that something is good for every human being does not by itself entail that it ought to be done for every human being, and I do not mean to suggest otherwise. Nonetheless, that something is good for every human being can be, depending on the nature of that something, part of an argument for concluding that it ought to be done for every human being. (Even if something is not good for every human being, or even for any human being, one might have an obligation to do it for some human being(s)—if, for example, it is not bad for any human being and one has accepted consideration for a promise to do it.)
This, then, is the heart of the relativist challenge to the idea of human rights: the claim that nothing is good and nothing is bad for every human being—nothing serves and nothing deserves the well-being of every human being—because human beings are not all alike in any respect that supports generalizations either about what is good or about what is bad, not just for some human beings, but for every human being. This position—nothing is good and nothing is bad for every human being—is "relativist" in the sense that, according to the position, what is good and what is bad for a particular human being are never good and bad for her in virtue of anything she has in common with every other human being—in particular, what is good and what is bad for her are not good and bad for her in virtue of a common nature, a human nature. Rather, what is good and what is bad for a particular human being always depend on—they are always relative to—

One more clarification. That something—for example, a democratic form of government—might not be good for each and every human being who has it does not entail that international law should not establish a right to that something as a human right; it does not entail that the international law of human rights should not make the choice of that something obligatory. That there is, as a moral matter, and that there should be, as an international legal matter, a human right to X—freedom from torture, for example—might presuppose that something (torture) is bad for everyone who is subjected to it and that freedom from that something is good for every human being who has it; it might presuppose that any human being is better off for having X. But that there is, as a moral matter, and that there should be, as an international legal matter, a human right to X—a democratic form of government, for example, or religious freedom—does not necessarily presuppose that X is good for every human being who has it. For whatever reason(s), there might be some who would be much better off, in one or more respects, if they did not have X. For example, there might be some poor souls, helplessly adrift in the spaces created by modern political and religious freedoms, who would be genuinely better off if, instead of living in a society that enjoyed such freedoms, they lived in a society in which they were told by a benevolent state what political and/or religious orthodoxies to accept. That there is a human right to X might presuppose only that most human beings in any existing society will be much better off (eventually if not right away) if they have X—and that a choice against X, which is a choice favoring the well-being of the few (the genuine well-being, let us assume) over the (genuine) well-being of the many, is therefore inconsistent with the premise that all human beings, and not merely some, are sacred.

23. The relativist might also claim that there is not even anything such that most people in any existing society will be better off, eventually if not right away, if they have it. See supra note 22. This article concentrates on the former claim. If the response developed here to the former claim is sound—the response that some things are good and some things are bad for every human being—a fortiori the response works against the second claim as well: some things are good, eventually if not right away, for most human beings in any existing society. Even if the response developed here is sound, there might still be serious disagreement about what things are good or about what things are bad for every human being, or about both, or about what things are good for most human beings in any existing society.

(A puzzle: Why might anyone who affirms that there is something about every human being in virtue of which every human being is sacred deny that there is anything about every human being in virtue of which some things are bad or some things are good, or both, for every human being?)
some thing about her or about her context or situation, some thing that is never true about every human being or about the situation of every human being.

Is the relativist challenge to the idea of human rights plausible? Should we take it seriously? A few fragments from the real world might help to focus the mind. On 20 January 1993, The New York Times reported:

In its final global human rights report, the Bush Administration said today that Serbian forces in Bosnia and Herzegovina were conducting a campaign of “cruelty, brutality, and killing” unrivaled since Nazi times.

The survey of 189 countries issued by the State Department described a Serbian policy of terror against civilians that made “a mockery” of the Geneva Convention. The Serbs’ “ethnic cleansing” campaign includes widespread and systematic rape and murder and the systematic shelling and starvation by siege of large cities, the report said.

Non-Serbs were subjected to “almost every conceivable form of torture, humiliation and killing,” it said, including the deliberate disfigurement and the excision of body parts of prisoners in Serb-run camps.24

The following three reports add some detail to what the Times story only sketched in broad outline:

On the basis of . . . statements of witnesses and actual raped people, one can confirm that . . . occupying Serbian forces formed special concentration camps for women and children. . . .

[W]ar crimes are being committed in special women’s concentration camps where little girls, girls and women are being raped in the presence of their parents, brothers and sisters, husbands or children. After that, according to witnesses’ statements, the raped persons are further brutalized and even massacred, their breasts are sliced off and their wombs are ripped out. . . . The young girls couldn’t physically survive the rapes and quickly died. . . . [O]ver 300 young girls in The Home for Retarded Children were raped.25

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Once a young woman with a baby was taken in the middle of the hall. . . . They ordered her to take off her clothes. She put the baby on the floor next to her. Four Chetniks raped her; she was silent, looking at her crying child.

When she was left alone she asked if she could breast-feed the baby. Then a Chetnik cut the child's head off with a knife. He gave the bloody head to the mother. The poor woman screamed. They took her outside and she never came back.26

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A Muslim man in Bosnia Petrovac . . . [was] forced to bite off the penis of a fellow Muslim. . . . If you say that a man is not human, but the man looks like you and the only way to identify this devil is to make him drop his trousers—Muslim men are circumcised and Serb men are not—it is probably only a very short step, psychologically, to cutting off his prick. . . . There has never been a campaign of ethnic cleansing from which sexual sadism has gone missing.27

The following report, which adds more detail, was broadcast on World News Tonight With Peter Jennings on 18 February 1994:

[Richard Gizbert, ABC News:] An investigation by German TV led to the arrest [in Germany] of Dusko Tadic, a Serb guard at the notorious Omarska prison camp. He's charged with aiding and abetting genocide. The only pictures the Serbs allowed at Omarska don't tell the real story. Human rights groups say that at least a thousand Bosnians were killed there, many tortured. Tesma Elezovic was a prisoner at Omarska. She says she was forced to wipe up the blood of Dusko Tadic's victims.

[Tesma Elezovic, through interpreter:] I saw with my own eyes Tadic beat the prisoners, throw them into hot oil, force them to castrate each other, beating them so badly they died.

[Richard Gizbert:] Another former prisoner afraid of identification says prisoners were forced to listen to others being tortured.

[Former prisoner, through interpreter:] I never heard such terrible screams, not even in horror films.28

These reports all concern the situation today in the former Yugoslavia.29 One could reproduce—one could fill volumes with—similar reports of horror that concern countless other situations at countless other times in countless other places, reports of cruelty so calculated that simply to hear of it tears the soul.30 But the reports reproduced here are more than adequate—

26. Id.
27. Letter from Bosnia, New Yorker, 23 Nov. 1992, at 82–95, quoted in Rorty, supra note 13, at 112.
29. See also Anthony Lewis, The Level of Beasts, N.Y. Times, 27 June 1994, at A17 (providing yet another report of horror from the former Yugoslavia).
even reports of cruelty less calculated, or of acts less cruel, would be more than adequate—to illustrate and clarify the fundamental point: some things are bad, indeed some things are horrible—conspicuously horrible, undeniably horrible—for any human being to whom the thing is done.

But can it also be said that some things are good for every human being for whom the thing is done? Concrete ways of life that would be bad, or horrific, for any human being can be identified. However, concrete ways of life that would be good, much less best, for every human being cannot be identified. But just as some things, indeed many things, that are bad for any human being can be confidently identified, some things that are good for every human being can confidently be identified: for example, “affection, the cooperation of others, a place in a community, and help in trouble.”

The relativist challenge to the idea of human rights is not plausible. It cannot seriously be denied—or, perhaps it should be said that the denial should not be taken seriously—that human beings are all alike in at least some respects such that there are some things that are good and some things that are bad for every human being—some things that serve and some things that disserve the well-being of every human being. Some things are good and some things are bad, not merely for some human beings, but for every human being. If every human being is sacred, some things—some practices—ought not to be done to any human being, because the practice is bad for every human being; some practices ought to be done for every human being, at least in part because the practice is good for every human being. Human beings are all alike in some respects that support generalizations both about what is good and about what is bad, not just for some human beings, but for every human being.

All this seems so obvious that one can fairly wonder who, if anyone, denies it—and why?

IV. PLURALISM

The relativist challenge to the idea of human rights, though not plausible, appears plausible to some persons: those who confuse the relativist position with a different position. That different position, which is not only plausible but correct, is pluralism about human good.

To say that human beings are all alike in at least some respects such that some things are good and some things are bad for every human being is not to deny that human beings are not all alike in many other respects; it is not to deny that some things are good and some things are bad for some human

31. See infra text accompanying note 40.
beings but not for others. Even though some needs, social as well as biological, are common to all human beings, other needs are not common to all human beings; even though some wants (preferences) are common to many human beings, many wants are not common to all human beings. That which serves the well-being of—that which is congenial to the flourishing of—one or more human beings is not, therefore, necessarily congenial to the flourishing of every human being, and that which disserves the well-being of—that which is hostile to the flourishing of—one or more human beings is not necessarily hostile to the flourishing of every human being. In particular, a concrete way of life good for one or more human beings might not be good for every human being, and a way of life bad for one or more human beings might not be bad for every human being. Moreover, a way of life good for one or more human beings—or even for every human being—might not be the only way of life good for those human beings; even for a particular human being, there might be two (or more) ways of life that, as a practical matter, are mutually exclusive but each of which would be good for her (albeit in different ways). As David Wong has put it:

[T]here is no [determinate] feature or set of features [of human nature] that eliminates all but one ideal [of the good for man] as valid. . . . [I]nsofar as there is such a thing as a fixed human nature, remaining invariant from social environment to social environment, it is not sufficiently determinate to justify the claim that there is a determinate good for man, a complex of activities arranged in an ideal balance, which any rational and informed person would find the most rewarding.

Stuart Hampshire has made the same point:

There are obvious limits set by common human needs to the conditions under which human beings flourish and human societies flourish is not to deny that human nature, conceived in terms of common human needs and capacities, always underdetermines a way of life, and underdetermines an order of priority among virtues, and therefore underdetermines the moral prohibitions and injunctions that support a way of life.

None of this seems particularly controversial. Universalism about human good is correct: human beings are all alike in some respects such that some things good for some human beings are good for every human being and some things bad for some human beings are bad for every human being. But pluralism about human good is correct, too: there are many

32. I am referring here to wants or preferences the satisfaction of which is not antithetical to human flourishing or otherwise morally problematic.
important respects in which human beings are not all alike; some things
good for some human beings, including a concrete way of life, might not be
good for every human being, and some things bad for some human beings
might not be bad for every human being. \(^{35}\) (This is true intraculturally
as well as interculturally.) Indeed, some things good for some human beings, or
even for every human being, might not be compatible with every other thing
good for them; two or more mutually exclusive things might both be good
for a human being. \(^{36}\) Undeniably, then, any plausible conception of human
good must be pluralist. A conception of human good, however, can be, and
should be, universalist as well as pluralist: it can acknowledge sameness as
well as difference, commonality as well as variety. \(^{37}\)


If today we differ with Aristotle it is in being much more pluralistic than Aristotle was. Aristotle
recognized that different ideas of Eudaemonia, different conceptions of human flourishing, might
be appropriate for different individuals on account of the difference in their constitution. But he
seemed to think that ideally there was some sort of constitution that every one ought to have; that
in an ideal world (overlooking the mundane question of who would grow the crops and who
would bake the bread) everyone would be a philosopher. We agree with Aristotle that different
ideas of human flourishing are appropriate for individuals with different constitutions, but we go
further and believe that even in the ideal world there would be different constitutions, that diversity
is part of the ideal. And we see some degree of tragic tension between ideals, that the fulfillment
of some ideals always excludes the sacrifice of some others.

\(\text{id. at 148.}\)

As Putnam goes on to emphasize, however: "[B]elief in a pluralistic ideal is not the
same thing as belief that every ideal of human flourishing is as good as every other. We
reject ideals of human flourishing as wrong, as infantile, as sick, as one-sided." \(\text{id. see also id. at 140 (referring to "sick
standards of rationality" and "sick conception(s) of human flourishing"); id. at 147 ("We have just as
much right to regard some 'evaluational' casts of mind as sick (and we all do) as we do to
regard some 'cognitive' casts of mind as sick.").}\)

36. See BERNARD WILLIAMS, ETHICS AND THE LIMITS OF PHILOSOPHY (1985). Williams argues:

[There are many and various forms of human excellence which will not all fit together into a one
harmonious whole, so any determinate ethical outlook is going to represent some kind of
specialization of human possibilities. That idea is deeply entrenched in any naturalistic or . . .
historical conception of human nature—that is, in any adequate conception of it—and I find it
hard to believe that it will be overcome by an objective inquiry, or that human beings could turn
out to have a much more determinate nature than is suggested by what we already know, one that
timelessly demanded a life of a particular kind.

\(\text{id. at 153.}\)

37. See STUART HAMPSHIRE, TWO THEORIES OF MORALITY (1977). Hampshire believes that:

The correct answer to the old question—"why should it be assumed, or be argued, that there is just
one good for men, just one way of life that is best"—is . . . an indirect one and it is not simple.
One can coherently list all the ideally attainable human virtues and achievements, and all the
desirable features of a perfect human existence; and one might count this as prescribing the good
for man, the perfect realization of all that is desirable. But the best selection from this whole that
could with luck be achieved in a particular person will be the supreme end for him, the ideal at
which he should aim. It is obvious that supreme ends of this kind are immensely various and
always will be various. There can be no single supreme end in this particularized sense, as both
social orders and human capabilities change. . . .

\(\text{id. at 43.}\) That there should be an abstract ethical ideal, the good for men in general, is
not inconsistent with there being great diversity in preferred ways of life, even among
A. Universalist v. Pluralist

There are often differences about how universalist and how pluralist a conception of human good should be. (There are often differences, too, about which universalist position is most credible.\textsuperscript{38}) But is a radically anti-universalist position reasonable? For example, the anthropological view according to which nothing of consequence is good for every human being because, beyond some biological needs, there are no significant needs (much less wants) common to all human beings, no needs, therefore, such that what satisfies them is good, not just for this person or that, or for this group or that, but for any and every person, for human beings generally. Is it plausible to insist that human beings do not have significant needs in common, especially social needs, needs beyond the merely biological needs all human beings obviously share? Is it plausible to deny that there are significant needs common to all human beings, needs such that what satisfies them is good for every human being?

Why would anyone doubt that there are significant needs common to all human beings?\textsuperscript{39} After all, some significant senses and appetites—social senses and appetites no less than biological—certainly seem to be shared across the human species. Shared senses and appetites can be and often are shaped in different ways by different cultures and by different individual histories within a single culture. Not that all differences are due merely to differences in how common senses and appetites have been shaped; some significant senses and appetites are not shared across the human species. Nonetheless, some senses and appetites are shared. Therefore, some

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\textsuperscript{39} Stuart Hampshire, Innocence and Experience 90 (1989) ("Moral relativism has always rested on an under-estimate of universal human needs.").
significant needs, some social needs as well as biological, are shared across the human species: the needs that are the correlates of the shared appetites and senses. Some needs are universal and not merely local in character. Some needs are human. Philippa Foot has made the point succinctly but eloquently:

Granted that it is wrong to assume an identity of aim between peoples of different cultures; nevertheless there is a great deal that all men have in common. All need affection, the cooperation of others, a place in a community, and help in trouble. It isn’t true to suppose that human beings can flourish without these things—being isolated, despised or embattled, or without courage or hope. We are not, therefore, simply expressing values that we happen to have if we think of some moral systems as good moral systems and others as bad. Communities as well as individuals can live wisely or unwisely, and this is largely the result of their values and the codes of behavior that they teach. Looking at these societies, and critically also at our own, we surely have some idea of how things work out and why they work out as they do. We do not have to suppose it is just as good to promote pride of place and the desire to get an advantage over other men as it is to have an ideal of affection and respect. These things have different harvests, and unmistakably different connections with human good.40

Just as some needs (and wants) are human—just as there are significant needs common to all human beings—there are, correspondingly, some things of value to every human being: whatever satisfies, or somehow conduces to the satisfaction of, a common, human need. There are, in that sense, goods common to every human being. Some goods are universal and not merely local in character. Some goods are human. They include various human capacities or capabilities or virtues, namely, those that enable human beings to struggle against those forces, inside them as well as outside, that periodically threaten the well-being of any human being and for those things, those states of affairs or those states of being, congenial to the flourishing of any human being.

B. Historicists and Their Critics

In a series of related essays over the last several years, Martha Nussbaum has developed all this so well that the burden, a heavy burden, is now squarely on those who would press the relativist—the anti-universalist or, as it is sometimes called, anti-"essentialist"—position. Given the seemingly obvious truth of the basic claim—that there are significant needs and corresponding goods common to every human being—one can fairly wonder what in the world might tempt someone to doubt or even to deny it. Why would anyone deny what, according to Richard Rorty,

historicist thinkers [ever since Hegel] have denied[,] that there is such a thing as "human nature" or the "deepest level of the self." Their strategy has been to insist that socialization, and thus historical circumstance, goes all the way down, that there is nothing "beneath" socialization or prior to history which is definatory of the human. Such writers tell us that the question "What is it to be a human being?" should be replaced by questions like "What is it to inhabit a rich twentieth-century democratic society?"

There is a revealing passage in his essay "Solidarity or Objectivity?" in which Rorty, even Rorty, seems to retreat, albeit perhaps unwittingly, from the extremity of his "historicism"—his anti-universalism. He writes:

The pragmatists' justification of toleration, free inquiry, and the quest for undistorted communication can only take the form of a comparison between societies which exemplify these habits and those which do not, leading up to the suggestion that nobody who has experienced both would prefer the latter.

If Rorty is right that no one—no human being, no member of the species—who has experienced both would prefer the latter, what might explain such a preference: a universal preference? Moreover, even if Rorty is mistaken in

41. See Nussbaum, supra note 40; see also Martha C. Nussbaum, Aristotelian on Human Nature and the Foundations of Ethics (1990); Martha C. Nussbaum, Non-Relative Virtues: An Aristotelian Approach, in The Quality of Life 242–69 (Martha C. Nussbaum & Amartya Sen eds., 1993). The anti-"essentialist" position denies that there are any needs or goods common to each and every human being simply qua human; it denies, in that sense, that there are any needs or goods that are "essentially" human; it denies that there is any human "essence."

42. Richard Rorty, Contingency, Irony, and Solidarity xiii (1989). Rorty writes approvingly of "this historicist turn," which, he says, "has helped free us, gradually but steadily, from theology and metaphysics—from the temptation to look for an escape from time and chance. It has helped us substitute freedom for Truth as the goal of thinking and of social progress." Id. For an excellent critique of this and related aspects of Rorty's views, see Timothy P. Jackson, The Theory and Practice of Discomfort: Richard Rorty and Pragmatism, 51 THOMIST 270 (1987).

thinking that nobody who has experienced both would prefer the latter, why
would he suggest that nobody who has experienced both would prefer the
latter unless he believed that there are interests—there are senses and
appetites, there are needs—common to every human being, interests the
frustration of which is antithetical to the well-being of any human being?
Rorty’s statement that nobody who has experienced both would prefer the
latter is certainly in tension, if not inconsistent, with his insistence that (as
Bernard Williams has paraphrased):

[W]e cannot, in philosophy, simply be talking about human beings, as opposed
to human beings at a given time. . . . Rorty . . . contrasts the approach of taking
some philosophical problem and asking . . . “What does it show us about being
human?” and asking, on the other hand, “What does the persistence of such
problems show us about being twentieth-century Europeans?”

As the passage from his encyclical, Veritatis Splendor, might suggest,
John Paul II has been one of the most prominent critics of what, according
to Rorty, “historicist thinkers ever since Hegel” (including Rorty himself)
have claimed: “that there is nothing ‘beneath’ socialization or prior to
history which is definatorily of the human.” In their rejection of Rorty’s
historicist claim, John Paul II and Martha Nussbaum are allied. According to
Nussbaum, a conception of human good, of human flourishing, can at least
aspire
to be objective in the sense that it is justifiable by reference to reasons that do
not derive merely from local traditions and practices, but rather from features of
humanness that lie beneath all local traditions and are there to be seen whether
or not they are in fact recognized in local traditions.

The historicist insistence that it is socialization all the way down is not
merely some innocuous position in a far corner of academic philosophy. As
Rorty’s statement about “historicist thinkers since Hegel” suggests, the
denial of human good or well-being, of human needs—the denial, in that
sense, of “the human,” of “human nature”—has not been uncommon
among contemporary thinkers. More importantly, the denial is clearly
subversive of human rights claims.

Because the historicist denial of human nature is subversive of human
rights claims, the question is all the more urgent: What might lead to, what
might explain, a denial of the human? What might lead to or explain

45. Rorty, supra note 42, at xiii.
46. Nussbaum, Non-Relative Virtues: An Aristotelian Approach, supra note 41, at 243
(emphasis added).
47. See CHOMSKY, supra note 2, at 404.
nihilism (as distinct from pluralism) about human good? I do not have a confident answer. Perhaps a partial explanation is that some such denials confuse conceptions of human nature with human nature itself. It is one thing to insist that conceptions of human nature are irredicibly contingent, that they—like the languages, the vocabularies, in which the conceptions are expressed—bear the traces of particular times and places, of particular histories and cultures; it is another thing altogether to insist that there is no such thing as human nature. Moreover, it is one thing to insist that conceptions of human nature are socially constructed and that there are good reasons to be wary—or at least methodologically skeptical—about any such conception; it is another thing altogether to insist that we can get along quite nicely, thank you, without any conception of human nature, or to insist that putative human nature itself is, through and through, socially constructed (“there’s no there there, it’s socialization all the way down”).

C. Natural Law

Not everyone means the same thing by “natural law,” but the position shared by John Paul II, Martha Nussbaum, and Noam Chomsky seems to be the principal modern natural law position. It is, in any event, the position presupposed by the idea of human rights. According to this position, the

48. I concur in Martha Nussbaum’s comment:

I grant that some criticisms of some forms of essentialism have been fruitful and important: they have established the ethical debate on a more defensible metaphysical foundation and have redirected our gaze from unexamined abstract assumptions to the world and its actual history. But I argue that those who would throw out all appeals to a determinate account of human being, human functioning, and human flourishing are throwing away far too much. . . .

Nussbaum, supra note 40, at 205.

A comment by feminist legal theorist Robin West, though directed specifically to other feminist theorists, is relevant here:

What is of value in critical social theory for feminists? My suspicion is that what attracts many feminists to critical social theory is not its anti-essentialism, but more simply its skepticism: its refusal to accept any particular account of truth or morality as the essential true, moral or human viewpoint. This skepticism is entirely healthy and something we should treasure. The anti-essentialism of the critical theorist’s vision, by contrast, is something we should reject. Surely we can have both ways. A skepticism toward particular claims of objective truth, a particular account of the self, and any particular account of gender, sexuality, biology or what is or is not natural, is absolutely necessary to a healthy and modern feminism. But that skepticism need not require an unwillingness to entertain descriptions of subjective and intersubjective authenticity. . . .


49. D.J. O’CONNOR, AQUINAS AND NATURAL LAW 57 (1968) (“In so far as any common core can be found to the principal versions of the natural law theory, it seems to amount to the statement that the basic principles of morals and legislation are, in some sense or other, objective, accessible to reason and based on human nature.”).
fundamental subject matter of morality is human well-being; according to the natural law conception of the subject matter of moral knowledge, moral knowledge is knowledge of or about the constituents and conditions of human flourishing or well-being. The "natural law" that the idea of human rights presupposes is simply that all (or virtually all) human beings share some significant characteristics. In that sense they share a "nature," in virtue of which some things are good for every human being—some things are valuable for (and, so, should be valued by) every human being—and some things are bad for every human being—some things are harmful to (and, so, should be disvalued by) every human being. In Nussbaum's words, there are "features of humanness that lie beneath all local traditions and are there to be seen whether or not they are in fact recognized in local traditions," and these "features of humanness" constitute, in the words of John Paul II, "the measure of culture and the condition ensuring that man does not become the prisoner of any of his cultures."

Moreover, as Chomsky puts it, "[t]hose with some confidence in the human species . . . will try to determine the intrinsic human characteristics that provide the framework for intellectual development, the growth of moral consciousness, cultural achievement, and participation in a free community." Questions about human good—about what is good, or bad, not just for this or that human being, but for every human being, for human beings generally—including questions about human rights, are not misconceived. Contra Rorty, the question "What is it to be a human being?" should not be replaced by other questions. This is not to deny that there are

50. See Michael J. Perry, Morality, Politics, and Law 9–23 (1988). If personal "autonomy" is a particular, and particularly important, constituent of human well-being, then protecting such autonomy is protecting an important constituent of human well-being and protecting human well-being in its entirety requires protecting personal autonomy. On the relation of human well-being and personal autonomy, see Joseph Raz, Liberalism, Skepticism, and Democracy, 74 Iowa L. Rev. 761, 779–86 (1989).

51. One who holds the natural law position might also believe, and surely will believe: (1) that some things are good and some things are bad only for some human beings; and (2) that, nonetheless, whatever is good for a human being should be valued by that human being and whatever is bad for a human being should be disvalued by that human being. But the emphasis in the natural law tradition is on what is good/bad for every human being rather than on what is good/bad just for some human beings. (That something is good—sleep, for example—and should therefore be valued does not entail that one should value it more highly than something else with which, in the circumstances, it competes—for example, caring for one's sick child.) Properly understood, the "should" ("should be valued," "should be disvalued") is hypothetical rather than categorical. See Perry, supra note 50, at 12–19.


53. See Pope John Paul II, supra note 3, at 314.

54. See supra text accompanying note 2.

55. See Robin W. Lovin, Perry, Naturalism, and Religion in Public, 63 Tul. L. Rev. 1517 (1989). Lovin states:
other important, and sometimes complementary, questions, such as “What is it to inhabit a rich twentieth-century democratic society?” Nor is it to deny “the very poignant sense in which we may be unable to choose between cultures” or between (or among) ways of life within a single culture: “We may indeed be able to understand the transition [from one culture or way of life to another] in terms of gain and loss, but there may be some of both, and an overall judgement may be hard to make.”

It bears emphasis, however, that this inability to adjudicate between or among cultures or ways of life, as Charles Taylor explains,

presupposes that we can, in principle, understand and recognize the goods of another society [or of another way of life] as goods-for-everyone (and hence for ourselves). That these are not combinable with our own home-grown goods-for-everyone may indeed be tragic but is no different in principle from any of the other dilemmas we may be in through facing incombinable goods, even within our own way of life. There is no guarantee that universally valid goods should be perfectly combinable, and certainly not in all situations...

It may be that our contact with certain cultures will force us to recognize incommensurability, as against simply a balance of goods- and bads-for-everyone that we cannot definitively weigh up. But we certainly shouldn’t assume this is so a priori.

Perry speaks of “human good” in nonrelativist terms, not because he thinks that there is universal agreement about what is good for persons, nor even because he believes that there is some single ideal of human flourishing that would satisfy everyone, but because he thinks that people who disagree about the human good understand that they are disagreeing about the same thing. They are not talking about, say, architecture and tennis, in which the terms are so different that we would wonder how two people arguing about the relative merits of a good lobby and a good volley got into the same conversation. An argument over the relative values of artistic and athletic achievement in a complete human life, by contrast, does make sense, even if we are not certain that there is one and only one best solution to the problem.


[1]Relativists are quite right to insist that even such dramatically basic activities as birth, copulation, and death, such basic processes as eating and sleeping, physical growth and physical decay, are intentionally described in ways that affect phenomenological experience. Events and processes are encompassed and bounded, articulated and differentiated, within the web of a culture’s conceptual and linguistic categories; their meaning is formed by its primary practices and sacred books, songs and rituals. Even the conceptions of social practices and meaning are sufficiently culturally specific so that it is tendentious to refer to conceptions of culture practices, as if culture or practice were Platonic forms, waiting to be conceptualized this way or that. Indeed the very practices of interpretation and evaluation are themselves culturally variable.

But nothing follows from this about the impossibility of crosscultural interpretation, communication, or evaluation, particularly among cultures engaged in practical interactions with one another. The core truth of relativism—the intentionality of practice and experience—does not entail that successful communication and justified evaluation require strict identity of meaning. There are, furthermore, basic culturally invariant psychophysical and biosocial salience markers that set the boundaries of attention, however variously these foci may be identified, interpreted, or evaluated.

Id. at 418–19 (emphasis added).

Until we meet this limit, there is no reason not to think of the goods we are trying to define and criticize as universal, provided we afford the same status to those of other societies we are trying to understand. This does not mean of course that all our, or all their, supposed goods will turn out at the end of the day to be defensible as such; just that we don’t start with a preshrunk moral universe in which we take as given that their goods have nothing to say to us or perhaps ours to them.  

D. Rejection of the Relativist Approach

The relativist challenge to the idea of human rights is not, then, a plausible challenge. At least, it seems deeply contrary to experience to suggest that there are no significant respects in which human beings are all alike, and that no things, therefore—no practices, no acts or failures to act—are good and no things are bad for every human being. Moreover, a healthy pluralism about human good is consistent with a realistic universalism about human good and does not support, and should not be confused with, the relativist challenge. In June 1993, at the UN-sponsored World Conference on Human Rights, the representatives of 172 states adopted by consensus the Vienna Declaration and Programme of Action. They were right to reject the relativist challenge. In the first of its 100 declarations, the Vienna Declaration states of “all human rights and fundamental freedoms for all” articulated in the Universal Declaration of Human Rights and elsewhere: “The universal nature of these rights and freedoms is beyond question. . . . Human rights and fundamental freedoms are the birthright of all human beings; their protection and promotion is the first responsibility of Governments.”  

I concur in Jack Donnelly’s judgment that

[one of the more heartening results of the Vienna Conference was the repudiation of . . . the relativist position. Despite lingering fears of Western neocolonialism, and a continuing preoccupation with the task of development in the former Soviet bloc and the Third World, the resolutions adopted at Vienna generally reflect a commitment to the true universality . . . of internationally recognized human rights.]

57.  Id. at 61–62.
59.  Jack Donnelly, Post-Cold War Reflections on the Study of International Human Rights, 8 Ethics & Int’l Aff. 97, 113 (1994). Where I have put the second ellipsis, Donnelly writes “and interdependence.” Donnelly’s reference to the “interdependence of internationally recognized human rights” is to the interdependence of “civil and political rights” on the one hand and “economic, social, and cultural rights” on the other. See id. at 111–13.
To reject the relativist challenge to the idea of human rights—to the idea that (because every human being is sacred) there are things that ought not to be done to any human being and things that ought to be done for every human being—is not to deny that there can be, and are, deep differences about human good. Different people, different cultures, different traditions have different views about the way or ways of life that are good or fitting, not merely for themselves, but for any human being and for any human community. There are “deep conflicts over what human flourishing and well-being . . . consist in . . . Aristotle and Nietzsche, Hume and the New Testament are names which represent polar oppositions.” 60 Embedded in such differences are differences both about what is bad and about what is good for every human being and, therefore, differences about what ought not to be done to any human being and about what ought to be done for every human being. There might be radical differences, too, about who is a human being, or, equivalently, about whether every human being—every homo sapien—is sacred or inviolable, etc. But even among those who agree that every human being is sacred, there can be, and are, differences about what way (or ways) of life is fitting for human beings and, in particular, about what ought not to be done to any human being and about what ought to be done for every human being.

But to acknowledge those differences—even to understand that some such differences are reasonable ones—is a far cry from claiming that nothing, that no act or failure to act, is bad and nothing is good for every human being. Indeed, that there are widespread differences about whether one or another practice is bad for every human being does not entail that the practice is not bad for every human being:

[The mere fact of disagreement among the judgments of people hardly shows there is no fact of the matter to be agreed upon. People within a culture, and people in different cultures, may disagree about all sorts of things, such as whether the winds are influenced by the earth’s rotation, or whether the moon is made of rock.] 61

Moreover, whatever such differences might be, they are not typically differences between universalists on the one side and anti-universalists (or “relativists”) on the other. They are typically differences among universalists: Again, the Vienna Declaration, which repudiates the anti-universalist position, was adopted by consensus by the representatives of 172 states at the World Conference.

Finally, whatever such differences might be, they are differences among

60. ALASDAIR MACINTYRE, AFTER VIRTUE 152 (1981).
universalists who agree, as well as disagree, about what some of the things are—indeed, about what many of the things are—that ought not to be done to, or that ought to be done for, human beings. Many beliefs about what is good for every human being and, especially, many beliefs about what is bad for every human being are widely shared across cultures.

There is nothing . . . culture-bound in the great evils of human experience, reaffirmed in every age and in every written history and in every tragedy and fiction: murder and the destruction of life, imprisonment, enslavement, starvation, poverty, physical pain and torture, homelessness, friendlessness.62

Addressing the World Conference on Human Rights in June 1993, U.S. Secretary of State Warren Christopher observed that “[t]orture, rape, racism, anti-Semitism, arbitrary detention, ethnic cleansing, and politically motivated disappearances . . . none of these is tolerated by any faith, creed, or culture that respects humanity.”63 No one believes that rape, or slicing off breasts, or ripping out wombs, or decapitating a child in front of its mother (who has just been raped), or castrating a prisoner (or forcing another prisoner to do so), or throwing a prisoner into hot oil—no one believes that such acts are or might be good for them on whom the horror is inflicted.64

V. THE SECOND CHALLENGE TO HUMAN RIGHTS: WHAT THINGS OUGHT/NOT TO BE DONE FOR EVERY HUMAN BEING

Although many beliefs about what is bad for every human being and many beliefs, too, about what is good for every human being are widely shared among cultures, obviously not every such belief is shared among cultures—

64. It is a mistake, therefore, to think that such acts reflect a vision of human good, albeit a perverse vision. Rather, because everyone (not least, the perpetrators) understands that such acts—acts of calculated and gratuitous cruelty—are horrible for the victims, such acts constitute an existential, if not a reflexive or self-conscious, denial that the victims are sacred. Some acts that violate one or another human right (or that are plausibly believed to do so)—some acts that do to a human being what ought not to be done to any human being, or that fail to do for a human being what ought to be done for every human being—can fairly be understood to reflect a (mistaken) vision of human good. Moreover, some acts that violate one or another human right can fairly be understood to reflect, not the view that the victims of the act are not sacred, but only a (perhaps mistaken) judgment that the act, understood as a means, is justified by the end it serves. Some terrorist acts come to mind here—shootings and bombings—as do many acts of war. But it seems difficult to understand acts of calculated and gratuitous cruelty like those reported above as not reflecting, however unselfconsciously, the view that the victims of the act are somehow subhuman and therefore not sacred.
or even within a single culture. For example, although the proposition that raping a person attacks her (or his) well-being is not controversial, the proposition that surgically removing a girl’s clitoris (clitoridectomy) attacks her well-being is controversial.\textsuperscript{65} Many persons in some cultures or subcultures believe that excising a girl’s clitoris serves her well-being.\textsuperscript{66} Again, even among those who agree that every human being is sacred, there can be, and are, differences either about what ought not to be done to any human being or about what ought to be done for every human being, or about both. This is the basis of a second relativist challenge. This relativist challenge, however, unlike the first one, is not to the idea of human rights itself; it is not to the premise that some things are bad and some things are good for every human being. Rather, it is a challenge to the possibility of overcoming, to any significant extent, transcultural disagreement about what things are bad and what things are good for every human being. More precisely, it is a challenge to the possibility of overcoming transcultural disagreement—of diminishing transcultural dissensus—about whether a particular practice, like clitoridectomy, violates one or another human right, or more than one, that it is transculturally agreed that people have.

It bears emphasis that in the second half of the twentieth century, in the period since the end of World War II, significant transcultural agreement has been achieved about what many of the human rights are that people have.

\textsuperscript{65} Clitoridectomy is one of a collection of practices often subsumed under the name “female circumcision,” or, more accurately, “female genital mutilation.” See Larson, supra note 40. Larson explains:

Female genital surgeries include clitoridectomy (surgical removal of the clitoris), excision (surgical removal of the clitoris and labia) and infibulation (stitching up the vaginal opening after removal of the clitoris and labia). These practices are sometimes incorrectly called “female circumcision,” but this analogy is seriously misleading. The consequences of female genital mutilation are not comparable to the far safer, less painful, non-mutilating (indeed, perhaps prophylactic) practice of removing the penile foreskin.

\textit{Id.} at 60 n.12; see also A Traditional Practice that Threatens Health—Female Circumcision, 40 \textit{World Health Org. Chron.} 31 (1986).


Female circumcision is practiced in over 20 African countries. . . . [It] is also found in Malaysia, Indonesia, the southern parts of the Arab peninsula, Pakistan, some sects in the Soviet Union, United Arab Emirates, Oman, Bahrain, and South Yemen. Although the operations are most prevalent in Africa and the Middle East, they are also done in Peru, Brazil, eastern Mexico, and among the aboriginal tribes of Australia.

International human rights documents like the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights are widely endorsed by the states of the world. It is true that "[m]ost African and Asian countries did not participate in the formulation of the Universal Declaration of Human Rights because, as victims of colonization, they were not members of the United Nations." But the same cannot be said about many later documents, which not merely affirm but elaborate and add to the rights of the Universal Declaration. For example, both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) were adopted in 1966; each covenant entered into force a decade later, in 1976, when the requisite number of states became signatories. As of 1994, there were 122 state parties to the ICCPR and 124 state parties to the ICESCR. The Vienna Declaration and Programme of Action was adopted (by consensus by the representatives of 172 states) even more recently, in June 1993. Thus, there is significant transcultural agreement first, that people have human rights and, second, about what some, even many, of those rights are. That is, there is significant transcultural agreement: first, that because every human being is sacred, certain things ought not to be done to any human being and certain other things ought to be done for every human being; and, second, about what many of those things are.

67. See Christina M. Cerna, *Universality of Human Rights and Cultural Diversity: Implementation of Human Rights in Different Socio-Cultural Contexts*, 16 Hum. Rts. Q. 740, 746–48 (1994) (providing data). The language or vocabulary of rights is mainly Western in origin, but like many other artifacts mainly or even solely Western in origin, "rights-talk" has become an international currency. See Perry, supra note 1.


69. See Cerna, supra note 67, at 747. However, to be a signatory to an international human rights convention is not necessarily to have signed on to everything decreed in the convention. A state might hedge its signing by including, in its signing, one or more "reservations" or "declarations." Indeed, in extreme cases, some signatories have so hedged their signing that they have signed on to very little. See id. at 748–49 (reporting troubling examples with respect to the Convention on the Rights of the Child). The United States finally ratified the ICCPR in 1992, but not without several controversial reservations and declarations. See generally Symposium: The Ratification of the International Covenant on Civil and Political Rights, 42 DePaul L. Rev. 1167 (1993). The United States has yet to ratify the International Covenant on Economic, Social and Cultural Rights. See Philip Alston, *U.S. Ratification of the Covenant on Economic, Social and Cultural Rights: The Need for an Entirely New Strategy*, 84 Am. J. Int‘l L. 363 (1990).

70. See Antonio Cassese, *Human Rights in a Changing World* 63–67 (1990); Cerna, supra note 67. I am not suggesting that there is unanimity. That there is widespread transcultural
Though there is significant transcultural agreement both that people have human rights and about what many of those rights are, there can be, and sometimes is, significant transcultural disagreement about whether a particular practice violates one or another human right, or more than one, that it is transculturally agreed—and transculturally established, by international law—that people have.\footnote{Not every such disagreement is a reasonable agreement does not entail that there is consensus. Widespread transcultural agreement about what human rights people have co-exists with much disagreement about what human rights they have. But, typically, such disagreements are not intercultural: the dividing lines in such disagreements do not separate all the members of one or more cultures from all the members of one or more other cultures; instead, they separate some members of one or more cultures from some other members of the same culture or cultures. The Reagan Administration’s effort to paint the International Covenant on Civil and Political Rights (ICCPR) as a “Western” document and the International Covenant on Economic, Social and Cultural Rights (ICESCR) as a “non-Western,” “socialist” document, though not surprising, was not at all persuasive. For an important discussion and development of the point, see Alston, supra note 69, at 375–76, 386–88.

The suggestion that the concept of economic and social rights is a “Soviet-Third World” creation does a gross injustice to the Catholic and many other churches (at least since the late 19th century) and those many Western European states, not to mention Australia and New Zealand, which have consistently championed economic and social rights, at least since the creation of the United Nations in 1945 and, in most cases, since the establishment of the International Labour Organisation in 1919.

\textit{Id.} at 387–88. It is often the case, as the Reagan Administration’s effort to discredit the ICESCR illustrates, that “norms in societies are presumed to be ascertainable and cohesive; the multiply-constituted nature and competing understandings of any given culture are rarely discussed, and the tensions and contradictions within a society go unmentioned.” Annie Bunting, \textit{Theorizing Women’s Cultural Diversity in Feminist International Human Rights Strategies}, 20 J.L. & Soc’y 6, 9–10 (1993). In particular, “the notion of ‘Western’ is rarely problematized by critics; while culture is seen as differentiated along the Western/non-Western lines, Western culture itself is not seen as heterogenous. Norms of morality within the West may be as diverse as norms found in non-Western contexts.” \textit{Id.} at 9. Not surprisingly, national leaders elsewhere have done in their political contexts what President Reagan did in his, namely, assert that some universally proclaimed human rights were more provincial than universal. Indeed, one prominent national leader, Chinese Premier Li Peng, has mirror-imaged President Reagan: Whereas Reagan focused on “economic, social and cultural rights” of the sort protected by the ICESCR, Li Peng has focused on “political and civil rights” of the sort protected by the ICCPR. See Tom J. Farer & Felice Gaer, \textit{The UN and Human Rights: At the End of the Beginning, in United Nations, Divided World} 240 (Adam Roberts & Benedict Kingsbury eds., 2d ed., 1993). Farer and Gaer refer to:

The not infrequent claims of certain political leaders that many of the civil and political rights enumerated in the Universal Declaration of Human Rights and other sacred texts, rather than reflecting universally relevant demands and interests, are provincial products of the West’s singular historical experience and the liberal ideology stemming therefrom.


one. Some practices undeniably violate an established human right: practices explicitly proscribed by the provision articulating the right. (Practices transculturally agreed to be moral abominations—slavery and genocide, for example—are, typically, explicitly proscribed by the international law of human rights.) But not every practice that might violate an established human right is explicitly proscribed. A practice not explicitly proscribed might nonetheless violate an established human right even if not everyone agrees that it does.

A. An Example: Female Circumcision

The particular relativist challenge I now want to address is a challenge to the possibility of overcoming, to any significant extent, transcultural disagreement: not so much about what human rights people have—again, there is much transcultural agreement about that—but about whether some practice, a practice not explicitly proscribed, violates one or more established human rights. Female circumcision, which has recently been much discussed in the human rights literature, will serve as a useful example.\textsuperscript{72}

Assume you believe that female circumcision violates a woman's human rights\textsuperscript{73}—that subjecting a girl to the practice is unacceptable given


that she is sacred (inviolable) and should therefore be treated with respect and concern rather than as an object of domination and exploitation. Assume you believe that the practice violates, *inter alia*, the Universal Declaration of Human Rights, according to which every human being—including, therefore, every woman—has inherent dignity and worth and, moreover, is equal in dignity and worth to every other human being. You believe that the principal though latent function of the practice, in the cultures (or subcultures) whose practice it is, is to help maintain a social system in which men dominate and exploit women, and that a culture in which men did not dominate and exploit women would not support such a practice. Perhaps you would choose to feature, in defending your position, the Convention on the Elimination of All Forms of Discrimination against Women and, especially, the Declaration on the Elimination of Violence against Women. The Declaration, a nonbinding resolution of the United Nations General Assembly adopted in 1993, goes so far as to state, in Article 2(a), that "[v]iolence against women shall be understood to encompass . . . female genital mutilation." Although widely accepted in your culture and elsewhere, your evaluation of female circumcision is alien to the cultures that practice female


In the fall of 1996, Congress outlawed the rite of female genital cutting in the United States . . . and directed federal authorities to inform new immigrants from countries where it is commonly practiced that parents who arrange for their children to be cut here, as well as people who perform the cutting, face up to five years in prison. Celia W. Dugger, *New Law Bans Genital Cutting in United States*, N.Y. Times, 12 Oct. 1996, at A1.

See Larson, * supra* note 40, at 60 n.12 (“[T]he practice [of female genital mutilation] is designed to aid male sexual control over females and is designed to destroy female sexual pleasure, and thus represents a direct attack on female sexuality and a reflection of women’s subordinate position.”). Larson adds that “[t]here is no credible argument that the practice of male circumcision in either non-Western or Western societies is a parallel mark either of hostility to male sexuality or of men’s social inferiority.” *Id.*


circumcision (which is not to say that in those cultures no one opposes female circumcision). In the view of the cultures whose practice it is, and in particular in the view of many of the mothers who persist in subjecting their often willing daughters to the practice, female circumcision is morally proper; even, for the girl subjected to the practice, ennobling. 79 Someone might suggest to you that it is just a matter of conflicting “cultural preferences,” and that you should not seek to impose your cultural preferences on the members of other cultures. You believe that there is more to it than that, that the practice is a violation of human rights. But, you might be wrong. Perhaps it is just a matter of conflicting cultural preferences; perhaps female circumcision, however distasteful to you, does not violate any human right. Committed to the ideal of self-critical rationality, 80 you do what you can to test your position. Perhaps you accept, as Charles Taylor has suggested we should, “a ‘presumption of equal worth’ of cultures as an appropriate opening moral stance.” 81 Taylor explains:

[l]t is reasonable to suppose that cultures that have provided the horizon of meaning for large numbers of human beings, of diverse characters and temperaments, over a long period of time—that have, in other words, articulated their sense of the good, the holy, the admirable—are almost certain to have something that deserves our admiration and respect, even if it is accompanied by much that we have to abhor and reject. 82

As Taylor then insists, “[l]t would take a supreme arrogance to discount this possibility a priori.” 83

In the end, however, after due deliberation, you persist in believing that female circumcision is not merely something “we have to abhor and reject,” but a violation of a woman’s (girl’s) human rights. In this, you are supported not only by the Declaration on the Elimination of Violence against Women, but by the UN Sub-Commission for the Prevention of Discrimination and the Protection of Minorities, which in 1988 adopted a resolution declaring that female circumcision violates the human rights of women and children. 84 The particular problem that engages you now, therefore, is this: you

79. See Brennan, supra note 66, at 374; see also Maynard H. Merwine, How Africa Understands Female Circumcision, N.Y. Times, 24 Nov. 1993, at A24 (letter to the editor); Dugger, supra note 66, at A1.
82. Id. at 72–73.
83. Id. at 73.
want the members of the cultures that practice female circumcision to come to accept the view that the practice transgresses the inviolability of a woman.\textsuperscript{85} You wonder, however, if and to what extent transcultural disagreement about the practice can be overcome. You wonder if it is realistic to think that a critical mass of the members of the cultures that practice female circumcision can be brought to share your evaluation of the practice; and if so, how? (Or if it is realistic to think that you might be brought to share their view?) You wonder whether it is not the case, after all, that East is East and West is West—or, in the post–Cold War world, North is North and South is South—and never the twain shall meet?

\section*{B. Intercultural and Intracultural Discourse}

However difficult it might be to achieve, productive moral discourse \textit{is} possible interculturally as well as intraculturally. "[O]ne can maintain that truth is framework-relative, while conceding for a large range of propositions nearly all frameworks coincide."\textsuperscript{86} Indeed, as Richard Rorty has sensibly observed:

\begin{quote}
Everything which we can identify as a human being or as a culture will be something which shares an enormous number of beliefs with us. (If it did not, we would simply not be able to recognize that it was speaking a language, and thus that it had any beliefs at all.)\textsuperscript{87}
\end{quote}

\begin{itemize}
\item \textsuperscript{85} \textit{See generally} Donnelly, supra note 59, at 115 ("The goal is cross-cultural consensus not because it . . . somehow validates the norms but because consensus eases implementation."). However, that there is a "cross-cultural consensus" about a norm is at least some evidence that what the norm presupposes about human well-being is accurate, even if the absence of such a consensus does not entail that what the norm presupposes is false.
\item \textsuperscript{86} Philip E. Devine, Relativism, 67 Monist 405, 412 (1984).
\begin{quote}
When we think of forms of life as conventional, . . . "we are thinking of convention not as the arrangements a particular culture has found convenient, in terms of its history and geography, for effecting the necessities of human existence, but as those forms of life which are normal to any group of creatures we call human, any group about which we will say, for example, that they have a past to which they respond, or a geographical environment which they manipulate or exploit in certain ways for certain humanly comprehensible motives. Here the array of 'conventions' are not patterns of life which differentiate human beings from one another, but those exigencies of conduct and feeling which all humans share." This passage makes it clear that—the amorphpousness of life notwithstanding—most fundamentally, the human species is the locus of forms of life. For specific purposes, "form of life" is sometimes applied to practices that are not universal, as when writers take religion (or a particular religion) to be a form of life, or when writers speak of different societies as exhibiting different forms of life. Although I think that these narrower uses of "form of life" illustrate the elasticity of the idea, and suggest that forms of life, though not clearly demarcated, are thoroughly interwoven and even "nested," they do not tell against the point that Wittgenstein's first concern is with human practices, not with local options.
\end{quote}
\end{itemize}
Thus, "[a] fully individuable culture is at best a rare thing."88 Moreover, "[c]ultures, subcultures, fragments of cultures, constantly meet one another and exchange or modify practices and attitudes."89 Indeed, moral discourse among members of different cultures, if conducted in good faith and with an ecumenical openness to the beliefs and experiences of one's interlocutors, can be a principal medium through which different moral communities "meet one another and exchange or modify practices and attitudes."90 That in the period since World War II there has emerged such widespread transcultural agreement about what many of the rights are that all human beings have (because they are inviolable) disconfirms, powerfully and dramatically, that "never the twain shall meet."

Indeed, productive moral discourse might sometimes be easier to achieve interculturally than intraculturally. For example, productive moral discourse might be easier to achieve among some women from several different cultures, if and to the extent they share an experience of domination and exploitation, than between some men and some women from the same culture. It is simply a mistake to think that there is invariably

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88. Williams, supra note 44, at 158; see also Rorty, supra note 43, at 8–9. Rorty states:

It is a consequence of this holistic view of knowledge . . . that alternative cultures are not to be thought of on the model of alternative geometries. Alternative geometries are irreconcilable because they have axiomatic structures, and contradictory axioms. They are designed to be irreconcilable. Cultures are not so designed, and do not have axiomatic structures.

89. Williams, supra note 44, at 158; see Chandran Kukathas, Explaining Moral Variety, 11 Soc. Phil. & Pol'y 1 Winter 1994 (providing an extended argument in support of this claim).

90. Williams, supra note 44, at 158.
a radical discontinuity of significant experiences and values between or among persons from different cultures. Amélie Oksenberg Rorty has observed:

Sometimes there is unexpectedly subtle and refined communication across radically different cultures. . . . [S]ometimes there is insurmountable bafflement and systematic misunderstanding between relatively close cultures. For the most part, however, we live in the interesting intermediate grey area of partial success and partial failure of interpretation and communication. The grey area is to be found at home among neighbors as well as abroad among strangers. . . ."⁹¹

A further, often related premise is also mistaken: that cultures are, or tend to be, morally monistic rather than pluralistic. One must be careful not to fall prey to the mistake of seeing a culture, whether it is one's own or another's, as much more cohesive or monistic than it really is.⁹² As Nancy Kim has emphasized, with particular reference to the situation and experience of women, even "traditional" cultures are morally pluralistic:

The label "culture" has obscured the power-play involved in the evolution of "traditional" practices that affect women. . . . "[C]ulture" is often composed of different "subcultures" that may or may not conform to the expectations and norms of the broader society. . . . The culture of which anthropologists speak is the dominant culture within society—the culture of society's power elite. Culture, thus distilled, leaves out rebels, misfits, and the disempowered. . . . In almost every society, the power elite is comprised overwhelmingly of men. Because most cultures are male dominated, how and what women choose to accept or reject as part of their culture is often ignored or suppressed.⁹³

Therefore, if it is not unrealistic to think that the members, or some members, of the cultures that practice female circumcision might be brought to share your view that the practice ought not to be performed—morally ought not, ought not because every human being, including every woman, is sacred—how might they be brought to share it? How else but by means of an internal critique of the practice. A critique is external if and to the extent it is based on premises and experiences that, though they have

⁹¹ Oksenberg Rorty, supra note 55, at 418; see also Rorty, Solidarity or Objectivity?, supra note 43. Rorty notes:

[The distinction between different cultures does not differ in kind from the distinction between theories held by members of a single culture. The Tasmanian aborigines and the British colonists had trouble communicating, but this trouble was different only in extent from the difficulties in communication experienced by Gladstone and Disraeli.

Id. at 9.

⁹² See supra note 70 and accompanying text.

authority for the person or persons whose critique it is, happen not to have authority for persons in the culture (or cultures) to whom the critique is addressed. An internal critique draws on, it works with, premises and experiences authoritative not just for those whose critique it is, but also for those in the culture to whom the critique is addressed. Locating such premises and experiences—relevant premises and experiences shared across the interlocutor cultures—is not as difficult as some seem to believe.94 Commenting on “the strategy of finding within the tradition those resources that express the aspirations of suffering and oppressed people,” Lee Yearley has written:

Persuasion is much more likely to be effective if it draws on a listener's own tradition, and such resources are often available. Indeed, these resources are often dramatic and powerful—for example, Aquinas’s validation of theft if the need is great or Mencius’s seeming acceptance of regicide to ease people’s suffering. Moreover, great religious traditions are always more complex and variegated, and more defined by deep tensions and even oppositions, than is reflected in any single, contemporary vision. (Adherents also are often more concerned with proper and improper developments of their tradition than is apparent, particularly when they are forced into defensive positions.) Finally, a tradition’s most sophisticated intellectual and spiritual representatives often have positions that can be helpful.95

There is a further, more practical sense in which a critique can be internal: the critique can be advanced primarily not by those outside the culture(s) to whom the critique is addressed, least of all by those who are citizens of a state that, when a colonial power, exercised imperial political dominion over the members of that culture. Rather, the critique can be advanced primarily by those inside the culture to whom the critique is addressed, those who have begun to object to the practice in question: perhaps, though not necessarily, because they themselves, or those dear to them, have been victimized by the practice. Indeed, a critique internal in this more practical sense might be necessary if anything is to be done about a practice. The Association of African Women for Research and Development has stated that “[f]eminists from developed countries . . . must accept that [female genital mutilation] is a problem for African women, and that no change is possible without the conscious participation of African women.”96

94. Again, “[a] fully individuable culture is at best a rare thing.” See supra note 88, and accompanying text.
Moreover, a critique internal in this more practical sense is at least somewhat less vulnerable to an effort by insiders to deflect the critique by arguing that the critique is little more than a morally imperialist attempt by outsiders to impose their values on the insiders, to make the insiders more like the outsiders. Such an effort at deflection is often conspicuously self-serving. It is often little more than an effort by some in the culture—perhaps even by a relatively few in the culture, who have the upper hand in relation to others in the culture—to maintain the status quo: men in relation to women, for example, or those with political power in relation to those without it, or those with great wealth in relation to whose without it, and so on. Such an effort at deflection is a prime example of what Secretary Christopher has called "the last refuge of repression."  

One of the most insistent proponents of internal critique—internal critique in both senses of the term, but especially in the first, or substantive, sense—has been Abdullahi Ahmed An-Na'im, a prominent Islamic human rights scholar and advocate. In An-Na'im's view, "human rights advocates in the Muslim world must work within the framework of Islam to be effective."  

He then explains, in a way that illustrates and confirms Yearley's point, that human rights advocates in the Muslim world need not be confined, however, to the particular historical interpretations of Islam known as Shari'a. Muslims are obliged, as a matter of faith, to conduct their private and public affairs in accordance with the dictates of Islam, but there is room for legitimate disagreement over the precise nature of these dictates in the modern context. Religious texts, like all other texts, are open to a variety of interpretations. Human rights advocates in the Muslim world should struggle to have their interpretations of the relevant texts adopted as the new Islamic scriptural imperatives for the contemporary world.  

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97. See supra text accompanying note 63.
99. An-Na'im, supra note 68, at 15.

An-Na'im considers[s] that efforts to promote respect for international human rights standards are often likely to remain superficial and ineffective until such time as they relate directly to, and where possible are promoted through, local cultural, religious and other traditional communities.
That Islamic texts can and do support many human rights of the sort established by the international law of human rights is confirmed by the Universal Islamic Declaration of Human Rights, which was "compiled by eminent Muslim scholars, jurists and representatives of Islamic movements and thought" in 1981. 100

The situation of women in Islam is especially problematic from a human rights perspective. Citing Islamic scholars, Chandran Kukathas writes:

Muslims may insist on the subordinate position of women as a fundamental tenet of Islamic practice. Yet the Quran’s strictures on the family display a concern to ameliorate the status of women by abolishing pre-Islamic practices such as female infanticide, and according women rights of divorce, property ownership, and inheritance. Arguably, many practices which weakened women’s status were the result of local customs which were often antithetical to the spirit of emancipation envisaged in the Quran. 101

Kukathas concludes that "[c]onflict between differing cultural standards on such issues might best be explained, then, not by appealing to incommensurability of values or fundamental cultural incomparabilities, but by pointing to the fact that not only outsiders but also insiders often misunderstand the traditions." 102

Indeed, the arguments advanced in feminist Islamic theology 103—and analogous arguments advanced in feminist Christian theology and in feminist Jewish thought—are compelling arguments to the effect that dominant insiders do misunderstand the tradition, that they marginalize or deny the deepest truths of the tradition.

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102. Id.; see also Bruce B. Lawrence, Woman as Subject/ Woman as Symbol: Islamic Fundamentalism and the Status of Women, 22 J. RELIGIOUS ETHICS 163, 180–83 (1994).

There is hardly any doubt that women have been discriminated against by patriarchal Christianity as by patriarchal Islam. However, the re-reading and re-interpretation of significant women-related Biblical and Qur’anic texts by feminist theologians has shown that it is possible to understand these texts in more than one way, and that—in fact—understanding them in egalitarian rather than in hierarchical terms is more in keeping with the belief, fundamental in both religious traditions, that God, the universal creator and sustainer, is just to all creation.104

By exemplifying, powerfully, the very sort of revisionist project urged by An-Na’im, feminist theological arguments serve to illustrate that the strategy of internal critique, far from being just a naive fantasy, is an already existing practice. Moreover, recent developments in some Islamic political communities suggest that internal critique is emerging as a significant phenomenon even beyond the domain of feminist discourse; it is emerging as a relatively broadly focused practice.

After a millenium of inertia . . . Islamic thought is on the move. From Morocco to Malaysia, Muslim intellectuals are reinterpreting the ancient dictates of Islam to fit the modern age, spearheading an extraordinary Islamic revival. In Jordan, professors at a new Islamic university are assigning student papers on the human-rights implications of Islamic law’s treatment of women and non-Muslims. In Egypt, Islamic writers are condemning both the use of violence by Muslim extremists and the state’s brutal response. Activists in Algeria, Turkey and even Iran are crusading for democracy based on an idea seldom heard in the Muslim world: that Islam forbids all forms of coercion.105

C. Conclusion

Thus, one should be wary about assuming a priori that moral discourse between or among cultures, especially between or among very different cultures, is a futile project, a dead end. The preceding discourse, which dealt with whether a particular practice that violates one or another human right which it is transculturally agreed—and transculturally established, by international law—that people have, applies to a discourse about a more fundamental matter as well. That is, this analysis also applies to whether a particular claim that people have this or that human right—a particular

claim that this or that thing ought not to be done to any human being, or that this or that thing ought to be done for every human being—should be accepted (and, so, whether the right at issue should be established by international law, if it is not already). Recall, in that regard, that in the period since World War II there has emerged, in transcultural dialogue nurtured by the United Nations and other institutions, widespread transcultural agreement about what many of the rights are that all human beings have.\footnote{The Universal Islamic Declaration of Human Rights, though not a part of the international law of human rights or of any domestic law, is nonetheless probative of the extent of transcultural agreement about what many of the rights are that people have. For a critical analysis, see Ann Elizabeth Mayer, Islam and Human Rights: Tradition and Politics 27 (1991).} That bit of history disconfirms that moral discourse between or among even very different cultures—including moral discourse about so fundamental a matter as whether people have such-and-such a human right—is a futile project. The emergence, in the second half of the twentieth century, of widespread transcultural agreement about what many of the rights are that all human beings have—about what many of the things are that ought not to be done to any human being and also about what many of the things are that ought to be done for every human being—teaches us that we cannot know how far moral discourse can go in resolving particular disagreements between or among particular persons from different cultures \emph{until it is tried}. Here, too, Philippa Foot gets to the heart of the matter:

One wonders . . . why people who say this kind of thing [that moral discourse can go only a little way, at best, in resolving disagreements] are so sure that they know where discussions will lead and therefore where they will end. It is, I think, a fault on the part of relativists, and subjectivists generally, that they are ready to make pronouncements about the later part of moral arguments . . . without being able to trace the intermediate steps.\footnote{Foot, supra note 40, at 164; see id. at 165–66 (providing a perceptive explanation why “relativists, and subjectivists generally,” are not able to take the whole journey); see also Ronald Beiner, Political Judgment (1983). Beiner argues that: The question here is not whether there is some ascertainable moral-political framework that will guarantee a resolution in all cases; but rather, whether there is, in principle, any limit to the possibility of overcoming incommensurability. . . . [T]here is no such limit: at no point are we justified in terminating an unresolved argument, for it always remains open to us to persevere with it still further. The next stage of argument may yet bring an enlargement of moral vision to one of the contending parties, allowing this contender to integrate the perspective of the other into his own in a relation of part to whole. . . . Therefore at any point there remains the possibility, though not the guarantee, of resolving deep conflict. . . . Confronted with apparent stalemate, there is no need to give in to moral or intellectual “pluralism,” for it always remains open to us to say “Press on with the argument.” Id. at 186 n.17.}
VI. TYPES OF RELATIVISM

In his address, in 1993, to the World Conference on Human Rights, Secretary Christopher said: "We respect the religious, social, and cultural characteristics that make each country unique. But we cannot let cultural relativism become the last refuge of repression."108 What is this "cultural relativism" of which Christopher spoke? The phrase, notwithstanding the frequency of its use, has no single, canonical meaning.109 Some positions that sometimes go by the name "cultural relativism" are so confused that they barely merit mention, much less discussion. Three, in particular, come to mind, each of which purports to support tolerance of every culture. Nothing about to be said in criticism of the three positions entails rejection of Charles Taylor's position that "a 'presumption of equal worth' of cultures [is] an appropriate opening moral stance."110 But Taylor's sensible presumption is, after all, a rebuttable presumption: one must not confuse the moral stance that is or might be appropriate at the opening with the stance appropriate at the close.

1. No culture is better than any other. (Therefore, no culture is worse than any other.) Every culture is as good as every other. From what or whose evaluative standpoint—on the basis of what or whose norms or criteria—is every culture supposed to be as good as every other? Yours? Mine? Theirs? God's? From any particular evaluative standpoint, every culture is obviously not as good as every other.

There is a difference between saying that every community is as good as every other and saying that we have to work out from the networks we are, from the communities with which we presently identify. . . . The view that every tradition is as rational or as moral as every other could be held only by a god, someone who had no need to use (but only to mention) the terms "rational" or "moral," because she had no need to inquire or deliberate. Such a being would have escaped from history and conversation into contemplation and metanarrative.111

108. Christopher, supra note 63, at 442.
110. See supra note 81. One or more of the three positions I am about to criticize might be embedded in an anti-imperialist or anti-colonialist sensibility. Nothing I am about to say is meant to disparage such a sensibility, which might, after all, reflect an embrace of the conviction that every human being—and not just the privileged citizens of the imperial or colonial powers—is sacred.
111. Richard Rorty, Postmodernist Bourgeois Liberalism, 80 J. Phil. 583, 589 (1983). To say that from any particular evaluative standpoint every culture is not as good as every other is not to deny that there might be one or another evaluative standpoint from which one
To say that from any particular evaluative standpoint every culture is not as good as every other culture is not to deny that there might be one or another evaluative standpoint from which one or another culture is as good as one or another culture, in this sense: "We may indeed be able to understand the transition [from a particular culture or way of life to another] in terms of gain and loss, but there may be some of both, and an overall judgement may be hard to make."\(^{112}\)

2. No evaluative standpoint is better than any other. In particular, the evaluative standpoint of no culture is better than that of any other. Every evaluative standpoint is as good as every other. Same problem: From what or whose evaluative standpoint is every evaluative standpoint supposed to be as good as every other? From any particular evaluative standpoint, every evaluative standpoint is not as good as every other.

3. No culture is, from its own evaluative standpoint, inferior to any other culture. From its own evaluative standpoint, every culture is at least as good as every other. The confusion here consists in thinking that the claim somehow supports tolerance of every culture. Even if it were sound, the claim would not support tolerance: Even if by the standards of his culture the person standing on my neck, or on my neighbor's neck, or on the neck of a member of his own culture, has a right to do so, that does not mean that by the standards of our culture—by the standards we accept as correct—we ought to tolerate his doing so; to the contrary, we might be obligated, by our standards, to do what we can to remove his foot even from the neck of a member of his own culture.\(^{113}\)

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or another culture is as good as one or another other culture, in this sense: "We may indeed be able to understand the transition [from a particular culture or way of life to another] in terms of gain and loss, but there may be some of both, and an overall judgement may be hard to make." See supra text accompanying note 56.

112. See Taylor, supra note 56, at 61.

[We can] condemn other people as evil, bad, or dangerous by our lights, or take them to be our enemies. Nothing prevents us from using our values to judge other people and other moralities. But we only fool ourselves if we think our values give reasons to others who do not accept those values.

Id. at 321.
In any event, the claim is not sound: it makes the mistake, discussed in the preceding section, of treating a culture as much more monistic than any large culture really is; the mistake of treating the norms that have authority for many in a culture as much more coherent overall than they really are.\footnote{See Kim, supra note 73, and accompanying text.} Some aspect (or aspects) of a culture might be deeply problematic—and, indeed, quite inferior to some aspect of another culture—on the basis of some of the norms authoritative in the culture.\footnote{See Kukathas, supra note 89, and accompanying text.} Put another way, some aspect of a culture might be deeply problematic from the particular evaluative standpoint of those in the culture, or of some of them, who are victimized by the aspect at issue (e.g., women).\footnote{See Devine, supra note 86, at 405. Devine states that:

\begin{quote}
[Relativism is not individualistic subjectivism, for which anything goes intellectually; nor is it collective subjectivism, which would settle intellectual questions by voting. The analogy with law makes this point clear: while law is relative to a particular society, law and public opinion are not the same thing. Not anything goes by way of legal argument—the precedents and statutes have to be taken into account. But one can say, so long as one does not do so too often, that the decision of the courts, even those of the last resort, are legally and not just morally or politically wrong. Likewise a moral relativist who finds his basic standards in the ethos of a given society can disagree with the majority of that society (though perhaps not the overwhelming majority) on some moral issue, so long as he is prepared to defend his disagreement on grounds whose relevance the majority is prepared to accept. In brief, while the standards we employ are (according to the relativist) grounded in the fact of their acceptance by a group to which we belong, the application of these standards is objective and not a matter of what people think.
\end{quote}


By contrast with the three relativist positions just criticized, neither of the two relativist challenges addressed in the preceding sections of this article is confused. Both of them are, however, problematic.

The first challenge, directed against the idea of human rights (i.e., against the second part of the idea), claims that human beings do not have a common nature, a \textit{human} nature; it claims, in other words, that there is no \textit{human} being, only \textit{cultural} being. "I have seen in my time Frenchmen, Italians, and Russians. I even know, thanks to Montesquieu, that one may be a Persian, but as for Man, I declare that I have never met him in my life; if he exists it is without my knowledge."\footnote{See Edmund Leach, \textit{Social Anthropology} 56 (1982) (quoting Joseph de Maistre).} Because it makes a claim in "the science of man," i.e., a claim about human nature—namely, the claim that
there is no human nature or being, only cultural being—this position may be called "anthropological" relativism.

The second challenge claims that because the beliefs human beings accept vary so much from one culture to another, there is little possibility, if any, for productive dialogue between or among cultures about whether a particular practice violates one or another human right it is agreed and established that people have—or, more fundamentally, about what human rights people have. On the basis of a (correct) presupposition about the nature of justification or legitimation—that successful justification is always "coherentist" or "holist"—this relativism makes an (exaggerated) claim about the (im)possibility of transcultural justification; thus, this position may be called "epistemological" relativism.

There is yet a third relativist position, which can aptly be called "cultural" relativism. Unlike anthropological relativism and epistemological relativism, cultural relativism, as presented here, is quite sound: though it is a position that, as a defense to a critique of one or another cultural practice, can be, and has been, invoked implausibly or even in bad faith.

The rights and freedoms articulated both in many national constitutions and in various international documents, like the Universal Declaration of Human Rights, represent values—i.e., valued states of affairs—to be achieved (or they represent disvalues to be avoided). A perusal of international human rights documents will disclose many examples of such values—for instance, "the best interests of the child" standard in the Convention on the Rights of the Child. Examples from the Bill of Rights of the Constitution of the United States include: "the free exercise of religion" (First Amendment), "the freedom of speech" (same), "the freedom of the press" (same), and "due process of law" (Fifth Amendment). An example of a disvalue to be avoided is "cruel or unusual punishment" (Eighth Amendment). The Constitution of Japan speaks of "freedom of thought and conscience" (Article 19), "freedom of religion" (Article 20), "freedom of assembly and association as well as speech, press and all other forms of expression" (Article 21); such values are "not to be violated" (Article 19) or

118. On the "coherentist" or "holist" nature of justification, see Perrv, supra note 80, at 52–65.
120. U.S. Const. amend. I, V, VIII.
are “guaranteed to all” (Article 21).\textsuperscript{121} The Basic Law of Israel states that “[t]he . . . dignity of any person shall not be violated.”\textsuperscript{122}

With respect to values like those just mentioned, it cannot plausibly be said there is always—i.e., in every context—only one concrete embodiment (instantiation) of a value that is right or correct no matter what the particularities of the context in which the value is to be achieved. The embodiment of the value that makes the most sense in any context inevitably depends on the particularities of the context in which the value is to be achieved.\textsuperscript{123} The embodiment that makes the most sense in one context, given the other legitimate values or interests that compete with the value in that context, might not make the most sense in a different context, where the nature of the competing values or interests is different.\textsuperscript{124}

\footnotesize

121. Nihonkoku Kempo [Constitution], art. 19–21 (Japan).


123. There can be little doubt about the practical necessity of establishing normatively indeterminate or, more precisely, underdeterminate norms both in domestic, especially constitutional, law and, above all, in the international law of human rights. For a helpful presentation of the point in the context of the international law of human rights, see Alston, supra note 91. For a presentation in the context of domestic (United States) constitutional law, see Michael J. Perry, THE CONSTITUTION IN THE COURTS: LAW OR POLITICS? 76–78 (1994).

124. Cf. Benjamin N. Cardozo, The Nature of the Judicial Process 67 (1921) (“[W]hen [judges] are called upon to say how far existing rules are to be extended or restricted, they must let the welfare of society fix the path, its direction and its distance.”).

Hans-Georg Gadamer observed:

In both legal and theological hermeneutics there is the essential tension between the text set down—of the law or of the proclamation—on the one hand and, on the other, the sense arrived at by its application in the particular moment of interpretation, either in judgment or in preaching. A law is not there to be understood historically, but to be made concretely valid through being interpreted. Similarly, a religious proclamation is not there to be understood as a merely historical document, but to be taken in a way in which it exercises its saving effect. This includes the fact that the text, whether law or gospel, if it is to be understood properly, i.e., according to the claim it makes, must be understood at every moment, in every particular situation, in a new and different way. Understanding here is always application.

Hans-Georg Gadamer, Truth and Method 275 (1975). In the Federalist Papers, James Madison wrote: “All new laws, though penned with the greatest technical skill, and passed on the fullest and most mature deliberation, are considered as more or less obscure and equivocal, until their meaning be liquidated and ascertained by a series of particular discussions and adjudications.” The Federalist No. 37, at 229 (Alexander Hamilton) (Clinton Rossiter ed., 1961); see also Kim Lane Scheppele, Legal Secrets (1988). Lane Scheppele notes:

Generally in the literature on interpretation the question being posed is, What does a particular text (or social practice) mean? Posed this way, the interpretive question gives rise to an embarrassing multitude of possible answers, a cacophony of theories of interpretation. . . . [T]he question that (in practice) is the one actually asked in the course of lawyering and judging is: what . . . does a particular text mean for the specific case at hand?"

Id. at 94–95.
One may refer to the process of embodying or shaping a value on the basis of the particularities of the context in which the value is to be achieved as the process of “specifying” the value. A specification of a principle for a specific class of cases is not a deduction from it, nor a discovery of some implicit meaning; it is the act of setting a more concrete and categorical requirement in the spirit of the principle, and guided both by a sense of what is practically realizable (or enforceable), and by a recognition of the risk of conflict with other principles or values. . . .

What Anthony Kronman has said of the process of “judgment” accurately describes the process of specifying a value. Such specification is a species of judgment.

Good judgment, and its opposite, are in fact most clearly revealed in just those situations where the method of deduction is least applicable, where the ambiguities are greatest and the demand for proof most obviously misplaced. To show good judgment in such situations is to do something more than merely apply a general rule with special care and thoroughness, or follow out its consequences to a greater level of detail. Judgment often requires such analytic refinement but does not consist in it alone. That this is so is to be explained by the fact that we are most dependent on our judgment, most in need of good judgment, in just those situations that pose genuine dilemmas by forcing us to choose between, or otherwise accommodate, conflicting interests and obligations whose conflict is not itself amenable to resolution by the application of some higher-order rule. It is here that the quality of a person’s judgment comes most clearly into view and here, too, that his or her deductive powers alone are least likely to prove adequate to the task.

If the embodiment or specification that makes the most sense in any context inevitably depends on the particularities of the context in which the value is to be achieved, then the embodiment that makes the most sense in the context of one culture might well not make the most sense in the context of a different culture. Moreover, there might be room for a reasonable difference of judgment about what embodiment makes the most sense in a particular cultural context. The embodiment that makes the most sense, in a particular cultural context, to those charged, or to a majority of those


charged, with achieving the value in that context might not make the most sense to others, whether inside or outside the culture, and yet the position of those charged with achieving the value might nonetheless be a reasonable one.\textsuperscript{127} Philip Alston is right to emphasize that

\begin{quote}
in spite of its undoubted importance in terms of rejecting what might be termed crude relativist attacks, the diplomatic/legal vindication of the principle of universality cannot be taken to have resolved the deeper, more enduring challenge of ensuring greater openness and sensitivity to different cultural contexts in the implementation of human rights standards. . . . [N]o amount of universalist aspirations can cancel out the inevitable influence of cultural values and perceptions.\textsuperscript{128}
\end{quote}

Focusing in particular on “the best interests of the child” standard under the Convention on the Rights of the Child, Alston suggests that

\begin{quote}
it might be argued that, in some highly industrialized countries, the child’s best interests are “obviously” best served by policies that emphasize autonomy and individuality to the greatest possible extent. In more traditional societies, the links to family and the local community might be considered to be of paramount importance and the principle that “the best interests of the child” shall prevail will therefore be interpreted as requiring the sublimation of the individual child’s preferences to the interests of the family or even the extended family.\textsuperscript{129}
\end{quote}

Add to the stew provisions like the following one, which are not uncommon in the international law of human rights, and the point to be made becomes overwhelming: Article 19 of the International Covenant on Civil and Political Rights states that “the right to freedom of expression” (which Article 19 protects) “may be subject to certain restrictions, . . . these shall only be such as . . . are necessary . . . for the protection of national security or of public order, or of public health or morals.”\textsuperscript{130} There is obviously room for a reasonable difference of judgment, intraculturally and even more so interculturally, about what the requirements of the “public morals” are; and room, too, therefore, for a reasonable difference of judgment about when it is necessary to compromise the value of free expression in the interest of the public morals. “[I]dentical norms can lead to very different results, but results that may well be, in the light of the prevailing and other cultural circumstances, largely compatible with the

\begin{footnotes}
\item 127. See \textit{Perry}, supra note 123, at 70–115.
\item 128. Alston, \textit{supra} note 99, at 9, 23.
\item 129. \textit{id.} at 5.
\item 130. See ICCPR, \textit{supra} note 9 (emphasis added).
\end{footnotes}
international norms."\textsuperscript{131} A society that is highly individualistic (like the United States?) will tend to see the requirements of the public morals one way; a society that is more communitarian (like Canada or Ireland?) will tend to see them at least somewhat differently, maybe very differently.\textsuperscript{132} As Alston points out:

In contrast to criticisms which tend to portray international human rights norms as being not only hostile, but also impervious, to non-Western cultural influences, [it is clear] that there is enormous scope for such differences to be taken into account in the implementation of those norms at the domestic level.\textsuperscript{133}

Here, then, is a "cultural relativism" difficult to dispute: The best, or optimal, specification of some of the values represented in an international human rights document like the Universal Declaration cannot be determined acontextually; it depends on, \textit{it is relative to}, particularities of context. Most importantly for present purposes, the optimal specification might be relative to cultural particularities. And, indeed, the Vienna Declaration acknowledges that "the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind. . . ."\textsuperscript{134} Jack Donnelly's cautionary note is sound:

Political histories, cultural legacies, economic conditions, and human rights problems do differ not only among the First, Second, and Third Worlds, but within each world as well. In the practical world of implementing universal human rights, this needs to be kept in mind. Internationally recognized human rights provide general direction. They do not provide a plan of implementation that can be applied mechanically, irrespective of political, economic, and cultural diversity.\textsuperscript{135}

No less an opponent of "moral relativism" than John Paul II supports the point: "Certainly there is a need to seek out and to discover the most

\textsuperscript{131} Alston, \textit{supra} note 99, at 22.

Nor is the reference to these predominantly Third World-focused case studies intended to suggest that the situation in the industrialized countries is radically different. Even within the common law tradition, American and English law have been shown to function very differently, in large part because of the different legal, political and institutional cultures in which the law operates.

\textit{Id.} at 22–23.

\textsuperscript{132} \textit{See supra}, \textit{supra} note 1 (collecting and discussing provisions like Article 19 and commenting on the nonabsolute character, in international law, of many human rights).

\textsuperscript{133} Alston, \textit{supra} note 99, at 19. "In cultural terms, . . . the Convention [on the Rights of the Child], while by no means perfect, is probably more sensitive to different approaches and perspectives than most of the principal human rights treaties adopted earlier." \textit{Id.} at 7. (The Convention was adopted in 1990.)

\textsuperscript{134} Vienna Declaration, \textit{supra} note 58, Part I, \S 5.

\textsuperscript{135} Donnelly, \textit{supra} note 59, at 113.
adequate formulation for universal and permanent moral norms in the light of different cultural contexts.

One must not overstate (or overread) the point, however: in the very same sentence it acknowledges that the differences among nations and regions "must be borne in mind," the Vienna Declaration goes on to insist that, nonetheless, "it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms." Similarly, Secretary Christopher, in his address to the Conference that produced the Vienna Declaration, stated: "That each of us comes from different cultures absolves none of us from our obligation to comply with the Universal Declaration [of Human Rights]." Obviously one cannot exclude a priori the possibility that one or another controversial specification of a human rights value is unreasonable, even allowing for all the relevant particularities of context, including cultural particularities.

Footbinding in pre–World War II China, child slavery or bondage, and female infanticide in various societies are examples of practices in relation to which culture-based arguments have already had to yield (in theory, if not always in practice) in favour of human rights norms.

In particular, one cannot exclude the possibility that one or another ungenerous specification of a human rights value is not really an honest effort to take the value seriously in the context at hand but is, instead, an effort to marginalize the value while paying it lip service. Indeed, there might not even be a plausible culturally based justification for one or another ungenerous specification of a human rights value. It is always

136. Pope John Paul II, supra note 3, at 314 (emphasis added); see also Alston, supra note 99. Alston explains:

Perhaps the best way to understand the role that culture can and does play in this regard is by analogy to the concept of the margin of appreciation within the jurisprudence developed under the European Convention on Human Rights. The analogy also serves to emphasize that the cultural dimension is a universal one and not only something which comes into play when we are considering non-Western cultural factors. The margin of appreciation concept is nowhere to be found in the text of the European Convention. Rather, it is a doctrine which has been developed by the European Commission and Court of Human Rights to enable an appropriate degree of discretion to be accorded to national authorities in their application of the provisions of the Convention. Cultural considerations have figured very prominently in the factors for which the European supervisory organs have been prepared to make some allowance. Moreover, many of the cases in which the doctrine has been most clearly applied and explored have concerned the notion of permissible restrictions upon rights, the organs have also made considerable use of the doctrine in determining the actual scope of many of the rights.

Id. at 20. On the "margin of appreciation" doctrine in the European Convention system, see INTERNATIONAL HUMAN RIGHTS IN CONTEXT: LAW, POLITICS, MORALITY, supra note 72, at 615–17, 626–36.

137. Vienna Declaration, supra note 58, Part I, ¶ 5.

138. Christopher, supra note 63, at 442 (passages rearranged).

important, therefore, to undertake a careful scrutiny of “claims of relativism in terms of their foundations within the cultural, philosophical, or religious traditions of societies. Many claims made have no foundation whatsoever in such traditions.”

The position that female circumcision does not violate any established human right constitutes a controversial specification of the right or rights in question. Allowing for all the relevant cultural particularities, is that specification reasonable? The same inquiry might be pursued with respect to many other “cultural” practices.

There are ... many ... cases in which cultural arguments continue to be used today to justify the denial of children's rights. They include arguments designed to defend the full range of practices relating to female circumcision, to justify the non-education of lower class or caste children, or to justify the exclusion of girls from educational and other opportunities which would make them less sought after in marriage.

The question whether a particular specification is not, finally, unreasonable is different from the question whether those whose specification it is could be brought, in transcultural discourse, to see that it is unreasonable. The latter question—the possibility of productive transcultural discourse about human rights—is one of the issues addressed in this article.


Many of the Asian governments, like those of China and Singapore, that are most critical of U.S. human rights policy and seek to characterize it as Western-based and culturally biased are among the declining number of regimes that absolutely prevent any independent human rights groups from operating. Their claims of cultural relativism can only be sustained if they continue to prevent their own people from raising human rights issues. But they are fighting a losing battle. Recent experience in countries as diverse as Chile, Kuwait, Nigeria, South Africa, and Sri Lanka leave no doubt that where people are allowed to organize and advocate their own human rights, they will do so. The common denominators in this area are much stronger than the cultural divisions.

Id. at 137–38. For a recent example of the Chinese government’s effort to deflect the West’s emphasis on human rights, see the Speech of Liu Huaqui, head of the Chinese delegation, Vienna, 15 June 1993, quoted in Dijk, supra note 70, at 105. See also Human Rights in China, a statement issued in 1991 by the Information Office of the State Council of the Peoples’ Republic of China, excerpted in International Human Rights in Context: Law, Politics, Morality, supra note 72, at 233–34. For a kindred statement on behalf of the countries of East and Southeast Asia, including Singapore, see Bilhari Kausikan, Asia’s Differing Standard, 92 Foreign Pol. 24 (1993). For a skeptical look at the claim “that there is a distinct Asian approach to human rights,” see Yash Ghai, Human Rights and Governance: The Asia Debate, 15 Austl. Y.B. Int’l L. 1 (1994).

VII. CONCLUSION

The principal aim of this article has been to address the three "relativisms" that challenge discourse about human rights. That is, this article addresses the three relativisms worth addressing. As noted earlier, not every position that goes by the name "cultural relativism" merits much consideration. In the human rights literature, different relativist positions are not always distinguished from one another with due care. Each of the three positions discussed here is distinct from the other two. Recognizing them as distinct positions—positions that say different things, that make different claims, and thus that merit different responses—is a step in the direction of clarity. A summary is in order.

A. Anthropological Relativism

I have claimed that, and explained why, the first and principal relativism—the relativist challenge to the (second part of the) idea of human rights—is simply not plausible. However fashionable this relativism (anti-universalism, anti-essentialism, etc.) might be in some quarters today, some things are bad and some things are good, not just for some human beings, but for every human being.

That some things are bad and some things are good for every human being—even that there is widespread transcultural agreement to that effect—does not entail that there is widespread transcultural agreement either about what, precisely, is bad or about what, precisely, is good for every human being. As it happens, however, there is widespread transcultural agreement about what many of the things are that are bad for every human being and also about what many of the things are that are good for every human being. That widespread agreement is evidenced by the widespread support the major international human rights documents enjoy among the states of the world today.

B. Epistemological Relativism

The second relativism is skeptical about the possibility of overcoming, to any significant extent, transcultural disagreement about whether a particular practice, like female circumcision, violates one or another established human right; it is skeptical about the possibility of productive transcultural moral dialogue. This relativism derives whatever plausibility it has mainly from the mistaken presupposition that there is, often if not always, a radical discontinuity of significant premises and experiences between or among
different cultures—which presupposition is often aided and abetted by a further presupposition, also mistaken: that cultures are, or tend to be, morally monistic rather than pluralistic.

C. Cultural Relativism

The third relativism insists that particularities of context, especially cultural particularities, do and should play a role in determining the specific shape—for example, the specific institutional embodiment—one or another culture gives to a value (e.g., freedom of the press) represented by a human rights provision. This relativism, unlike the other two, is not merely plausible, but correct.