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HEADLINE: The Attack on Human Rights

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BODY:

FROM WITHIN AND WITHOUT

SINCE 1945, human rights language has become a source of power and authority. Inevitably, power invites challenge. Human rights doctrine is now so powerful, but also so unthinkingly imperialist in its claim to universality, that it has exposed itself to serious intellectual attack. These challenges have raised important questions about whether human rights norms deserve the authority they have acquired: whether their claims to universality are justified, or whether they are just another cunning exercise in Western moral imperialism.

The cultural challenge to the universality of human rights arises from three distinct sources -- from resurgent Islam, from within the West itself, and from East Asia. Each of these challenges is independent of the others, but taken together, they have raised substantial questions about the cross-cultural

validity -- and hence the legitimacy -- of human rights norms.

The challenge from Islam has been there from the beginning. When the Universal Declaration of Human Rights was being drafted in 1947, the Saudi Arabian delegation raised particular objection to Article 16, relating to free marriage choice, and Article 18, relating to freedom of religion. On the question of marriage, the Saudi delegate to the committee examining the draft of the declaration made an argument that has resonated ever since in Islamic encounters with Western human rights, saying that

the authors of the draft declaration had, for the most part, taken into consideration only the standards recognized by Western civilization and had ignored more ancient civilizations which were past the experimental stage, and the institutions of which, for example, marriage, had proved their wisdom through the centuries. It was not for the Committee to proclaim the superiority of one civilization over all others or to establish uniform standards for all the countries of the world.

This was a defense of both the Islamic faith and patriarchal authority. The Saudi delegate in effect argued that the exchange and control of women is the very *raison d'etre* of traditional cultures, and that the restriction of female choice in marriage is central to the maintenance of patriarchal property relations. On the basis of these objections to Articles 16 and 18, the Saudi delegation refused to ratify the declaration.

There have been recurrent attempts, including Islamic declarations of human rights, to reconcile Islamic and Western traditions by putting more emphasis on family duty and religious devotion and by drawing on distinctively Islamic traditions of religious and ethnic tolerance. But these attempts at fusion between the Islamic world and the West have never been entirely successful: agreement by the parties actually trades away what is vital to each side. The resulting consensus is bland and unconvincing.

Since the 1970s the relation of Islam to human rights has grown more hostile. When the Islamic Revolution in Iran rose up against the tyrannical modernization imposed by the shah, Islamic figures began to question the universal writ of Western human rights norms. They have pointed out that the Western separation of church and state, of secular and religious authority, is alien to the jurisprudence and political thought of the Islamic tradition. And they are correct. The freedoms articulated in the Universal Declaration of Human Rights make no sense within the theocratic bias of Islamic political thought. The right to marry and establish a family, to freely choose one's partner, is a direct challenge to the authorities in Islamic society that enforce the family choice of spouse, polygamy, and other restrictions on women's freedom. In Islamic eyes, universalizing rights discourse implies a sovereign and discrete individual, which is blasphemous from the perspective of the Koran.

In responding to this challenge, the West has made the mistake of assuming that

fundamentalism and Islam are synonymous. But in fact Islam speaks in many voices, some more anti-Western or theocratic than others. National contexts may be more important in defining local Islamic reactions to Western values than are broad theological principles in the religion as a whole. Where Islamic societies have managed to modernize, create a middle class, and enter the global economy -- Egypt and Tunisia being examples -- a constituency in favor of basic human rights can emerge. Egypt, for instance, is now in the process of passing legislation to give women the right to divorce, and although dialogue with Egypt's religious authorities has been difficult, women's rights will be substantially enhanced by the new legislation. In Algeria, a secular human rights culture is more embattled. The governing elite, which rode to power after a bloody anticolonial revolution failed to modernize the country, faces an opposition, led by Islamic militants, that has taken an anti-Western, anti-human rights stance. And in Afghanistan, where the state itself has collapsed and foreign arms transfers have aggravated the nation's decline, the Taliban explicitly rejects all Western human rights standards. In these instances, the critical variant is not Islam itself but the fateful course of Western policy and economic globalization.

A second challenge to the universality of human rights comes from within the West itself. For the last 20 years, an influential current in Western political opinion has been maintaining, in the words of the radical scholars Adamantia Pollis and Peter Schwab, that human rights are a "Western construct of limited applicability," a twentieth-century fiction dependent on the rights traditions of the United States, the United Kingdom, and France and therefore inapplicable in cultures that do not share this historical matrix of liberal individualism.

This current of thought has complicated intellectual origins: the Marxist critique of the rights of man, the anthropological critique of the arrogance of late-nineteenth-century bourgeois imperialism, and the postmodernist critique of the universalizing pretensions of Enlightenment thought. All of these tendencies have come together in a critique of Western intellectual hegemony as expressed in the language of human rights. Human rights are seen as an exercise in the cunning of Western reason: no longer able to dominate the world through direct imperial rule, the West now masks its own will to power in the impartial, universalizing language of human rights and seeks to impose its own narrow agenda on a plethora of world cultures that do not actually share the West's conception of individuality, self-hood, agency, or freedom. This postmodernist relativism began as an intellectual fashion on Western university campuses, but it has seeped slowly into Western human rights practice, causing all activists to pause and consider the intellectual warrant for the universality they once took for granted.

This challenge within has been amplified by a challenge from without: the critique of Western human rights standards by some political leaders in the rising economies of East Asia. Whereas the Islamic challenge to human rights can be explained in part by the failure of Islamic societies to benefit from the global economy, the Asian challenge is a consequence of the region's staggering

economic success. Because of Malaysia's robust economic growth, for example, its leaders feel confident enough to reject Western ideas of democracy and individual rights in favor of an Asian route to development and prosperity -- a route that depends on authoritarian government and authoritarian family structures.

The same can be said about Singapore, which successfully synthesized political authoritarianism with market capitalism. Singapore's Senior Minister Lee Kuan Yew has been quoted as saying that Asians have "little doubt that a society with communitarian values where the interests of society take precedence over that of the individual suits them better than the individualism of America." Singaporeans often cite rising divorce and crime rates in the West to illustrate that Western individualism is detrimental to the order necessary for the enjoyment of rights themselves.

An "Asian model" supposedly puts community and family ahead of individual rights and order ahead of democracy and individual freedom. In reality, of course, there is no single Asian model: each of these societies has modernized in different ways, within different political traditions, and with differing degrees of political and market freedom. Yet it has proven useful for Asian authoritarians to argue that they represent a civilizational challenge to the hegemony of Western models.

TRADES AND COMPROMISES

LET IT BE CONCEDED at once that these three separate challenges to the universality of human rights discourse -- two from without and one from within the Western tradition -- have had a productive impact. They have forced human rights activists to question their assumptions, to rethink the history of their commitments, and to realize just how complicated intercultural dialogue on rights questions becomes when all cultures participate as equals.

But at the same time, Western defenders of human rights have traded too much away. In the desire to find common ground with Islamic and Asian positions and to purge their own discourse of the imperial legacies uncovered by the postmodernist critique, Western defenders of human rights norms risk compromising the very universality they ought to be defending. They also risk rewriting their own history.

Many traditions, not just Western ones, were represented at the drafting of the Universal Declaration of Human Rights -- for example, the Chinese, Middle Eastern Christian, Marxist, Hindu, Latin American, and Islamic. The members of the drafting committee saw their task not as a simple ratification of Western convictions but as an attempt to delimit a range of moral universals from within their very different religious, political, ethnic, and philosophical backgrounds. This fact helps to explain why the document makes no reference to God in its preamble. The communist delegations would have vetoed any such reference, and the competing religious traditions could not have agreed on words

that would make human rights derive from human beings' common existence as God's creatures. Hence the secular ground of the document is not a sign of European cultural domination so much as a pragmatic common denominator designed to make agreement possible across the range of divergent cultural and political viewpoints.

It remains true, of course, that Western inspirations -- and Western drafters -- played the predominant role in the drafting of the document. Even so, the drafters' mood in 1947 was anything but triumphalist. They were aware, first of all, that the age of colonial emancipation was at hand: Indian independence was proclaimed while the language of the declaration was being finalized. Although the declaration does not specifically endorse self-determination, its drafters clearly foresaw the coming tide of struggles for national independence. Because it does proclaim the right of people to self-government and freedom of speech and religion, it also concedes the right of colonial peoples to construe moral universals in a language rooted in their own traditions. Whatever failings the drafters of the declaration may be accused of, unexamined Western triumphalism is not one of them. Key drafters such as Rene Cassin of France and John Humphrey of Canada knew the knell had sounded on two centuries of Western colonialism.

They also knew that the declaration was not so much a proclamation of the superiority of European civilization as an attempt to salvage the remains of its Enlightenment heritage from the barbarism of a world war just concluded. The declaration was written in full awareness of Auschwitz and dawning awareness of Kolyma. A consciousness of European savagery is built into the very language of the declaration's preamble: "Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind . . . "

The declaration may still be a child of the Enlightenment, but it was written when faith in the Enlightenment faced its deepest crisis. In this sense, human rights norms are not so much a declaration of the superiority of European civilization as a warning by Europeans that the rest of the world should not reproduce their mistakes. The chief of these was the idolatry of the nation-state, causing individuals to forget the higher law commanding them to disobey unjust orders. The abandonment of this moral heritage of natural law and the surrender of individualism to collectivism, the drafters believed, led to the catastrophes of Nazi and Stalinist oppression. Unless the disastrous heritage of European collectivism is kept in mind as the framing experience in the drafting of the declaration, its individualism will appear to be nothing more than the ratification of Western bourgeois capitalist prejudice. In fact, it was much more: a studied attempt to reinvent the European natural law tradition in order to safeguard individual agency against the totalitarian state.

THE POWER OF ONE

IT REMAINS TRUE, therefore, that the core of the declaration is the moral

individualism for which it is so reproached by non-Western societies. It is this individualism for which Western activists have become most apologetic, believing that it should be tempered by greater emphasis on social duties and responsibilities to the community. Human rights, it is argued, can recover universal appeal only if they soften their individualistic bias and put greater emphasis on the communitarian parts of the declaration, especially Article 29, which says that "everyone has duties to the community in which alone the free and full development of his personality is possible." This desire to water down the individualism of rights discourse is driven by a desire both to make human rights more palatable to less individualistic cultures in the non-Western world and also to respond to disquiet among Western communitarians at the supposedly corrosive impact of individualistic values on Western social cohesion.

But this tack mistakes what rights actually are and misunderstands why they have proven attractive to millions of people raised in non-Western traditions. Rights are meaningful only if they confer entitlements and immunities on individuals; they are worth having only if they can be enforced against institutions such as the family, the state, and the church. This remains true even when the rights in question are collective or group rights. Some of these group rights -- such as the right to speak your own language or practice your own religion -- are essential preconditions for the exercise of individual rights. The right to speak a language of your choice will not mean very much if the language has died out. For this reason, group rights are needed to protect individual rights. But the ultimate purpose and justification of group rights is not the protection of the group as such but the protection of the individuals who compose it. Group rights to language, for example, must not be used to prevent an individual from learning a second language. Group rights to practice religion should not cancel the right of individuals to leave a religious community if they choose.

Rights are inescapably political because they tacitly imply a conflict between a rights holder and a rights "withholder," some authority against which the rights holder can make justified claims. To confuse rights with aspirations, and rights conventions with syncretic syntheses of world values, is to wish away the conflicts that define the very content of rights. Individuals and groups will always be in conflict, and rights exist to protect individuals. Rights language cannot be parsed or translated into a nonindividualistic, communitarian framework; it presumes moral individualism and is nonsensical outside that assumption.

Moreover, it is precisely this individualism that renders human rights attractive to non-Western peoples and explains why the fight for those rights has become a global movement. The language of human rights is the only universally available moral vernacular that validates the claims of women and children against the oppression they experience in patriarchal and tribal societies; it is the only vernacular that enables dependent persons to perceive themselves as moral agents and to act against practices -- arranged marriages, purdah, civic disenfranchisement, genital mutilation, domestic slavery, and so on -- that are ratified by the weight and authority of their cultures. These

agents seek out human rights protection precisely because it legitimizes their protests against oppression.

If this is so, then it is necessary to rethink what it means when one says that rights are universal. Rights doctrines arouse powerful opposition because they challenge powerful religions, family structures, authoritarian states, and tribes. It would be a hopeless task to attempt to persuade these holders of power of the universal validity of rights doctrines, since if these doctrines prevailed, their exercise of authority would necessarily be abridged and constrained. Thus universality cannot imply universal assent, since in a world of unequal power, the only propositions that the powerful and powerless would agree on would be entirely toothless and anodyne. Rights are universal because they define the universal interests of the powerless -- namely, that power be exercised over them in ways that respect their autonomy as agents. In this sense, human rights represent a revolutionary creed, since they make a radical demand of all human groups that they serve the interests of the individuals who compose them. This, then, implies that human groups should be, insofar as possible, consensual, or at least that they should respect an individual's right to exit when the constraints of the group become unbearable.

The idea that groups should respect an individual's right of exit is not easy to reconcile with what groups actually are. Most human groups -- the family, for example -- are blood groups, based on inherited kinship or ethnic ties. People do not choose to be born into them and do not leave them easily, since these collectivities provide the frame of meaning within which individual life makes sense. This is as true in modern secular societies as it is in religious or traditional ones. Group rights doctrines exist to safeguard the collective rights -- for example, to language -- that make individual agency meaningful and valuable. But individual and group interests inevitably conflict. Human rights exist to adjudicate these conflicts, to define the irreducible minimum beyond which group and collective claims must not go in constraining the lives of individuals.

CULTURE SHOCK

ADOPTING THE VALUES of individual agency does not necessarily entail adopting Western ways of life. Believing in your right not to be tortured or abused need not mean adopting Western dress, speaking Western languages, or approving of the Western lifestyle. To seek human rights protection is not to change your civilization; it is merely to avail yourself of the protections of what the philosopher Isaiah Berlin called "negative liberty": to be free from oppression, bondage, and gross physical harm.

Human rights do not, and should not, delegitimize traditional culture as a whole. The women in Kabul who come to human rights agencies seeking protection from the Taliban do not want to cease being Muslim wives and mothers; they want to combine their traditions with education and professional health care provided by a woman. And they hope the agencies will defend them against being beaten and

persecuted for claiming such rights.

The legitimacy of such claims is reinforced by the fact that the people who make them are not foreign human rights activists or employees of international organizations but the victims themselves. In Pakistan, for example, it is poor rural women who are criticizing the grotesque distortion of Islamic teaching that claims to justify "honor killings" -- in which women are burned alive when they disobey their husbands. Human rights have gone global by going local, empowering the powerless, giving voice to the voiceless.

It is simply not the case, as Islamic and Asian critics contend, that human rights force the Western way of life on their societies. For all its individualism, human rights rhetoric does not require adherents to jettison their other cultural attachments. As the philosopher Jack Donnelly argues, human rights assume "that people probably are best suited, and in any case are entitled, to choose the good life for themselves." What the declaration does mandate is the right to choose, and specifically the right to exit a group when choice is denied. The global diffusion of rights language would never have occurred had these not been authentically attractive propositions to millions of people, especially women, in theocratic, traditional, or patriarchal societies.

Critics of this view would argue that it is too "voluntaristic"; it implies that individuals in traditional societies are free to choose the manner of their insertion into the global economy and free to choose which Western values to adopt and which to reject. In reality, these critics argue, people are not free to choose. Economic globalization steamrolls local economies, and moral globalization -- human rights -- follows behind as the legitimizing ideology of global capitalism. "Given the class interest of the internationalist class carrying out this agenda," law professor Kenneth Anderson writes, "the claim to universalism is a sham. Universalism is mere globalism and a globalism, moreover, whose key terms are established by capital."

This idea that human rights represent the moral arm of global capitalism falsifies the insurgent nature of the relationship between human rights activism and the global corporation. The activists of nongovernmental organizations (NGOS) who devote their lives to challenging the labor practices of global giants such as Nike and Royal Dutch/Shell would be astonished to discover that their human rights agenda has been serving the interests of global capital all along. Anderson conflates globalism and internationalism and mixes up two classes, the free market globalists and the human rights internationalists, whose interests and values are in conflict.

Although free markets do encourage the emergence of assertively self-interested individuals, these individuals seek human rights in order to protect themselves from the indignities and indecencies of the market. Moreover, the dignity such individuals seek to protect is not necessarily derived from Western models. Anderson writes as if human rights were always imposed from the top down by an international elite bent on "saving the world." He ignores the extent to which

the demand for human rights comes from the bottom up.

Indeed, what makes human rights demands legitimate is that they emanate from the bottom, from the powerless. Instead of apologizing for the individualism of Western human rights standards, activists need to attend to another problem, which is how to create conditions in which individuals on the bottom are free to avail themselves of such rights. Increasing the freedom of people to exercise their rights depends on close cultural understanding of the frameworks that often constrain choice.

The much debated issue of female circumcision illustrates this point. What may appear as mutilation in Western eyes is, in some cultures, simply the price of tribal and family belonging for women. Accordingly, if they fail to submit to the ritual, they lose their place in that world. Choosing to exercise their rights, therefore, may result in social ostracism, leaving them no option but to leave their tribe and make for the city. Human rights advocates should be aware of what it really means for a woman to abandon traditional practices under such circumstances. And activists have an equal duty to inform women of the medical costs and consequences of these practices and to seek, as a first step, to make them less dangerous for those who choose to undergo them.

As for the final decision, it is for women themselves to decide how to adjudicate between tribal and Western wisdom. The criteria of informed consent that regulate medical patients' choices in Western societies are equally applicable in non-Western settings, and human rights activists must respect the autonomy and dignity of agents. An activist's proper role is not to make the choices for the women in question but to enlarge those women's knowledge of what the choices entail. In traditional societies, harmful practices can be abandoned only when the whole community decides to do so. Otherwise, individuals who decide on their own face ostracism and worse. Consent in these cases means collective or group consent. Yet even group consent must be built on consultation with the individuals involved.

Sensitivity to the real constraints that limit individual freedom in different cultures is not the same thing as deferring to these cultures. It does not mean abandoning universality. It simply means facing up to a demanding intercultural dialogue in which all parties come to the table under common expectations of being treated as moral equals. Traditional society is oppressive for individuals within it, not because it fails to afford them a Western way of life, but because it does not accord them a right to speak and be heard. Western activists have no right to overturn traditional cultural practice, provided that such practice continues to receive the assent of its members. Human rights are universal not as a vernacular of cultural prescription but as a language of moral empowerment. Their role is not in defining the content of culture but in trying to enfranchise all agents so that they can freely shape that content.

The best way to face the cultural challenges to human rights coming from Asia, Islam, and Western postmodernism is to admit their truth: rights discourse is

individualistic. But that is precisely why it has proven an effective remedy against tyranny, and why it has proven attractive to people from very different cultures. The other advantage of liberal individualism is that it is a distinctly "thin" theory of the human good: it defines and proscribes the "negative" -- that is, those restraints and injustices that make any human life, however conceived, impossible; at the same time, it does not prescribe the "positive" range of good lives that human beings can lead. The doctrine of human rights is morally universal because it says that all human beings need certain specific freedoms "from"; it does not go on to define what their freedom "to" should comprise. n1 In this sense, it is a less prescriptive universalism than the world's religions: it articulates standards of human decency without violating rights of cultural autonomy.

n1 These distinctions -- negative liberty, positive liberty, freedom from, freedom to -- are suggested by Isaiah Berlin, "Two Concepts of Liberty," in *The Proper Study of Mankind*, ed. Henry Hardy (London: Chatto and Windus, 1997), pp. 191 -- 243; on "thin" theories of the good, see John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1970).

THE WEST AGAINST ITSELF

IN THE MORAL DISPUTE between the "West" and the "rest," both sides make the mistake of assuming that the other speaks with one voice. When the non-Western world looks at human rights, it assumes -- rightly -- that the discourse originates in a matrix of historical traditions shared by all the major Western countries. But these Western nations interpret the core principles of their own rights tradition very differently. A common tradition does not necessarily result in common points of view on rights. All of the formative rights cultures of the West -- the English, the French, and the American -- give a different account of such issues as privacy, free speech, incitement, the right to bear arms, and the right to life.

In the 50 years since the promulgation of the Universal Declaration of Human Rights, these disagreements have become more salient. Indeed, the moral unanimity of the West -- always a myth more persuasive from the outside than from the inside -- is breaking up and revealing its unalterable heterogeneity. American rights discourse once belonged to the common European natural law tradition and to British common law. But this awareness of a common anchorage now competes with a growing sense of American moral and legal exceptionalism.

American human rights policy in the last 20 years has been increasingly distinctive and paradoxical: it is the product of a nation with a great national rights tradition that leads the world in denouncing the human rights violations of others but refuses to ratify key international rights conventions itself. The most important resistance to the domestic application of international rights norms comes not from rogue states outside the Western tradition or from Islamic and Asian societies. It comes, in fact, from within the heart of the Western rights tradition itself, from a nation that, in linking rights to popular

sovereignty, opposes international human rights oversight as an infringement on its democracy. Of all the ironies in the history of human rights since the signing of the Universal Declaration of Human Rights, the one that would most astonish Eleanor Roosevelt is the degree to which her own country is now the odd one out.

In the next 50 years, the moral consensus that sustained the declaration in 1948 will continue to splinter. For all the rhetoric about common values, the distance between the United States and Europe on issues such as abortion and capital punishment may grow, just as the distance between the West and the rest may also increase. There is no reason to believe that economic globalization entails moral globalization. Indeed, there is some reason to think that as economies have unified their business practices, ownership, languages, and networks of communication, a countermovement has developed to safeguard the integrity of national communities, national cultures, religions, and indigenous and religious ways of life.

This is a prophecy not of the end of the human rights movement but of its belated coming of age, its recognition that we live in a world of plural cultures that have a right to equal consideration in the argument about what we can and cannot, should and should not, do to human beings. Indeed, this may be the central historical importance of human rights in the history of human progress: it has abolished the hierarchy of civilizations and cultures. As late as 1945, it was common to think of European civilization as inherently superior to the civilizations it ruled. Today many Europeans continue to believe this, but they know that they have no right to do so. More to the point, many non-Western peoples also took the civilizational superiority of their rulers for granted. They no longer have any reason to continue believing this. One reason for that is the global diffusion of human rights talk -- the language that most consistently articulates the moral equality of all the individuals on the face of the earth. But to the degree that it does this, it simultaneously increases the level of conflict over the meaning, application, and legitimacy of rights claims.

Rights language states that all human beings belong at the table in the essential conversation about how we should treat each other. But once this universal right to speak and be heard is granted, there is bound to be tumult. There is bound to be discord. Why? Because the European voices that once took it upon themselves to silence the babble with a peremptory ruling no longer take it as their privilege to do so, and those who sit with them at the table no longer grant them the right to do so. All this counts as progress, as a step toward a world imagined for millennia in different cultures and religions: a world of genuine moral equality among human beings. But a world of moral equality is a world of conflict, deliberation, argument, and contention.

We need to stop thinking of human rights as trumps and begin thinking of them as part of a language that creates the basis for deliberation. In this argument, the ground we share may actually be quite limited -- not much more than the

basic intuition that what is pain and humiliation for you is bound to be pain and humiliation for me. But this is already something. In such a future, shared among equals, rights are not the universal credo of a global society, not a secular religion, but something much more limited and yet just as valuable: the shared vocabulary from which our arguments can begin, and the bare human minimum from which differing ideas of human flourishing can take root.

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