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The Non-Modularity of Moral Knowledge: Implications for the Universality of Human Rights

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Abstract: Many contemporary human rights theorists argue that we can establish the normative universality of human rights despite extensive cultural and moral diversity by appealing to the notion of overlapping consensus. In this paper I argue that proposals to ground the universality of human rights in overlapping consensus on the list of rights are unsuccessful. I consider an example from Islamic comprehensive doctrine in order to demonstrate that apparent consensus on the list of rights may not in fact constitute meaningful agreement and may not be sufficient to ground the universality of human rights. I conclude with some general suggestions for establishing the universality of human rights. Instead of presuming the universality of human rights based on apparent overlapping consensus we need to construct universality through actual dialogue both within and between communities.

I. Introduction

The criticism that human rights are not legitimately universal but instead reflect political and moral ideologies of western liberal democratic states has been waged for decades and continues today. One popular strategy adopted by several contemporary human rights theorists to address this criticism seeks to preserve the universality of human rights while remaining sensitive to local cultural beliefs by

incorporating both pluralism and universalism. Theorists who adopt this strategy appeal to John Rawls's notion of overlapping consensus to explain how we can have meaningful agreement about human rights despite extensive cultural and moral diversity. We can allow for moral pluralism regarding justification of a human rights regime and to some extent interpretation and implementation of human rights, while maintaining that human rights are universal because there is widespread cross-cultural consensus on the list of rights, e.g., as expressed in the Universal Declaration and other International Human Rights Covenants.

In this paper I argue that while we need to find ways of establishing the normative universality of human rights while taking seriously moral and cultural diversity, proposals that seek to do this by appealing to overlapping consensus on the list of rights are not the most promising strategies. Specifically, I argue that comprehensive belief systems, which provide justification for human rights, shape *conceptual* understandings of human rights and not just interpretation or implementation of rights. Thus, if the various belief systems upon which justification of human rights are based are divergent enough or incompatible, then widespread agreement on the list does not necessarily constitute meaningful agreement and may not be sufficient to ground the universality of human rights. I consider an example from Islamic comprehensive doctrine in order to demonstrate that apparent agreement on the list of rights may not in fact constitute meaningful agreement. I conclude with some general alternative suggestions for establishing the universality of human rights. Instead of presuming the universality of human rights based on apparent overlapping consensus we need to construct universality through actual dialogue both within and between communities.

II. Universality as Overlapping Consensus at the Level of Concepts

Proposals to construe the universality of human rights as overlapping consensus on the list of rights are quite popular. For example, Amy Gutmann argues that a universal human rights regime ought to be compatible with a plurality of comprehensive belief systems that converge on the content of the list while providing varied

religious, social, and cultural justifications for human rights.[1] Similarly, Jack Donnelly argues that while there may be disagreement at the levels of interpretation and implementation, there is arguably universal agreement on human rights at the conceptual level.[2] Finally, James Nickel argues that one way to secure the universality of human rights is to establish that there is worldwide acceptance of human rights, and that worldwide acceptance requires acceptance of the rights themselves, not necessarily acceptance of the same reasons or justification for rights.[3] In this paper I will focus primarily on the proposal Jack Donnelly presents in his recent book, *Universal Human Rights in Theory and Practice*, while noting that my remarks apply to any proposal that seeks to establish the universality of human rights through overlapping consensus on the list.

Donnelly states that human rights can be said to be universal in at least two ways. First, they are universal in the sense that all human beings hold these rights simply in virtue of being human and they hold them universally against all other human beings and institutions.[4] Donnelly calls this the *moral universality* of human rights. Understood in this way, human rights are universal in the sense that they have humanity as their source. Human nature contains the basis for norms regarding what it means to live a dignified human life in the sense that the "source of human rights is man's moral nature."[5]

Donnelly admits that the fact that human rights ultimately depend on some prescriptive conception of human nature seems initially to pose a problem, for few issues in moral and political philosophy are as contested as theories of human nature. The fact that there are so many diverse and in some cases incompatible conceptions of human nature could pose a problem, for it raises the question of whether it is possible to supply persuasive arguments to support a single set of human rights norms that are universally valid. Yet, Donnelly concludes that such profound diversity does not in fact pose a problem. He states:

If we were faced with an array of competing and contradictory lists of human rights clamoring for either philosophical or political attention this inability to defend a particular theory of human nature might be a serious short-coming. Fortunately, there is remarkable

international normative consensus on the list of rights contained in the Universal Declaration and in International Human Rights Covenants.[6]

This brings us to the second sense in which Donnelly believes human rights can be said to be universal, namely, that there is universal or near universal agreement on the substantive content of the list. Donnelly relies on John Rawls's notion of overlapping consensus to demonstrate how meaningful convergence of diverse comprehensive doctrines is possible and can ground the universality of human rights. Rawls distinguishes between comprehensive religious, moral, or philosophical doctrines and political conceptions of justice. Since political conceptions of justice are defined as independently as possible from any particular comprehensive doctrine, it is possible for people who have varied and perhaps even incompatible comprehensive doctrines to nonetheless agree on or reach an overlapping consensus on a political conception of justice. Using this notion of overlapping consensus, Donnelly argues that justifications for human rights can be many and varied, but we can nonetheless maintain that human rights are universal because there is overlapping consensus on the human rights model and the substantive content of the list expressed in the Universal Declaration. This is what Donnelly calls the *international normative universality* of human rights.[7]

Donnelly spells out the nature and scope of his particular proposal for preserving the universality of human rights and respecting local cultural norms by arguing for a position he calls weak cultural relativism (WCR). According to WCR, "culture is a secondary source of the validity of a right or rule. Universality is initially presumed, but the relativity of human nature, communities, and rules, checks potential excesses of universalism."[8] Thus, the WCR can recognize a set of prima facie universal human rights norms while allowing limited local variation. Donnelly characterizes the scope of WCR by distinguishing between the levels of concept, interpretation, and implementation and then argues for universalism at the level of concepts; at this level, a particular human right is an "abstract, general statement of orienting value" in which there is substantive though general agreement on basic meaning that will limit the range of defensible interpretations.[9] Thus, cultural difference poses no real threat to the normative universality of human rights. For though there may be a good deal of cultural variability at the level of implementation, and perhaps even

some at the level of interpretation, there is universal or near universal agreement at the level of concepts; that is, there is near universal agreement on the substantive content of the list and this, Donnelly and others believe, is sufficient to ground the normative universality of human rights.

Of course human rights will not be compatible with all comprehensive doctrines, though this is itself not a problem. After all, it is the point of human rights norms that they discriminate between legitimate and illegitimate practices and actions, in particular those that are just and unjust. The range of acceptable comprehensive doctrines is set by phrases like "these rights derive from the inherent dignity of the human person" or "all human rights derive from the dignity and worth inherent in the human person" that appear in various human rights declarations and documents.[10] Thus, Donnelly states that participation "in the overlapping consensus on the Universal Declaration model is (only) possible for those who see "human being" as a fundamental moral category and who see human beings as in some important sense autonomous actors."[11] Human rights will be incompatible with comprehensive doctrines that are fundamentally inegalitarian, in particular those that do not see "human being" as a fundamental moral category. Nonetheless, Donnelly believes that the "basic moral equality of all human beings is not merely accepted but strongly endorsed by all leading comprehensive doctrines in all regions of the world" and that this "convergence on egalitarian comprehensive doctrines, both within and between civilizations, provides the foundation for a convergence on the rights of the Universal Declaration."[12]

III. The Non-Modularity of Moral Knowledge: Implications for Overlapping Consensus

While I agree that we need to find some way of establishing the universal validity of human rights, proposals like WCR may not be the most viable way to do this. Specifically, any proposal to ground the universality of human rights in overlapping consensus at the level of concepts rests on suspect epistemological underpinnings regarding the nature of moral knowledge. Drawing from the work of Margaret Walker, I will explain briefly what this faulty view of moral knowledge

is, why it is problematic, and the ways in which proposals like WCR depend on it.

In her book *Moral Understandings*, Margaret Urban Walker argues against a model of morality, accepted in much western analytic ethics, that she calls the theoretical-juridical model.[13] The theoretical-juridical model is not a type of normative moral theory, but expresses a general approach to moral theorizing that many, otherwise quite disparate, normative moral theories share. One feature of this model that Walker rejects is its tendency to assume that moral knowledge consists of a pure core or compact set of beliefs that can be detached from the particularities of any specific way of life and that differences across cultures merely represent different applications of this same core.[14] Against this view, Walker argues that moral knowledge is not conceptually modular, that what we know and what we can know about morality cannot be detached from whatever other beliefs, both moral and non-moral, we have about the world, in particular those that constitute the social life of the respective ways of life we inhabit. Moral understandings are not only intimately bound up with other social understandings but are effected through them. This means that other social and cultural understandings frame or give shape to the meanings of moral concepts and principles. Accordingly, in "differentiated moral-social worlds … 'we' may participate in different practices that support different moral concepts or may participate in practices whose differences give the same moral terms different meanings."[15] I call Walker's view the non-modularity thesis of moral knowledge.

Walker provides the following example in order to illustrate the non-modularity thesis. While it may seem that the Golden Rule, "Do unto others as you would have them do unto you," has an intuitive egalitarian content that everyone can grasp equally well, in a context "that does not already provide some patterns of universal egalitarian thinking it may well only make sense in such ways as 'Do unto others what is appropriate to their station as you would have done to you what is appropriate to yours.'"[16] Those of us in communities that already have "patterns of universal egalitarian thinking" take for granted the "typical" egalitarian interpretation of the Golden Rule as obvious if not self-evident. Yet, for such an interpretation to seem so

obvious and so reasonable requires that we hold a certain number of other beliefs within which this interpretation makes sense.

At this point someone might worry that the non-modularity thesis entails radical incommensurability of moral concepts or principles. Our ability to effectively communicate with and understand those whose shared life is shaped by comprehensive doctrines that are very different from our own presupposes that at some level there is shared meaning that fixes the concept or principle in question. If radically different comprehensive doctrines give what appear to be the same moral terms radically different meanings, then perhaps members of these different communities are not in fact using the same moral terms after all. If so, then we have no basis for comparison, no shared terms on which meaningful dialogue can proceed.

While the non-modularity thesis does not entail radical incommensurability, the thesis does suggest that conceptual meaning is complex and multi-layered. It may be true that we can identify some bare, substantively thin meaning that fixes a particular concept or term and on which many comprehensive doctrines seem to converge. Yet, this meaning is likely to be so thin that agreement at this level is vacuous or practically trivial. The non-modularity thesis entails that when we make moral terms or principles substantive or thick enough to be action-guiding, we inevitably build in substantive premises or assumptions that attach to the moral-social worlds we inhabit and the comprehensive doctrines that shape these worlds.

Michael Walzer makes a similar point when he discusses the relationship between minimal and maximal moralities in his book *Thick and Thin: Moral Argument at Home and Abroad*.[17] When from a distance we watch protestors in Prague demanding 'truth' and 'justice' from their political leaders there is a sense in which we see something that we recognize. There is a minimal, thin meaning of these terms that allows us to identify these concepts as familiar; they are not wholly foreign. Yet, the minute we provide a more substantive account of justice or attempt to establish action-guiding norms or principles for how to best meet the demands of justice, we inevitably build in premises and assumptions that attach to our own maximal or "thick" moralities. When this happens it is not clear that members of different

communities actually agree about what 'justice' is even though there is a minimal sense in which we are using the same moral term.[18]

Thus, the non-modularity of moral knowledge does not entail radical incommensurability of the sort that makes moral dialogue across diverse cultural contexts impossible. Indeed, thin meaning may provide that point of contact and shared epistemic turf upon which dialogue and discussion can begin. Instead, the non-modularity of moral knowledge suggests that we cannot presume to have the kind of meaningful agreement required to ground the normative universality of human rights simply because many of "us" accept the same general moral norms or concepts. We cannot assume that overlapping consensus on the list of rights indicates the kind of meaningful, substantive agreement required for us to say with some confidence that there is universal acceptance of human rights as action-guiding norms for cross-cultural moral evaluation and critique.

Proposals such as WCR that try to ground the universality of human rights in overlapping consensus at the level of concepts rely on the view that moral knowledge is conceptually modular. They assume that we can identify a core set of concepts that, while not empty, is substantively thin enough such that many people who hold otherwise quite disparate comprehensive doctrines can nonetheless meaningfully accept this same core. Overlapping consensus at the level of concepts is possible precisely because human rights are believed to consist in a general, substantively thin core of moral knowledge that can be detached from the particularities of any specific comprehensive doctrine and thus be made compatible with many (though not all). Moreover, variations across cultures are simply expressed as different applications of this same core set of concepts. This is what Donnelly means when he says that we can allow cultural norms to influence implementation and, to some extent, interpretation of particular human rights, while nonetheless maintaining that human rights are universal. We all agree on the same core, the same concepts; cultural norms can influence different applications (implementations) of this core.

Yet, if the non-modularity thesis is correct then agreement at the level of concepts will not necessarily constitute meaningful agreement and may be insufficient to ground the universality of

human rights. The non-modularity of moral knowledge entails that comprehensive belief systems, which provide justification for human rights, shape to some degree our *conceptual* understandings of human rights and not just our interpretation and implementation of them. The non-modularity thesis denies that we can make the kind of sharp distinction between concepts and justifications that Donnelly and others want to make in order to preserve both the universality of human rights and respect for local cultural norms.

Donnelly admits that consensus is substantive and not merely procedural, for only those who believe in the fundamental moral equality of all human beings will agree to human rights norms. Yet, this general principle still needs to be given meaning and different comprehensive belief systems may support different meanings, differences which may reveal that agreement on general norms does not actually constitute meaningful agreement. This is what Walker means when she says that "we" may inhabit different moral-social practices that either support different concepts or give *different meanings to the same concepts*.[19]

I do not mean to argue that overlapping consensus at the level of concepts is not possible, or that it does not in fact happen. Rather, I wish to caution that in order for overlapping consensus to constitute meaningful agreement, those of us who agree must hold comprehensive doctrines that are similar enough or in the right ways such that they support similar conceptual understandings. In the global arena, the variety of comprehensive doctrines that people from different communities hold may or may not be similar enough or in the right ways to support conceptual understandings of human rights norms that are similar enough to establish genuine agreement on the list. At the very least we cannot assume that they are similar enough simply because people seem to accept the same general norms or concepts.

IV. Islamic Comprehensive Doctrine

In order to make this point clearer and more concrete, I'd like to consider an example from Islamic comprehensive doctrine. Many contemporary Islamic scholars have taken great pains to demonstrate that comprehensive religious doctrines of Islam support the

fundamental moral and intellectual equality of all human beings. For example, Maysam al-Faruqi explains that the comprehensive doctrines that unify Muslim belief and practice are rooted in the Quran and that the worldview of the Quran is committed to the fundamental moral and intellectual equality of all human beings.[20] The Quranic creation stories explain that the sole purpose of all of creation is to worship God; human beings have been charged with the special task of being God's representatives or vicergents on earth. As such, human beings are charged with following God's instructions for how to live and, importantly, these instructions are to be carried out by each individual regardless of gender or race. Faruqi emphasizes the absence of gender distinctions when the Quran speaks of the creation and purpose of human beings. She states:

> The rights to own property, to get an education, to work, to marry, to divorce are all granted equally in the Quran and clearly practiced as such during the life of the Prophet. Nowhere does the Quran affirm a difference based on race or gender in the endowment of intelligence, ethics, talents, or anything needed to carry out the vice-gerency and that is consistent with the absolute transcendence and the absolute justice of God.[21]

Faruqi's claims resonate with the extensive exegetical work of scholars such as Amina Wadud who challenges traditional interpretations of the Quran that deny the fundamental moral and intellectual equality of all human beings.[22] Similarly, Fatima Mernissi has argued against the misuse of popular hadith reports (officially sanctioned written reports specifying what the Prophet did or said on a particular occasion with respect to a particular issue) to support the view that women are intellectually and morally weak or inferior to men, by not only challenging the legitimacy of these hadith, but also by reexamining the role of women in the Muslim community during the time of the Prophet.[23] Given the work of these and other Islamic scholars there is clearly a sense in which Islamic comprehensive religious doctrines are fundamentally egalitarian in the sense required by Donnelly and others for overlapping consensus on the list of human rights. The Quran grants moral and intellectual equality to all human beings regardless of gender or race and in this sense the Quran recognizes "human being" as a fundamental moral category.

Yet, Faruqi notes that when we move to the socio-economic order, to the realm of family and property, things begin to look a bit different as "the Quran clearly differentiates between the rights and obligations of the two sexes."[24] The worldview expressed in the Quran is one that seeks to establish a social order based on interdependence and partnership. Yet, it takes the family rather than the individual as the locus of this social order. Accordingly, the Quran then assigns different rights and obligations to different family members based on sex and age. The goal of these assignments is to establish a fundamentally egalitarian social order and to maintain equal justice for all. Yet, because the Quran takes the family unit rather than the individual as primary at the socio-economic level, it does not assign rights and obligations on the basis of the kind of blind equality that the Universal Declaration presupposes. Indeed, Faruqi notes that there is no notion of blind equality in the Quran.[25]

For example, taking the family as the primary social unit, and recognizing the tremendous effort and toil that the mother experiences having to carrying the child, nurse the child, and fulfill the child's immediate needs as an infant, the Quran assigns obligations to fathers and brothers to bear financial burdens of family life. Faruqi states: "The mother then already contributes a substantial share at the physiological level. In the egalitarian system of the Quran, the father must, therefore, face an equal obligation because the mother already faces obligations set by biological laws."[26] The Quran assigns to the father the responsibility of providing for mother and child financially, because the mother should never *have* to shoulder financial burdens in addition to the other physical burdens she faces. Moreover, the notion of family central to Islamic moral understandings is not merely the nuclear family but also the extended family for if the father cannot meet his responsibilities, the Quran charges the extended family with doing so. Thus, it may seem that the Quran discriminates against women when, for example, it establishes the right of a brother to receive twice the inheritance of his sister. Yet, when we understand this assignment of rights within the context of a Quranic socio-economic order we can see that the "inheritance system follows the distribution of responsibilities within the family cell" and is designed to ensure equal justice for all.[27]

The point of exploring Faruqi's particular discussion of this aspect of Islamic comprehensive doctrine is to demonstrate the ways in which comprehensive doctrines give shape and meaning to concepts, in this case to the concept of equality. The non-modularity thesis entails that who "we" are may generate and support different understandings of the concept of equality. For example, even if "we" all accept the general moral norm expressed by Article 16 of the Universal Declaration, that all human beings are entitled to equal rights in marriage, many of "us" may have very different understandings of what this entails because our respective comprehensive doctrines support different conceptual understandings of the notion of equality. The kind of blind equality that the Universal Declaration presumes when assigning rights to individual human beings without reference to sex, race, creed, or nationality, is one way to understand the notion of equality. Yet, this conceptual understanding of 'equality' depends crucially on certain other social and cultural understandings that attach to particular comprehensive doctrines, doctrines that for example posit the individual as the primary social unit. Other comprehensive doctrines that do not take the individual as primary, but instead take the family as the basic social unit, may support different understandings of the notion of equality such that we do not actually agree even if we seem to accept the same general norm that people deserve equal rights in marriage.[28]

Someone might object at this point that equality rights are notoriously contested and controversial and that the non-modularity of moral knowledge seems less of a problem for security rights such as the right not to be tortured.[29] Yet, even if "we" all agree that individuals have a right not to be tortured, it is not clear that we have achieved meaningful agreement until we know how our different comprehensive doctrines influence our conceptual understandings of 'torture' including what counts as torture, the nature of the violation that has occurred, and how cases of torture should be addressed. For example, many believe that practices of female genital cutting are obvious examples of torture that the international community has an obligation to address. Yet, even if there is fairly wide-spread agreement that this practice counts as torture (and it is not obvious that there is), it is not yet clear that the human rights framework provides an adequate definition of the problem as a violation of human dignity based on the blind equality of individuals.[30] The recent sexual

abuse of Iraqi prisoners raises similar issues. Sexual abuse is a violation of human dignity, but Islamic comprehensive doctrine may support a particular understanding of this violation that is not adequately captured by mere reference to a human rights framework that leaves out any reference to religion.[31]

I do not mean to preclude the possibility that there exist inconsistencies or contradictions among or within the various and competing translations and interpretations of the Quran and other sources that constitute Islamic comprehensive doctrine. Yet, this is not itself a fatal flaw; rather it is a characteristic feature of any lived morality. After all, the professed "equality of all human beings" has co-existed with the formal denial of the full equality of non-whites and women in Western, liberal, democratic communities. Rather than reject liberalism or certain forms of democracy because of such inconsistencies, members of these moral communities have made moral progress by reinterpreting what a commitment to equality in liberal societies entails.[32]

The comprehensive doctrines that shape shared life are not fixed, rigid sets of principles or codes, but are on-going interpretations and formulations of traditions, texts, values, and ideals. No community is homogenous and shared understandings are always contested. It is precisely within the existing tensions and inconsistencies where arguments and debates about who "we" are, what "we" value, and what are the best interpretations of the understandings that shape our shared life can occur.

V. Consensus Based On the "Universal" Threats of Modern States and Markets

At this point, someone might object further that the non-modularity of moral knowledge coupled with extensive diversity among comprehensive doctrines is still not a problem for meaningful agreement on human rights norms. Numerous scholars point out that overlapping consensus on the list of human rights has become so wide-spread and is meaningful enough to have normative force because human rights are a construct designed to counter threats posed by the rise of modern states and markets, a threat to which we

are all now vulnerable.[33] Agreement on human rights is agreement on *political* norms and insofar as we are all now using modern political institutions, we can agree on human rights as the known remedies to safeguard against likely abuses by those institutions, despite our other moral and political differences. Thus, meaningful agreement can be established now because of the historical fact that we are all now using modern political institutions.

Jim Nickel provides a very helpful analogy to make this point clearer: the modern state is like a rotary lawnmower. A rotary lawnmower is a device for cutting grass that has very sharp blades parallel to the ground that can injure the operator's feet if she gets too close, a danger which is inherent in the device and is realized everywhere the device is used. If people everywhere think cut up feet are a bad thing, and if people in all countries are going to use rotary lawnmowers, then both the dangers inherent in the device and known remedies for protecting against these dangers need to be learned everywhere. The modern state is similar to the rotary lawnmower in that it has certain built-in dangers that are a threat to all who use it. Human rights norms are known remedies for protecting against the dangers posed by the modern state.[34] Thus, despite extensive cultural and moral diversity, insofar as we are all using modern political and economic institutions and are vulnerable to the dangers inherent in such institutions, we can achieve overlapping consensus on human rights as the set of remedies to protect us from such dangers.

The point of drawing any analogy is to highlight and clarify a particular feature of an entity or process, and Nickel's analogy is helpful in highlighting those violations or threats to human dignity posed by certain systematic deficiencies of modern political and economic institutions.[35] Nickel concedes that not all of the problems human rights address derive from abuses of political institutions, and that consensus may be more controversial on those rights that deal with social issues, such as equality rights. Moreover, he notes that we need a view of rights that is broader than merely focusing on problems caused by modern political institutions.[36] Yet, since so many human rights theorists appeal to the universality of modern political and economic institutions as a historical condition that makes overlapping consensus on human rights plausible and effective, I think it is worth pointing out the limitations of such an approach.

Focusing on human rights as a response to "the" dangers posed by modern political and economic institutions simply shifts the problem of the non-modularity of moral knowledge, for it still assumes that we can isolate a pure core of moral knowledge that is applicable to all. In this case, the pure core is "the" effects of modern states and markets, which can be divorced from the particularities of comprehensive doctrines. Yet, the effects of modern states and markets are not experienced everywhere in the same way precisely because of the ways in which these institutions interact with already existing comprehensive doctrines. Though the rise of modern states and markets may now be a global phenomenon, i.e., though we may all be using rotary lawnmowers, we are cutting different kinds of grass, with different kinds of blades, which may present different kinds of dangers that are more or less strongly felt in different places. The effects of processes of modernization are not experienced in the same way by all people everywhere because these processes are one variable among many that intersect in complex ways to create the multifaceted and complex oppressive situations that people in different places find themselves in.[37]

Donnelly spends a good deal of time arguing that even though the current human rights model originated in "the West" this "tells us absolutely nothing about the "applicability," "relevance," "appropriateness," or "value" of these ideas … either inside or outside the West."[38] We do not assume that gun powder is applicable only in China simply because it was invented there; we should not make the same mistake regarding human rights.[39] I agree with Donnelly that the Western origins of the current human rights model do not necessarily make human rights irrelevant to other cultures. Yet, modern political institutions do not exist in a vacuum. Their effects cannot be easily isolated from the other social and cultural practices and beliefs they interact with in particular places to generate the complex threats to human dignity that people experience, threats that have many sources. Thus, we cannot assume that "our" particular experiences of the dangerous effects of modern political and economic institutions represent "the" inherent dangers in the device. We can acknowledge what we think we know about some of the dangers of modern political and economic institutions based on our experiences of their effects thus far, but we also will need to actually examine what effects such

institutions have in other places as they interact with other local customs, practices, and frameworks.

VI. Navigating Our Way between Universalism and Relativism: Constructing Consensus

Thus far I have shown why conventional strategies for grounding the normative universality of human rights in overlapping consensus may not be the most viable strategies for achieving the kind of meaningful consensus required in order for us to say with some confidence that human rights are universally valid. Yet, this does not mean that we need to abandon a human rights approach altogether. In the case of Islam, Maysam Al-Faruqi recommends that the definitions of the problems Muslim women face must come from within an Islamic framework and that Islam *alone* will provide the solutions.[40] Though her points need to be taken very seriously, her proposal seems problematic for the same reasons that WCR does: it isolates and emphasizes only one variable among many that give shape to the various forms of oppression that Muslim women face. Insofar as her approach ignores the very real influences of processes of modernization and the ways these interact with already existing religious frameworks, it too will be insufficient to adequately define and address these problems. What we need are more contextualized, empirically informed strategies to better understand the kinds of violations that are occurring in different places and to identify the multiple sources of these violations in order to know how best to address them and if human rights are an appropriate part of the solution.

Drawing from the work of Abdullahi An-Na'im, I conclude with some extremely general suggestions for how we might proceed in establishing the universality of human rights. An-Na'im suggests that the "universality of human rights should be seen as a *product of a process* rather than as an established "given" concept and specific predetermined normative content to be discovered or proclaimed through international declarations and rendered legally binding through treaties."[41] Instead of presuming consensus, we should attempt to construct an overlapping consensus on the *meaning* and *implications* of universal human rights through internal discourse

within cultures and cross-cultural dialogue among them. Discourse aimed at constructing consensus needs to be as inclusive as possible, representing as many diverse views as possible, for the meanings and interpretations of comprehensive doctrines are contested.

Human rights advocates should use whatever arguments are likely to be persuasive to the members of a specific community or whatever means necessary to address their apprehensions and concerns, *in relation to whatever frame of reference is accepted by that community as authoritative or applicable*. This means that we cannot ignore the religious, moral, or philosophical frameworks that people in particular communities take as authoritative, nor can we merely allow them to influence implementation of rights; rather we need to engage these frameworks and pay attention to the nuances and complexities of comprehensive doctrines in order to figure out what conceptual understandings they in fact do support.

This approach does not preclude pointing out existing inconsistencies or contradictions within Islamic or any other comprehensive doctrine. Nor does this approach necessarily prohibit pointing out flaws or contradictions so great they prove to be fatal, rendering a particular worldview or framework unstable or insupportable. Yet, too often theorists presume to have identified inconsistencies or contradictions without really understanding the comprehensive doctrine in question. In practice I think it will rarely be the case that we find flaws so fatal they warrant rejecting a comprehensive doctrine and the way of life it supports in its entirety. It is more often the case that *particular* beliefs or understandings need reforming or reformulating; in order to know whether this is the case, and in order to do the reinterpretive work, we need to engage in actual dialogue with those who live by the comprehensive doctrine in question.[42]

An-Na'im's proposal for grounding the universality of human rights in overlapping consensus differs from more conventional appeals to overlapping consensus in at least three important respects. First, instead of presuming that any comprehensive doctrine that is fundamentally egalitarian will be compatible with and support the list of human rights, An-Na'im requires that we construct consensus through actual dialogue both between and within communities.

Second, instead of trying to isolate "the" threats of modern states and markets and construe human rights as remedies to these threats, An-Na'im stresses the importance of being attentive to the ways in which processes of modernization intersect with comprehensive doctrines and other local, regional, and global factors to create complex forms of oppression that have many sources. Third, instead of pointing to the fact that representatives from many different countries (primarily political leaders) have signed onto the Universal Declaration and other International Human Rights Covenants as evidence that human rights are increasingly universally supported, An-Na'im's account requires that dialogue for constructing consensus be as inclusive as possible representing as many diverse views as possible (not just the views of political elites).

My remarks against appeals to overlapping consensus as a viable strategy (to secure the universality of human rights while remaining sensitive to moral and cultural diversity) do not entail that we should reject this strategy altogether. Rather, they suggest that we need to rethink the way we employ it. Theorists have typically simply presumed overlapping consensus on the list of rights among comprehensive doctrines that support the fundamental equality of all human beings. This is a presumption that we cannot rightfully make, for we cannot know if we have the kind of meaningful agreement necessary to establish human rights as universally accepted until we know what conceptual understandings of particular rights various comprehensive doctrines actually support. We must take relativist worries more seriously than simply allowing for local cultural variation to influence the implementation of human rights norms. We begin to take relativist worries seriously by first acknowledging the difficulty of establishing universally valid and applicable norms, and then by working with and within the frameworks and worldviews that people already take as authoritative. We need deeply contextual knowledge of local customs, traditions, beliefs, and practices, and we need to engage with these comprehensive frameworks and doctrines in order to construct rather than presume meaningful consensus. This strategy is more likely to achieve genuine consensus because it is more likely to accurately define the problems people face as the complex problems that they are and thus to meet these problems with the multifaceted solutions they require. How we go about doing this is a complicated

matter, but this only reflects the complexity of the world we live in and the increasingly global relationships we engage in.[43]

Notes

[1]Amy Gutmann, "Introduction" in Michael Ignatieff, *Human Rights as Politics and Idolatry* (Princeton, NJ: Princeton University Press, 2001).

[2]Jack Donnelly, *Universal Human Rights in Theory and Practice* (Ithaca, NY: Cornell University Press, 2003).

[3]"Worldwide Acceptance of Human Rights?" unpublished manuscript by James. W. Nickel.

[4]Donnelly, 17.

[5]Ibid., 14.

[6]Ibid., 16–17.

[7]Jim Nickel also appeals to Rawls's notion of overlapping consensus as one possible strategy for establishing universal acceptance of rights. Though Nickel is more cautious than Donnelly is about concluding that there is currently worldwide acceptance of human rights, he argues that worldwide acceptance of rights is possible and would not require that we all accept the same reasons for rights (12).

[8]Donnelly, 90.

[9]Ibid., 96.

[10]Ibid., 41.

[11]Ibid., 51–52.

[12]Ibid., 41.

[13]Margaret Urban Walker, *Moral Understandings* (New York and London: Routledge, 1998).

[14]Walker, 8–9.

[15]Walker, 17.

[16]See Margaret Urban Walker, "Morality in Practice: A Response to Claudia Card and Lorraine Code," *Hypatia* (Winter, 2002), 174–182.

[17]Michael Walzer, *Thick and Thin: Moral Argument at Home and Abroad* (Notre Dame, IN: University of Notre Dame Press, 1994).

[18]See in particular Walzer, 1–19.

[19]Donnelly admits that overlapping consensus does not mean that there is or will be no disagreement about particular rights, but he insists that there is relatively minor disagreement and that it occurs primarily at the level of interpretation and implementation, and not at the level of concepts (103–106).

[20]Maysam al-Faruqi, "Self-Identity in the Quran and Islamic Law" in *Windows of Faith: Muslim Women Scholar Activists in North America*, ed. Gisela Webb (Syracuse, NY: Syracuse University Press, 2000).

[21]Faruqi, 79.

[22]Amina Wadud, *Quran and Woman: Rereading the Sacred Text from a Woman's Perspective* (New York: Oxford University Press, 1999).

[23]Fatima Mernissi, *Women and Islam: An Historical and Theological Enquiry*, trans. Mary Jo Lakeland (Oxford: Basil Blackwell, 1991).

[24]Faruqi, 79.

[25]Ibid.

[26]Ibid., 80.

[27]Ibid., 81.

[28]The point of exploring al-Faruqi's work is to demonstrate that though there is a sense in which "we" all accept the same general moral term 'equality' once this term functions in action-guiding moral norms or principles, it may turn out that we do not really agree on what equality is and how it is best achieved. Human rights and Islamic comprehensive doctrine both aim at establishing and securing an egalitarian social order and both seek to promote and respect the fundamental dignity of all human beings. Yet, Islamic comprehensive doctrines generate different "thick" conceptual understandings of equality and of how it should be achieved in the socio-economic order of Muslim communities. Thus we cannot simply presume to establish universal acceptance of human rights simply because most of us accept the same general moral terms or concepts.

[29]I thank Jim Nickel and Claudia Mills for bringing this to my attention and for challenging me to consider whether the non-modularity thesis issues a problem for other families of rights.

[30]For more on this see *Genital Cutting and Transnational Sisterhood: Disputing U.S. Polemics*, ed. Stanlie James and Claire Robertson (Urbana, IL: University of Illinois Press, 2002).

[31]I thank Abigail Gosselin for this example.

[32]Similarly, philosophers often point to apparent inconsistencies or contradictions in the Christian scriptures as evidence that the worldviews supported by these scriptures are at best unstable and at worst incoherent. Yet, it is often the case that people who point out these flaws fail to genuinely understand the nuanced and complex methods of textual interpretation used within various sects of Christianity for understanding revelation. Though some Christian sects employ a literal interpretation of the scriptures, which is more vulnerable to charges of inconsistency or contradiction, others do not. For example, the Roman Catholic community uses the historical-critical method for interpreting the Christian scriptures. This method seeks to uncover revealed truths within the scriptures while taking into account the context of the author, the audience to which the text was directed, and the literary genre of the text, e.g., myth, epistle, poetry, etc. Using this interpretive method, many apparent contradictions within

the Christian scriptures dissolve. While it is certainly possible that there exist incoherent comprehensive doctrines or worldviews that perhaps ought to be rejected, before we are too quick to condemn any particular way of life we need to do our best to understand it.

[33]For example, Donnelly argues that there is extensive convergence on the list because human rights are linked to processes of modernization that are now in force everywhere (58–59). Similarly, Jim Nickel notes that since "the modern state is used in every country, the lessons we have learned about its built-in dangers and what works to remedy them are applicable around the world. Differences in values and traditions are less important than one might think because all we are agreeing to are political norms to safeguard against threats posed by political institutions that we are all now using (15–16). For more on this see, George Ulrich, "Universal Human Rights: An Unfinished Project" in *Human Rights on Common Ground: The Quest for Universality*, ed. Kirsten Hastrup (The Hague, The Netherlands: Kluwer Law International, 2001). See also Abdullahi An-Na'im, "'Area Expressions' and the Universality of Human Rights: Mediating a Contingent Relationship" in *Human Rights and Diversity*, ed. David P. Forsythe and Patrice C. McMahon (Lincoln, NE: University of Nebraska Press, 2003).

[34]Nickel, 16.

[35]Though there is a sense in which individual human beings are always the perpetrators of human rights violations, Nickel's analogy captures certain structural features and patterns of behavior characteristic of modern political and economic institutions within which individual agents operate. His analogy is helpful in distinguishing between those violations that have individual human action as their proximate cause and those that are better understood as the result of the structural features of modern states and markets.

[36]Nickel, 18.

[37]In a recent article on global poverty, Alison Jaggar challenges Western philosophers to develop more empirically adequate theoretical frameworks for discussing global poverty by taking into account the many and varied local, regional, and global factors that interact in complex ways to generate situations of poverty around the world. She argues that the injustices that poor women around the globe endure "result from interaction between factors that are both macro and micro, global and local," including economic and political processes of globalization, which Western countries are largely responsible for promoting (12). Jaggar's methodological recommendations are precisely the sort I have in mind. The non-modularity thesis entails that in order to properly define the oppressive situations that people

around the world find themselves in, and in order to develop appropriate remedies for these situations, we have to actually examine the ways in which "macro" and "micro" factors interact in creating these situations. As Jaggar and others suggest, intercultural dialogue is indispensable to this task. See Alison Jaggar, "'Saving Amina:' Global Justice for Women and Intercultural Dialogue" forthcoming in *Ethics and International Affairs* (Spring, 2005), and also in *Real Justice*, ed. Andreas Follesdal and Thomas Pogge (Kluwer, 2005).

[38]Donnelly, 69.

[39]Ibid.

[40]Faruqi, 75.

[41]An-Na'im, "Area Expresisons," 2. In this article An-Na'im develops a position that he argued for earlier in *Human Rights in Cross-Cultural Perspectives*, ed. Abdullahi An-Na'im (Philadelphia: University of Pennsylvania Press, 1992).

[42]For more on both the dangers and the virtues of "insider" and "outsider" moral evaluation and critique in international development ethics see David Crocker, "Insiders and Outsiders in International Development," in *Ethics and International Affairs* 5 (1991), 149–173. Crocker notes some of the liabilities that attach to an outsider stance include ignorance of "what is going on in the group" and being "closed off from the facts, meaning, and communal values relevant for progressive social change" (163). Yet, Crocker also points out the virtues of an outsider stance including the ability to "reveal things that the insider misses" and the opportunity to offer perhaps quite needed new ideas, interpretations, and understandings that draw on the outsiders' own "tradition, vocabulary, and experience" (165).

[43]Perhaps certain versions of discourse ethics provide a promising method for achieving consensus through actual dialogue. For more on this see Seyla Benhabib, *Situating the Self* (New York: Routledge, 1992); and Alison Jaggar, "Globalizing Feminist Ethics," in *Hypatia* 13 (Spring, 1998), 7–31.