

Are Human Rights Universal?

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It is possible for human rights proponents to give long, complicated and philosophical answers to the question of this debate. But the only answer that has ever made a difference in the lives of, and changed history for, millions of people is an answer that was given more than fifty years ago by a very unlikely group—the government representatives of the members of the United Nations. That answer took the form of the Universal Declaration of Human Rights. This is a document that commanded no opposition, a document that President George W. Bush has called a landmark achievement in the history of human liberty, whose standard must guide our work. It is a document that spells out political, social, cultural and economic rights that each government must recognize as part of the “inherent dignity of all members of the human family.”

At the time the people who framed the Universal Declaration represented a fairly wide and diverse range of regions and traditions. They, very deliberately, did not root the rights in any particular culture, religion or philosophy; but treated them, as Thomas

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Jefferson put it, as simply self-evident. But the declaration was drafted in 1948 at a time when few current governments were represented in the United Nations—many were still colonies at that time.

It is really not surprising that as human rights began to demonstrate its power throughout the world, the universality of those rights began to be denied and attacked; especially by those who felt threatened by the growing international movement for human rights. These attacks on the idea of the universality of human rights have taken many different forms, most notably the “Asian Values” argument. It is important to take these criticisms seriously not least of all because they make it clear that it is important to talk about human right in language that resonates in different cultures, different traditions, that speaks to people out of the culture they know. That said, most of these attacks on universality have had remarkably little success.

In 1993 when the United Nations was planning a world conference on human rights, there was fear, given the debate on “Asian Values” that was at its peak, that this might be the time when governments would take the opportunity to roll back the idea of the universality of human rights. Instead, 171 governments, including the United States, strongly affirmed the idea and indivisibility of universal human rights. They rejected the idea that governments had to choose between freedom from want and freedom from fear. They stated that all governments have an obligation to work towards the universal adherence of both economic and civil rights. The Universal Declaration was eventually turned into two covenants or treaties, one on civil and political rights and the other on economic, social and cultural rights; 154 and 159 governments, respectively, have ratified these. For such an idea to gain widespread agreement of this nature by governments around the world is truly unique; it led Professor Louis Henkin to say human rights are the only political and moral idea to have received universal acceptance.

Equally important is that the fight for the realization of human rights has also been universal. At the 1993 conference the 171 governments were joined by nearly 1000 non-governmental organizations that represented virtually every region and every cultural and religious tradition. This global citizens’ human rights movement is largely responsible for advances in the fight to force governments to live up to their own words. The fight has not been over the question of whether there are universal rights but over the much harder question of how to make governments respect those rights. This is the most important fight of our time and it is a tough fight—it is not hard to understand why. The implication of the words that these governments adopted in 1948, and have affirmed time and time again, is nothing short of revolutionary. They recognize rights that are inalienable—they are *recognized* by the state but not *created* by the state, and therefore they cannot be taken away by the state. These are rights that apply to each and every one of us, everyone in this room—everyone in the world. They apply to those

that we admire and love; they apply to those that we rightly fear and whose actions we despise; and they apply to those who we sometimes hate. They apply in peacetime and in wartime; no matter how the term war is applied. And, most importantly, these are not hopes, they are not aspirations, they are commitments and obligations of every government, from the weakest to the most powerful. Every government is obligated to fulfill, respect and protect all the human rights in the Universal Declaration.

This idea of universal human rights is a challenge to long held notions of national sovereignty. It represented a monumental shift in the understanding of the power relations between individual human beings and those who govern us. It places clear limits on what governments *can* do to individuals and it places clear obligations on what government should do *for* individuals. Governments never like to have limits placed on their power. Why would any government agree to such a far-reaching document? One reason is given in the declaration itself: this is a document that “emerged in the wake of barbaric acts that outraged the conscience of mankind.” And these acts also led to the bloodiest world war in human history. This document was not a foray into idealism, it was not wishful thinking—it was a very hard headed and realistic reading of history that made governments see that human rights are, in their words: “the foundation of freedom, peace and security in the world.” And then there was the less lofty reason for adoption of the Declaration. Most governments probably did not believe that anyone would take their words seriously; they did not expect that anyone would think that governments were going to change their behavior to live up to those words. All the governments that adopted the Universal Declaration knew how vast the gap was between the ideas they put out and their own behavior. Take the United States, for example. When these words of equality and dignity were being proclaimed we had our own form of racial apartheid, we had widespread lynching, and we had denial of equal housing, education and justice. So our government, like others, fought against any genuine mechanism for investigation and enforcement of the rights in the Declaration.

For a long time after 1948 there was no reason to believe that the declaration would change the way governments operate, but then something very curious happened—something really amazing. The declaration began to be taken seriously, not by governments, but by those whose rights it protected. A global human rights movement began to grow, and it began to discover the power of moral pressure. And in the process it effectively challenged even the most entrenched and repressive regimes. It was made up of organizations like Amnesty International and Human Rights Watch and many others. But it was also made up of some truly extraordinary people from all walks of life—ordinary people, not human rights professionals: the mothers and fathers of the Plaza del Mayo in Argentina, trade unionists in Poland, students in Tiananmen Square

in China. It was made up of intellectuals in the Soviet Union; it was made up of unemployed youth in the slums of Soweto in South Africa. It was made up of students and young and old people, black and white, fighting for civil rights in this country.

Along the way we discovered that this idea of human rights had the power to free hundreds of thousands if not millions of people from unjust treatment, from torture,

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from hunger, from hopelessness, and death. If the goal of governments is to promote human welfare, it is indisputable that no idea has been more important in promoting human welfare than the idea of human rights. Now this global human rights movement did not succeed just by exposing and

criticizing governments that violated human rights. It also worked strategically with governments that for whatever reason and not always consistently nonetheless sought to advance human rights worldwide. The United States, for all its flaws, has been one of the most important allies in this fight for human rights worldwide.

And that is why the question of “how do we advance universal rights?” has special meaning for the people in this room and in this country. The last decade has been one of the most damaging in history to the idea and practice of human rights around the world. Why? Because the country which has been such an important champion for human rights—our country, the United States of America—became one of the most visible violators of those rights. In the name of security, the United States began to carry out the very same practices that it had so widely and so strongly condemned for many years in other countries—indefinite detention without trial or charges; disappearances of people; government agents kidnapping people and taking them to places where no one knew where they were and of course, the use of torture and cruel, inhuman, and degrading treatment.

These practices have been extremely well documented. You probably all know this just by reading the newspapers. We know that people not guilty of any crime, not guilty of violence, have been held in Guantanamo for more than six years without charges, without trial, and without any clarity about when they will ever be released.

We know about people like Maher Arar, a Canadian citizen who was at JFK airport changing planes when he was seized by the FBI and other U.S. officials. He was sent to Jordan, he was then driven across the border to Syria. He was placed in a filthy underground cell the size of a grave, he was beaten, he was held there for more than 10 months before he was released, because even the Syrians, with their techniques, could find no evidence that he was involved in terrorism. We know that many people who have been looking at the evidence have decided, as did Judge Susan Crawford—a judge appointed by George W. Bush—that we tortured people like Mohammed al-Qahtani

in Guantanamo. And there are many, many other examples, but what is even worse is that the United States began to openly and publicly try to justify these practices.

The law began to be used—not to protect us against the violation of human rights but to find a way to get around it. Torture was redefined so that it could be carried out. Cruel, inhuman, and degrading punishment was dismissed as unimportant, and categories of persons were created—enemy combatants, who apparently had no human rights—and they were held in places that were apparently supposed to be beyond the reach of all of us. People's very legitimate fear of terror was used to argue that only cruelty to those we captured could offer security.

Now, none of these arguments are original or unusual. Amnesty International has documented human rights violations for nearly 50 years in countries around the world. We have often heard the same arguments. Almost all human rights violations are carried out in the name of security. Almost all torture is carried out in the name of protecting us against people who are considered dangerous and against people who are going to use violence. Often those people are dangerous, and often they are going to use violence. It should be said that those who make these arguments often believe that they are doing their duty, that it is their job to do whatever is necessary to protect us. It also has to be said that governments not only have the right but they have the duty to combat the use of violence and to bring justice to those who commit horrific crimes.

But it also has to be said that there is no legitimate evidence that the only way or the best way to protect our society is to engage in official cruelty, our own form of terror against individuals. Indeed there is overwhelming evidence that such practices are not only imposed on many who are guilty of nothing at all but also, whatever the short term gains they claim to offer, in the long run as countries like France and Algeria and Great Britain and Northern Ireland have learned the violation of human rights undermines rather than increases security. The violation of human rights hurts those who are trying to fight against tyranny, and it helps those who yearn for violence and long to make those they hate fight on their terms.

And here is what made the U.S. actions so harmful? It is not that we are worse than any other countries—we are not. It is, rather, that we have always told the world that we were, and we aspired to be, so much better. It is because we claimed to be the great champions of universal human rights. When the country that championed human rights—when the world's greatest democracy and superpower—began to violate human rights so openly, it sends a very powerful message to dictators and killers around the world, helping them justify what is unjustifiable. And, more importantly, it undermines and makes so much more difficult the dangerous efforts of brave men and women who are fighting for their rights and the rights of all—and also all those who are fighting against acts of terror.

Leaders in Egypt, Zimbabwe, Russia, Iran, and China have used U.S. actions to defend their own violation of human rights. I am happy to give examples. I can think of one, one I can never forget—that of a man named Hassan Bility. He is a journalist from Liberia. He was arrested seven times because of an article he wrote about the thug-ruler Charles Taylor in Liberia. The last time he was arrested and tortured, he was told, “Don’t bother to try to fight this because you have no rights,” and he said, “I don’t understand. What do you mean I have no rights?” They said, “You have no rights because you are an enemy combatant. We have declared you an enemy combatant and therefore you have no rights.” And he said, “I’ve never heard this word, enemy combatant. What is the meaning?” They said, “We learned it from the United States of America.”

Those are the kind of people who are the most betrayed by what we have been doing. But it is the glory of our nation that we remain a nation of laws and we remain a democracy. Even the Supreme Court on several occasions sought to bring an end to some of the worst abuses, ruling for example that Article III of the Geneva Conventions applies to all prisoners held by the a government and therefore all people are protected from cruel, inhuman, and degrading treatment. And it sought to restore one of the oldest and most important protections against torture, habeas corpus.

As you know, we had an election and the advocates of official cruelty lost that election. The new administration has begun to take some important steps towards restoring our commitment to human rights. But the damage that we have done to universal human rights, and to our reputation as a country which embraces such rights, is extremely severe. And we have a long way to go before it is overcome. As U.S. citizens we have an obligation to make sure we hold our own government accountable—for universal rights to mean anything they have to be applied universally. The real criticism of the universality of human rights is, as people, especially dictators, have argued, that they are not applied universally. The strong and the powerful get away with human rights violations.

Now we have a chance to show that human rights apply to all. And we have to do that by holding ourselves accountable. And when I say ourselves I mean all of us, because we all allowed this to happen. I did not come here today to blame particular individuals. I came here today to try to urge us all to create a process in this country, to ask our government to create a process by which we can sort out went wrong and why we went down this ugly road. So that we can never ever go down it again and betray our promise to so many people around the world. To do that, we are going to need faith. I will end with my favorite Martin Luther King quote. He said that in order to fight the human rights fight that he had fought, and he is the one who talked about the human rights revolution, we need to have faith that is strong enough. He said: “to hue out of a mountain of despair a stone of hope.” For quite a while we have been liv-

ing on a mountain of despair. Now is the time for all of us to join in finding stones of hope and using them to build new foundation for freedom and security in the world. The foundation that is human rights.

JOHN YOO

Let me start by saying that I think that my ideal world is not significantly different from Larry's utopia. I would vastly prefer that everyone enjoyed a full range of political rights—the right to worship as they chose and the right to participate in a free market, to name a few. I will never forget a nighttime picture of the Korean Peninsula; one can see South Korea illuminated by electrical lighting and North Korea is completely dark. It is due to the United States that the Southern portion of the peninsula is able to enjoy political freedom and free markets. I use this anecdote to draw everyone to the actual question we need to ask. The real question is: how do we get to that world. What is the best way, as a matter of prudent public policy? The question is, “Will embracing the universality of human rights, as Larry argued, be the best way to achieve that kind of world?”

It is certainly true that lots of countries have signed various human rights instruments. At the same time, the record-of-practice indicates that those nations are not living up to their promises. In fact there is evidence, produced by political scientists, that shows that treaty signatories continue to abuse human rights as they did prior to the signing. It is not apparent that legalization efforts or treaties are going to make a difference in the pursuit of the human rights program and, as I will argue later, they might actually hurt that goal.

Second, if one is going to legalize human rights one is going to have to have some kind of consensus or agreement about what the sources of those rights are. Larry described rights as inalienable—a reference to the Declaration of Independence. I wish that rights were regarded as inalienable too. But, there is a lot of disagreement amongst moral philosophers about whether rights are inalienable or not. Those of you here at Brown have most likely already been put through your paces in Rawlsian thought in first year political philosophy—that is a very different theory about where human rights comes from and what they are compared to the natural rights philosophy that informed our framers. There are also utilitarian theories. And there are other cultures and traditions that deny or restrict human rights; cultures which perceive human rights to be a form of western imperialism—the Asian rights movement is an example. In parts of the Islamic world there are certainly people who do not think women should have certain rights and the same for people of certain other religions—that is the view that they promote.

It is fine and good to have treaties that establish principles of international human rights, but they mask a larger disagreement about whether these rights in fact do exist and the best way to achieve that ideal world we discussed. Instead of focusing on international human rights we should focus on human welfare. Rights are only one way that we improve global welfare, but we should not pretend that there is an absolute goal that supersedes other aspects of human happiness and wellbeing. Any one in government would admit that every policy is a trade off between promoting one goal at the expense of another. Governments have to conduct cost-benefit analysis.

For example, a lot of people want cleaner air; one option is to increase the gas mileage requirement for cars; this makes cars lighter. The trade off is that lighter cars increase the probability of vehicular deaths on highways. Trade-offs are inherent in every kind of policy choice the government makes. The value of rights will be weighed using the same calculus. But if one is going to say that rights are absolute, and then one is saying that rights supersede all other values. That philosophy would lead the state to secure rights, even at the expense of values people hold equally dear, or values that are prerequisites for human rights to actually function properly. I think that individual rights and economic liberty and growth go hand in hand; because, in order to have a functioning market all participants must know that the state will not go beyond its powers and appropriate private property and suppress all opposition. We need to have individual rights in order to have free markets and we also need markets to help rights develop.

If one were to focus on the trade-offs that are inherent in government policy making, and we understood that rights are indeed a part of that decision making process, then there could be an honest discussion. For example, I think governments have the right and duty to increase the welfare and well being of their citizens; on the other hand, there are other objectives that will come at a cost of it. We should be upfront about the costs and benefits of every policy objective. To take an example from my home state California: there is a federal judge that believes that our prison system violates the eighth amendment, due to its substandard health system. In order to bring the healthcare system of our prisons to par with the constitutional requirement, they have to spend something on the order of \$5 billion! That is what individual rights requires; but we must acknowledge that pursuing that agenda has an opportunity cost—it will draw money from other public concerns, for example: the education system, law enforcement, health care, welfare and the list goes on and on. You are privileging one of those values above all others. The debate over whether human rights is universal masks the debate, or even ends it, over trade-offs, preventing the government from making the best decision.

Another example is in the national security, war and human rights policy domain.

First of all rights apply differently depending on whether a state is at war or at peace. We, for example, on a daily basis restrict rights when we aren't even at war: you have the right to free speech but you don't have the right to drive a truck around with loud speakers on it in my neighborhood. Society puts reasonable restrictions on your freedom of speech in order to accommodate other social values. The question is not anywhere quite as acute as during a war. When you wage war the government kills people—it is not murder, as it would be during peacetime. In wartime one tries to kill members of the enemy. It is unfortunate, but it is something that happens if war is brought on. In wartime the government will detain people without a criminal trial. It is part of a strategy to prevent combatants from returning to the battlefield. We detained people in World War II, they were held in bases in this country without trial or the right to habeas corpus, some were held for three to five years. That is because the system that applies in wartime. In peacetime, if the government were to detain people without charge and without trial for some indefinite period that would be a violation of our constitution. The key difference is whether we are in peacetime or wartime. Because we are used to operating in the system under peacetime it does seem strange, or to violate our rules, to see what our government has to do in wartime. But that is the system that we in that situation in order for society to protect itself, which is its overriding goal.

This is not a fiction formulated by the Bush Administration, or any other modern president, for that matter. Look at the stance of Abraham Lincoln on this question. At the beginning of the Civil War he suspended the writ of habeas corpus, initially in Washington D.C. and Maryland, eventually throughout the whole country. He did it on his own authority, even though the constitution appears to suggest that only the Congress can suspend habeas corpus. He was accused of being a tyrant; there are scholars today who agree with that judgment. He was faced with the possibility that spies within the nation's borders helping the confederacy, and under the pressure of emergency he instituted military detention to prevent people from effectively cutting the line between D.C. and the rest of the country. He gave a speech to Congress on 4 July 1861. He admitted that he violated the constitution and disobeyed a direct order by the Chief Justice of the United States to release the individuals that were held in military detention. He said we could either have all the laws but one to go unenforced or obey the law and jeopardize the country's security. This was Lincoln; we recently celebrated the 200th anniversary of his birthday. If we are honest, there were trade-offs and he made the choice that we applaud him for today, but he had to violate the laws of the nation first.

On the question of how to advance human rights if one wants to achieve an ideal world where individuals have full political and economic liberty. First, this will not happen by the signing of treaties or the implementation of an international legal

framework. It will happen exactly as the process has worked historically—nations will take it upon themselves to express those kinds of values. It is not due to international law that human rights, of the kind that we celebrate today, took root in Western Europe, and now throughout most of Europe. It is because the United States and its allies went to war in Europe to protect those values in the face of the threat of Nazi Germany, and later, the Soviet Union. And what is important is that we preserve the ability to respond to security challenges from dictators using the threat of weapons of mass destruction, and from terrorists groups. Because that is the route that will lead to the expansion of human rights in the world; it happened through the expansion of democracy and free markets that we enjoy here today—which require a degree of security in order to flourish. Rights did not come from treaties; they came from the result of pursuing our own national interest in Europe and parts of Asia, which was to live under these kinds of western values.

Do the kind of limitations that should, as argued by many, be imposed on the United States through international law actually hurt that ultimate goal of an ideal world? The current body of international law says it is a violation for countries to use force, except in self-defense, unless it is acting pursuant to the UN Security Council, which itself has to justify its decisions by identifying a threat international peace and security. There are critics who argue that the war in Iraq violated that standard and there were other people who argue the opposite. But take some of the worst humanitarian disasters that have occurred, and are occurring, in the world.

Intervention in a country to prevent systematic, wholesale, deprivation of civil liberties and human rights; not just the right to eat or the right to trade, but the right to be *alive*, has taken place in the war in Kosovo. In the war in Kosovo the United States and its allies intervened; they did this after Vietnam and after ethnic cleansing in Bosnia in 1999. The UN Security Council never issued any kind of authorization for the intervention. The United States did so because it was necessary to prevent another repeated episode of ethnic cleansing, even though it was in violation of international law. Take Rwanda, the United States and its allies, with the deployment of a few thousand troops, could have prevented a genocide that killed roughly a million people. International law would have found that illegal, and if international law truly matters perhaps it had something to do with other countries not intervening. Look at Darfur today, there are some who think it will be as bad as Rwanda, it is certainly in a bad situation now. Countries that would want to intervene there to stop the violence would be in violation of international law, as we understand it now. The Security Council would not issue authorization for the use of force there and it would be hard to claim it was necessary for our national self-defense. One should think carefully about whether this attachment to international law is as helpful as some people want you to believe.

Finally, I want to look at where we are since the 9/11 attacks. One of the fundamental differences of opinion we have in our society, and we had it from the beginning, is whether it has been a war at all. We have heard critics call it a law enforcement issue. They ask, "How can you hold people without criminal trial?" That suggests we should have criminal trials; that dealing with Al Qaeda should be treated as a law enforcement issue instead of by military means; that terrorist suspects ought to be detained as a criminal suspect; they should be given a jury trial back in the United States in federal court; and only if they are convicted can they be held prisoner. But we have to turn to the distinction between wartime and peacetime—if it is a war that started on 9/11 then their rights are different, as has always been the case. The United States can detain people until the conflict has been resolved; you simply do not release detainees allowing them to return to the battlefield. The government has to make tough choices.

The United States is using remote-operated drones to fire missiles at the Al Qaeda leaders in Pakistan, sometimes leading to civilian death. If this was a criminal law enforcement enterprise, the United States government would not have the authority to fire missiles at people it thinks are criminals, it would have to detain them after capturing them and obtaining a warrant from a judge. But think of the manner of attacks which force us in to a state of emergency to which the government must respond; attacks which this country had not sought out, it was thrust upon it. The government, for good or ill, made the choice that we were at war; and it is not a question that the Congress and the President disagreed. Congress voted to authorize the use of force, not in Afghanistan, but

against anyone connected to or responsible for the 9/11 attacks. While it is true that it extended the writ of habeas corpus to Guantanamo Bay

it also said that the government, in this war against terrorism, does have the power to detain people who are part of Al Qaeda without criminal charge. This is simply the way we have held prisoners in any war since the founding of the country.

If it is a war you have to make those tough trade offs—rights versus security. People often repeat Benjamin Franklin's comment that those people who would trade a little liberty for security deserve neither. Benjamin Franklin also said the national symbol should be a turkey. That sort of argument is an effort to pretend that there is no trade-off involved. If there is anything we can do to increase security of our country with no expense to rights or liberty then we should pursue it, and hopefully we have. But at the point in which a trade-off between rights and security occurs then we have to make a choice; it is inevitable and it is not something we can simply shrug away by announcing that there is an overriding value relative to all others such that we can

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never do anything to diminish it.

Let me end this by being deliberately provocative, if I haven't been already! If one wishes to have a Western model of political and economic life spread throughout the world, it must be self-defeating to hamper our abilities to respond to an external attack. If a society where rights flourish is under attack, that society has a duty to protect itself. There is no contradiction between a society that preserves individual liberties but is also vigorous in its response to external threats. If we handicap countries ability to respond to external threats, like the one we face and continue to face since 9/11, how secure are those basic liberties and freedoms going to be?

I do not think that every policy position of the Bush Administration was correct. But there is a record, in that the country has not suffered another terrorist attack since 9/11. We should not say the policy was ineffective, we should say it came at too high a price—that is where the argument should be. Some say that there were costs, in respect to our standing in the world and costs in terms of our liberties. But those costs are not as large as people believe, and preventing another attack is worth those costs. There have been two elections since the attack, parties are losing and gaining control of Congress. Democracy is alive and even more vigorous since 9/11. Our country's reputation in the world has certainly been dealt a blow. But we are now in a world where we have a number of friendly governments in Western Europe, some even more conservative than our own. So I think that the question is this: will the costs of what we did after 9/11 be worth it in order to prevent another similar attack and seriously damage Al Qaeda to the point where it does not seem able to carry out those attacks in the future? I think it was. 