Introduction

"Area Expressions" and the Universality of Human Rights

MEDIATING A CONTINGENT RELATIONSHIP

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In this chapter I am concerned with mediating the clear tension between the reality of rigorous and permanent global cultural and contextual diversity on the one hand and the possibility of articulation and implementation of universal human rights standards on the other. Questions raised by this tension include whether the notion of universality of human rights is at all possible or viable. That will depend, it may be said, on what one means by this notion of the "universality" of these rights. To begin with, is it a normative claim notion, in the sense of rights that all human beings "ought to have" in accordance with some general justification or foundation, or is it an empirical assertion that a specific set of rights is in fact universally accepted everywhere? Whether it is the former or the latter sense of the term, does it mean that all human beings are entitled to the exact rights in precisely the same manner, or is there room for a degree of variation, and to what extent or on what grounds? What institutional and material resources does this claim or assertion require for its realization, and what allowances does it make for lack or deficiency of such resources?

For our purposes here in particular, are different geographical, cultural, political, and/or thematic "area expressions" of human rights inherently inconsistent with the universality of these rights, or are such expressions legitimate ways of "adapting" general definitions of universal human rights to various local settings for practical implementation? In other words, are the universality of these rights and the realities of different area expressions of human rights mutually exclusive, whereby one has to choose between the two approaches, or it is desirable and possible to see them in a dialectic relationship of mutual accommodation? If it is the latter, what are the appropriate limits of local variations for them to remain within the framework of universality? Assuming that differences in "area expressions" *can be* consistent with constructing a coherent and viable concept and normative content of the universality of human rights, is it not also reasonable to expect the opposite outcome when conditions are not favorable to a positive relationship between the two?

In my view the universality of human rights and their area expressions can be compatible and even mutually supportive, but this process should not be taken for granted or assumed to necessarily yield a predetermined or inevitable meaning and

content of universality of human rights. In other words, the synergy between the universality and culturally/contextually specific expressions of human rights can either be mutually supportive or not, depending on how various actors perceive the various elements of the process and how relevant factors and context affect its outcome. In either case, however, that conclusion would be the outcome of careful analysis of the two possibilities and assessment of available practical experience, rather than assertions of categorical, nonnegotiable positions.

Therefore, the premise of my analysis in this chapter is 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. In fact, the idea of "discovery" or "proclamation" itself already implies a process, which requires certain actors, context, and other conditions that are conducive to its success. If this is true, understanding the meaning and implications of the universality of human rights calls for an examination of the nature of that process, the role of the actors and context, and other relevant conditions. Moreover, I suggest that this process should be seen as one of synergy between its actors, context, and other conditions, whereby each element can affect the others, as well as the dynamics of their interaction, either in favor or against the universality of human rights. The proponents of universality need to understand the nature and dynamics of this process in order to develop appropriate strategies for the achievement of their objectives, instead of expecting affirmation of universality to emerge as simply "self-evident" or the inevitable outcome of national politics and/or international relations.

In this light the starting point of my analysis here is that the opponents of universality of human rights, commonly known as cultural/contextual relativists, have a point that has to be taken seriously but not conceded or allowed to defeat the possibility of the universality of these rights. It seems clear to me that the relativists are right in observing that the notion of universally valid and applicable norms are problematic, but they are wrong in concluding that the effort to establish and implement universal human rights norms should be abandoned for that reason alone. To acknowledge the difficulty of realizing the universality of human rights in practice is to accept the possibility that this effort may fail in the end. But in view of the supreme importance of the universality of human rights, to take the relativists' challenge seriously is to emphasize the need to develop and implement effective strategies for overcoming that difficulty, rather than forfeit the possibility of success. In the first section of this chapter, I will elaborate on this proposition and in section two illustrate its application to different forms of "area expressions" discussed in some of the other chapters of this book. In the final section of this chapter, I will examine how the difficulties of universality of human rights might be overcome at various levels of theory and practice.

The Quandary of Universality and Relativity

While often used in popular discourse to refer to notions of freedom and social justice in general, the term *human rights* has come to signify a particular conception of those claims as rights due to all human beings, without distinction on such grounds as race, sex (gender), or religion. This modern conception of human rights, as proclaimed in the Universal Declaration of 1948 and developed in subsequent treaties and institutions, was no doubt Western in its initial formulation after the Second World War. But that does not necessarily mean that it is alien or irrelevant to non-Western societies.[1] As clearly reflected in the frequent endorsement of the Universal Declaration in national constitutions and regional treaties, like the African Charter of Peoples' and Human Rights of 1981, the present concept has already transcended—and needs to transcend further—the limitations of its initial Western formulations. Nevertheless, doubts persist about the universality of these rights.

This issue is often discussed in terms of a binary of universality and relativity, as if one has to either fully accept or completely reject the universality of certain rights for all human beings. On one end of this purported dichotomy are said to be countries that claim cultural/religious relativity or contextual specificity to justify rejecting or qualifying certain universal human rights norms, and on the other side are those that are supposed to fully accept the universality of all human rights. Whereas some Islamic and East Asian countries are commonly placed on the relativist side, Western countries are commonly assumed to be fully committed to the universality of these rights. Upon reflection, however, one can see that such a binary view of this issue is both misleading and difficult to substantiate or maintain in practice because, as elaborated later, no country either fully accepts or completely rejects the universality of human rights.

A binary view is misleading in assuming either that human rights can be culturally and contextually neutral or that a conception of human rights emerging within one culture or context can be accepted by other cultures for application in their context. To explain, I would first note that as a normative system that seeks to influence people's behavior and the political and social institutions that regulate their lives, human rights could only be the product of culture, to be interpreted for practical application in a specific context. The idea of human rights is founded on the belief in the possibility of universal rights due to all human beings everywhere to ensure equal respect for human dignity throughout the world. But such norms can neither be imagined nor understood in the abstract, without reference to the concrete daily experience of the people who are supposed to implement them. Since any conception of human rights as a normative system is the product of some culture(s), a given set of these rights can be perceived as alien or unacceptable to other cultures. Given the cultural foundation of all normative systems on the one hand and the permanent cultural diversity of the world on the other, how to determine universally valid human rights standards that are acceptable to all societies

regardless of cultural and contextual difference? This is what is I call the quandary of the universality and relativity of these rights.

The basic difficulty here is that any approach to locating the foundation or source of the universality of human rights simply begs the question.[2] For instance, one can say that all human rights emanate from a particular philosophical or religious premise about human nature, social life, and so forth. But this simply reframes the question in terms of which premise to select, why, and to what ends. To assert that these rights are necessary for protecting human dignity or satisfying certain basic needs presupposes a universally accepted or applied conception of human dignity and its implications or an agreement on basic needs and the manner of their satisfaction. For instance, all human beings need food and shelter, yet liberal relativists tend to assert that these needs should be realized through the political process in which certain liberties, like freedom of speech and association, are secured against the state, rather than by accepting them as human rights as such. Taking a positivist view of human rights, as those acknowledged by states through international treaties and national law, leaves the matter to the ideological, cultural, or political positions of the elite who control the state in each country.

The difficulty of finding a universally accepted foundation of universal rights was clear to some observers even before the United Nations' Human Rights Commission finished the draft of the Universal Declaration of Human Rights. In 1947 the commission received a long memorandum from the American Anthropological Association (AAA) cautioning against the dangers of ethnocentrism, the tendency to regard one's own culture as superior to those of other cultures.[3] Since standards and values are relative to the culture from which they derive, any attempt to formulate norms that are based on the beliefs or moral code of one culture to that extent detracts from the applicability of the declaration to humanity as a whole. The basic problem raised by that AAA statement, and also expressed by other scholars since then,[4] is that approaches to determining the content of human rights norms, or selecting the most effective ways of implementing them, necessarily reflect specific cultural, philosophical, or ideological perspectives. Even those who accept the idea of the universality of human rights as a legal entitlement of every human being will probably continue to have significant differences about the actual content and implementation of these rights. For instance, liberal supporters of the universality of human rights find it difficult to accept the possibility of collective human rights because they see them as undermining individual rights.[5] But if the sources or foundations of human rights are necessarily multiple and diverse, how can the rights so determined be universal in validity and/or application?

However, as stated in the declaration adopted by the AAA in June 1999, there is a problem "whenever human difference is made the basis for a denial of basic human rights, where 'human' is understood in its full range of cultural, social, linguistic, psychological, and biological senses."[6] In other words, cultural or other differences between human societies should not be used as a pretext for justifying human

rights violations. But the problem with this view is that it assumes or presupposes the existence of a clearly identified and accepted set of human rights in the first place. In an effort to anticipate objections to the circular logic of this view, the 1999 AAA declaration also cautions against equating or limiting human rights to "the abstract legal uniformity of Western tradition" and emphasizes the need to keep the concept open to additional and new perspectives by asserting: "The AAA definition thus reflects a commitment to human rights consistent with international principles but not limited by them. Human rights are not a static concept. Our understanding of human rights is constantly evolving as we come to know more about the human condition. It is therefore incumbent on anthropologists to be involved in the debate on enlarging our understanding of human rights on the basis of anthropological knowledge and research."[7]

While welcome for supporting an evolving view of human rights, this statement does not resolve the basic tension between ethnocentricity and universality of standards that are now proclaimed as universal human rights. One may still wonder whether the phrases "our understanding" and "we come to know" (in the above quote) are, or can be, inclusive of all peoples or perspectives. Since the "anthropologists to be involved in the debate" are the product of their own culture, too, how can the "anthropological knowledge and research" they produce escape that fact in a verifiable manner? That is, assuming that the training and professional orientation of anthropologists enable them to be sensitive to the risks of ethnocentricity, are American or any other group of anthropologists thereby "qualified" or "authorized" to speak for all views on human rights in their own culture, let alone in other cultures?

As implied in this last question, regard must be taken of the unavoidable diversity of views on human rights within each culture due to religious, ideological, class, or other differences. Since ethnocentrism means the tendency to assume that one's own views and experiences are necessarily shared or accepted by others, that can happen regarding specific views within, as well as among, cultures or societies. Moreover, to say that human rights should not be limited by existing international standards does not resolve the issue of how and by whom additional human rights can be identified and defined in practice. In other words, these concerns apply to the possibility of new rights in the future as well as to present international standards.

Another aspect of the universality issue can be appreciated in relation to what might be called the paradox of state self-regulation in the human rights field. Given the realities of national sovereignty and international relations, the charter of the United Nations and the Universal Declaration had to strike a balance between the need for international supervision and respect for the domestic jurisdiction of nation states. Thus in universalizing certain notions of fundamental rights, the international human rights system seeks to make these rights binding under international law while leaving application on the ground to the agency of the nation-state. Addressing the problem of state self-regulation of their own human rights

performance requires acting on a clear understanding of the role of local, national, and international actors and processes in influencing the actual conduct of states in this regard. In other words, redressing the underlying causes of violations, as well as providing effective remedy for individual violations, requires the mobilization of the maximum possible degree of political will at the local, national, and international level. However, the necessary degree of political will is unlikely to emerge in a sustainable manner if human rights are perceived to be lacking cultural legitimacy or contextual viability.

Moreover, it is counterproductive to assume that the universality of human rights is self-evident or has already been established, so all that remains is to pressure a few ruling elites in developing countries to abandon their opportunistic denial of the obvious. This view encourages hypocrisy among the governments of developing countries who have to pay lip service to human rights in exchange for favorable treatment by developed countries in aid and trade. At the same time, the nature of existing power relations enables the governments of developed countries to raise issues of compliance with human rights standards selectively, in service of their own foreign policy objectives, without regard to the integrity and credibility of the universality of these rights as a whole. This double standard in judging similar situations is possible because of the lack of an independent check on the presumed commitment of developed countries themselves to the universality of human rights. By dominating international relations today, developed countries are the primary judge of their own behavior, as well as that of developing countries, without being accountable to any other entity in a credible manner.

Western countries have not shown consistent acceptance of the universality of human rights in their own national policies, particularly in relation to economic, social, and cultural rights. These countries also find it difficult to accept the possibility of protecting any collective or group claim or entitlement as a *human right* within an existing state, although this is the basis of the right of self-determination that is affirmed in the first article of both of the 1966 covenants. It is not enough, in my view, to provide for the services and benefits covered by these sets of rights through the normal political and legal processes of each country because the essence of the universality of human rights is to safeguard such entitlements against the contingencies of these processes. That is, recognition of a specific entitlement as a human right is intended to enhance the prospects of its practical implementation more than can be expected from the normal political and legal processes of any country. To the extent that they do in fact respect and protect economic, social, and cultural rights or collective rights, Western countries have nothing to fear from accepting those rights as human rights. Conversely, such acceptance is necessary whenever those rights are not sufficiently respected in the manner and to the extent required by international human rights standards.

The main purported justification for refusing to acknowledge the human rights standing of economic, social, and cultural rights and collective rights is the present

difficulty of specifying and enforcing them in the same way civil and political rights are defined and protected. For example, since the right to work cannot practically mean an obligation on the state to actually provide work for every person, the questions are what should be the content of this right and how can it be implemented? Collective rights raise issues of human agency in determining membership and boundaries of groups or more generally the dangers of elite appropriation of the collective voice of groups and communities. However, such difficulties are only to be expected because formal recognition of these rights is much more recent, in comparison to civil and political rights. Moreover, these rights need not necessarily fit the model of civil and political rights to qualify as human rights, which is neither uniform nor always effective even for those long-established rights. The processes of concrete definition and implementation of economic, social, and cultural rights cannot even begin unless they are taken seriously as *human rights*, rather than simply objectives of public policy.

In my view the real reason for Western resistance to accepting these rights as human rights is ideological or cultural. As noted earlier, and subject to national and regional variations, the liberal ideology/culture of Western countries tends to hold that economic, social, and cultural benefits or services should be provided for through the normal political process. Because of its emphasis on individual autonomy and privacy, liberal ideology/culture finds it difficult to conceive of collective entities or groups as bearers of rights. Liberals may see their views as obviously valid to every reasonable person, but that is exactly how ideological or cultural conditioning of human behavior works everywhere. In other words, liberal societies tend to resist accepting economic, social, and cultural rights or collective/group rights as human rights for the same reason some Islamic and East Asian countries are resisting the universality of human rights in the name of their own ideology or culture. If ideology or culture can exempt Western countries from accepting these rights as human rights, non-Western countries can claim the same regarding such human rights norms as equality for women or protection of freedom of expression.

Moreover, the persistence of some Western governments in asserting chauvinistic notions of national sovereignty is in fact as relativistic as similar claims by non-Western countries like China or Iran. For example, the United States is notorious for seeking to fashion international human rights treaties to fit its own ideological views and social institutions during the drafting process, only to fail to ratify and incorporate those treaties into its domestic law for application within the country itself. This is true from the 1948 Genocide Convention, which took the United States more than forty years to ratify, and only subject to reservations, to the 1989 Convention on the Rights of the Child, which is now ratified by every country in the world except the United States and Somalia. Since Somalia has had no government since 1992, the government of the United States stands completely alone in refusing to ratify this convention. This position is particularly damaging for the universality of human rights because other relativists can cite it as justification for their own

positions at a time when the United States is dominating international relations and exercising excessive influence on the domestic policies of weaker and poorer countries.

It is therefore clear to me that full acceptance of the universality of human rights is difficult for all countries, including those that enjoy the most favorable conditions for the realization of these rights. In other words, all countries need to engage in constant negotiation about which claims to accept as human rights and how they can be implemented in practice. This negotiation should, by definition, include the widest possible range of perspectives and priorities of different human societies for the outcome to be accepted as truly universal. To avoid the appropriation of the collective voice of a culture by its political leaders or some other elite group, such negotiation must take place within each culture as well as between cultures. As I have discussed elsewhere, the object of this internal discourse within cultures, and cross-dialogue among them, is to promote an overlapping consensus over the meaning and implications of the universality of human rights.[8] While internal discourse seeks to promote consensus within a society or community over human rights norms and their underlying values within a particular society, cross-cultural dialogue attempts to achieve the same among different societies and communities. In other words, the concept and normative content of the universality of these rights is to be constructed over time, rather than proclaimed once and for all.

To suggest this apparently long-term approach does not mean that the articulation and implementation of all human rights should wait until consensus is achieved on any of them. In fact, the protection of certain rights, like freedom of speech and the right to education, is necessary for the proposed internal discourse and cross-cultural dialogue to be possible and effective. Rather, the point is to work with the existing human rights to expand and enhance consensus on their validity and practical application, in addition to focusing on similar concerns regarding any human rights that might be asserted in the future. This is already beginning to happen in the drafting and ratification of recent human rights treaties like the Convention on the Rights of the Child of 1990.

But since such discourse and dialogue does not happen in a vacuum, these processes must take into account contextual factors such as differentials in power relations between different participants in dialogue within, and discourse between, cultures. That is, to enhance the ability of cross-cultural dialogue to contribute to the acceptance of the universality of human rights, the impact of persistent and growing global differentials in power relation and material conditions between Western and non-Western societies and cultures must somehow be redressed. The context of discourse and dialogue also includes events and developments that affect the rule of law in international relations as the essential prerequest condition for any possibility of acceptance and protection of universal standards of human rights anywhere in the world today.

I will return to these issues in the last section of this chapter. For now the point to emphasize is that the quest for universality must continue because that is in the immediate self-interest of all human societies under present conditions of global interdependence as well as the moral imperative for the protection of universal standards of human rights everywhere. A compelling justification of the universality of human rights is that these rights are necessary for securing freedom and social justice for all individual persons and communities against the excess or abuse of power by the state. In other words, the universalization of the European model of the nation-state through colonialism requires the corresponding universalization of human rights standards and mechanisms for securing freedom and social justice in the context of the expansive powers of the nation-state. Since governments everywhere are exercising the extensive and prerogative powers of the state under this European model, they must also be accountable to the safeguards and rights that have evolved by the same model to protect individuals and groups against abuse or excess of those powers.

The conclusion I draw from the preceding discussion is the necessity of deliberate strategies to mediate the apparent conflict or tension between the cultural and contextual specificity of all norms, including those underpinning human rights standards, and claims that certain norms have universal validity regardless of culture or context. This mediation is critically important because universality of human rights is both imperative and difficult to achieve out of genuine consensus throughout the world. Since the inherent and permanent diversity of the world precludes founding the universality of human rights on the normative claims of any single tradition or context, it is necessary to explore which possible foundation or justification is more likely to work in different settings and under which circumstances. This strategic *construction* of the universality of human rights out of the realities of inherent and permanent diversity calls for acting on a clear understanding of the factors and processes that are conducive or counterproductive to its evolution.

Area Expressions and the Synergy of the Specific and Universal

For our purposes here, the dynamics of the relationship between "area expressions" of human rights on the one hand and the universality of these rights on the other can be illustrated by a brief discussion of some of the chapters included in this book. But the following brief review cannot be comprehensive, and comments on some of them are not criticism of the authors. Rather, the objective is to highlight both the difficulties and possibilities of the proposed process. In the next, final section, I will discuss how this contingency may be resolved in favor of the universality of these rights.

In "Does Region Matter in Provision of the Human Right to Physical Integrity?" Steven C. Poe investigates the impact of regional factors on countries' human rights practices, specifically those rights pertaining to integrity of the person. The findings of his study indicate that although general models have achieved substantial

explanatory power, this approach should be augmented by a search for regional variations to general patterns. He finds that regional variables retain a moderate amount of explanatory power once other factors included in our general models of human rights abuse are controlled. Further, when analyses are conducted on a region-by-region basis, evidence of interesting regional differences in casual patterns arises, though this general model fares better in some regions of the world than others. He concludes that a new look at the role of regional factors in determining human rights might prove helpful in our efforts to better understand the reasons why human rights abuses occur.

David L. Richards's "The Civilizational Geography of Government Respect for Human Rights" uses an original database of information about government respect for human rights to provide a cross-regional overview and analysis of government respect for a wide variety of human rights. While opting for the civilizational scheme of Samuel Huntington in his regional grouping of countries, he also discusses the importance of conceptual transparency when defining "region" for the purposes of a cross-regional study. The chapter also includes regional analyses of six factors that have been widely found to be reliable predictors of levels of government respect for human rights.

In "Promoting Women's Rights against Patriarchal Cultural Claims," Zehra F. Kabasakal Arat examines continued violation of the human rights of women in Islamic countries, which are usually justified on the grounds that the provisions of international conventions are not consistent with the tradition and culture of the country in question. She objects to invoking cultural heritage and its preservation as a way of resisting the promotion of women's rights and gender equality in Muslim communities. The author focuses on the states parties' reservations to the Convention on Elimination of All Forms of Discrimination against Women of 1979. She finds that Muslim states parties to the convention are more likely to place reservations that are broader in scope and to ground the reservations on some legal foundations that are absolute or difficult to change (mainly Islamic *Sharīʿa*). In this way, she argues, these states insist on keeping the reservations and hindering the progress toward the elimination of discrimination against women. She also challenges these reservations by arguing that the *Sharīʿa* and the *Sharīʿa*-based laws are all constructed and have been subject to interpretation, modification, and selective application in different Islamic societies. In other words, given the diversity in interpretation, why should only those understandings of *Sharīʿa* that violate the human rights of women be selected for application? Arat calls on states to express their political commitment not only to respect the rights of women, but also to promote and protect them by eliminating the obstacles, which may involve cultural norms and values.

In "The Status of Human Rightsin the Middle East," Emile Sahliyeh surveys his topic by employing the Political Terror Scale data set and the Freedom House Index on civil rights to measure the conditions of human rights in the region. He

suggests that the regional average of the violation of human rights for the Middle East states is high, at 2.9 out of 5, which gives the Middle East the worst human rights record in the world between 1978 and 1994. The author further shows that a similar tendency exists with regard to civil liberties. It indicates that the Middle East is slightly surpassed by Africa (5.4 to 5.3 out of 7) in having the most unfavorable record on civil liberties. This low record of human rights in the Middle East region has been widely debated in scholarly literature. The study outlines five competing explanations of this.

Some writers ascribe the violations of human rights in the Middle East to the feebleness of the democratic institutions and norms and the persistence of autocracies. Others attribute the lack of respect toward human rights and democracy to political economy and foreign and security policy considerations. A third trend attributes the weakness of the human rights and democratic movement in the Middle East to a moral and political clash between the West and the Middle East, which took an anticolonial, nationalist dimension. A fourth explanation refers to the Islamic opposition to Western human rights standards, which began to dominate the political scene in several Middle Eastern countries since the 1980s. Finally, the collapse of communism and thetriumph of liberal democracy and capitalism produced political, cultural, and civilizational arguments for the lack of respect to human rights in the Middle East. These arguments revolved around the controversy about whether Islam is fundamentally incompatible with the Western conceptualizations of human rights and democracy. The author concludes by outlining the arguments of those writers who disagree with the arguments upon which the case against Islam as being anti-Western, antidemocratic, and antihuman rights is made. Many of these writers do not believe that the differences between the West and Islam are great enough to inhibit the establishment of liberal democratic regimes that respect human rights. He also briefly surveys the views of the liberal Islamic thinkers who call for a reinterpretation of the Islamic *Sharī'a* and its reconciliation with the universal and emancipatory standards of modern human rights.

All these chapters confirm the reality of regional variations in compliance with international human rights standards as well as the difficulty of drawing reliable conclusions about the relationship between that and the universality of these standards. An obvious source of difficulty is that selections of regional groupings may not only be arbitrary but also reflect preconceived notions of the commitment of those countries to the universality of human rights or ability to live up to that commitment. Whether based on a combination of economic, sociological, geopolitical, and geographical factors, in the case of Poe, Arat, and Sahliyeh, or the "civilizational" model adopted by Richards and so forth, there is a serious risk of circular logic in the selection. That is, patterns of violation may in fact be due to other causes than those assumed or implicit in the selection criteria, such as colonial history or present conditions of economic underdevelopment and political instability. As noted earlier,

however, this is not a criticism of the approach adopted by these authors but simply an illustration of the difficulty of the project itself.

Another problem is the risk of distortion due to the choice of the rights to be compared or the time frame of comparison. For example, a civilizational regional classification is premised on a presumption of shared values in a fundamental and lasting manner, which is simply not true from a human rights point of view. If one takes the case of Western European countries, for instance, it is clear that their commitment to even the universality of civil and political rights was not true in relation to their colonies. That commitment was also lacking in Nazi Germany and fascist Italy before their defeat in the Second World War. The point here is that if it is a question of acceptance of the universality of human rights as a matter of distinctive and self-contained Western civilization, it should have been true long before the Universal Declaration of Human Rights was adopted in 1948. Again, my point here is not to blame Western European countries, which in fact have the best human rights record compared to all other regions, nor to criticize Richards for focusing on a limited set of rights, as that is unavoidable. Rather, the object is to highlight the difficulty of such comparisons.

The chapter by Patrice C. McMahon, "Between Delight and Despair: The Effects of Transnational Women's Networks in the Balkans," examines the work of international and regional organizations and international nongovernmental organizations on women's rights in the Balkans of the 1990s. The author finds that while the efforts of these transnational women's networks did help Balkan women, they have also fallen short of intended goals. This is largely due to misperceptions about the Balkans, Western bias, and inappropriate strategies. On obstacles to success, the author finds that despite good intentions and a great deal of money spent, democracy assistance, particularly programs that focused on civil society development, were created with little understanding of the region's history, let alone the particulars of any country. She also adds that the in their effort to "do something," donors have failed to listen to the needs and priorities of local groups, which reinforced the prevailing insensitivity to gender problems and unintentionally undermined their own efforts. McMahon observes that changing international priorities and interests put local women's NGOs in a difficult position of having to attract grassroots interest when domestic priorities do not match the priorities of their international donors, who fail to practice what they preach about gender equality and women's rights. In her conclusion, the author recommends that women's networks in such situations should promote domestic priorities, adopt a strategic approach, and provide a good role model if they are to succeed in advancing the rights of women.

Eva Brems's discussion, "The Margin of Appreciation Doctrine of the European Court of Human Rights," presents a clear and strong model of the relationship between an "area expressions" and the universality of human rights. The author does that by examining the jurisprudence of the European Court of Human Rights in managing the tension between uniform human rights standards and respect

for diversity through what is known as the doctrine of margin of appreciation. This doctrine relates to the willingness of the European Court to defer to national bodies in the examination of whether a restriction of an individual human right is acceptable or not. "The effect of a wide margin of appreciation is that the application of a common standard leads to different results in different member states: the same facts that constitute a violation of a fundamental right in one state may be considered as a legitimate restriction of that right in another." The court uses this notion to balance uniformity and diversity within the European system but does not always mention it or justify its choice for a broad or narrow margin. "To the extent that there is a 'doctrine' of the margin of appreciation, it has to be derived from the case law." The author examines the case law of the court on such issues as protection of morals, significance of religion in society, availability of resources, security situations, and political ideology in the socioeconomic field. Her analysis is concerned with answering the following questions: Which types of diversity does the court encounter and how does it deal with each of them? Which criteria affect the court's decision to grant a wide or narrow margin of appreciation and thus to accept or reject diversity in the interpretation and application of the European Convention on Human Rights? To what extent can the margin of appreciation be used as a tool to reconcile universality and diversity on the universal level? I will highlight some of her conclusions and evaluation of the doctrine in the next section of this chapter because of their particular relevance to my analysis.

Another type of area expressions and universality of rights is presented in Corinne Packer's chapter, "African Women, Traditions, and Human Rights." The author examines some of the challenges facing African women and states in redressing human rights violations due to such customary practices as female genital mutilation, early marriage, and discrepancies in land ownership and inheritance on the basis of gender. These challenges include some of the language and concepts of human rights discourse applied to these issues. The author also finds the way in which human rights advocates expect African women to evaluate and claim their human rights to be problematic, particularly in light of the strong structural, cultural, and psychological impediments women in the region face in their use of law. These include financial costs, delay, intimidating or discouraging language and attitudes of court personnel, and inaccessibility of the court system, as well as cultural inhibition for women to stand in public opposition to dominant values and lack of confidence in the efficacy of rights. She calls for adaptation of the way in which human rights advocates expect gender discrimination, and specifically harmful traditional practices, to be challenged within Africa by, for example, drawing more upon local and culturally relevant mechanisms such as customary law and leadership. That is, she calls for drawing on religious and customary institutions in the process of challenging harmful traditional practices rather than simply criticizing and attempting to exclude them. Still, she also notes the difficulties of following that strategy. Ultimately, the author argues for the need to recognize that

the discourse of human rights is less useful and practical in efforts to eradicate gender discrimination in the African region without strong adaptation to local conditions through multiple strategies.

A good example of contextual difficulties facing the universality of human rights is discussed by Mahmood Monshipouri in "Human Rights and Child Labor in South Asia." According to the author, adopting a human rights approach to the elimination of poverty is a desirable but difficult and paradoxical task, given that freedom from child labor and socioeconomic rights continue to be conflicting concerns in South Asia. The elimination of child labor is a difficult proposition that defies sweeping generalizations, quick judgments, and short-term solutions. Attempts to prevent child labor have been plagued by the complex, interlocking relationships among a multitude of variables such as economic deprivation, cultural traditions, the local economy and power structure, and the global economy. The question of how to enforce laws against child labor remains unanswered. The long-term solution lies in alleviating poverty, improving the quality of education, and expanding access to schooling for disadvantaged social groups. Protecting children in their workplaces and creating more alternatives for economic and social advancement are the key. An antipoverty development strategy will be effective if it targets equality and education opportunities for poor families, especially those with school-age children.

The chapters by Richard Burchill and Ilan Peleg, "The Role of Democracy in the Protection of Human Rights" and "Ethnic Constitutional Orders and Human Rights," examine the relationship between human rights and two related concepts, namely, democracy and constitutionalism, which provide good examples of the sort of mediation I am proposing here. In his chapter, Burchill explains how democracy and human rights are closely related concepts, as democracy involves inclusion, participation, openness, and accountability, which are also familiar concerns in the human rights field. This affinity does not mean that these two concepts are inherently one and the same and should not be treated as such, but they are still closely interdependent. Burchill demonstrates this proposition by examining how the Inter-American Court of Human Rights and the European Court of Human Rights view democracy in the protection of human rights. Each court places a great deal of importance on democracy for the protection of human rights; but the approach of each court has been influenced by the regional context within which they operate.

Ilan Peleg discusses the conceptual affinity of constitutionalism and human rights with reference to what he calls "ethnic constitutional orders" in terms of the relationships between nationalism and ethnicity on the one hand and the commitment to human rights on the other. Since an ethnic constitutional order is, in and of itself, a negation of some fundamental human rights, he proposes a model of radical democratization for transforming such orders and reflects on how this change might be achieved. In terms of the thesis I proposed at the beginning of this chapter, Peleg's analysis addresses the question of how to mediate between

the particularistic language of ethnic uniqueness and the universalistic principles of contemporary human rights, especially in multiethnic polities dominated by a single ethnic group. Following an analysis of the phenomenon of ethnic orders, he reviews the sort of human rights that are typically violated by ethnic orders and concludes with an examination of some possibilities of theoretical and empirical change.

Finally, Robert K. Hitchcock's "Human Rights and Indigenous Peoples in Africa and Asia" examines the human rights situation of indigenous peoples. Estimated to be more than 600 million living in some seventy-five countries, indigenous peoples, also known by other names such as aboriginal, native, or tribal people, have suffered acts of genocide, human rights abuses, discrimination, impoverishment, and lack of equal opportunity in employment and land access for centuries. The claims of indigenous peoples are relatively similar—as they all wish to have their human rights respected, to have ownership and control over their own land and natural resources, and want the right to participate through their own institutions in the political process at different levels. The author discusses the situations of indigenous peoples in Africa and Asia, focusing on such issues as the definition of, and diversity among, indigenous peoples, and issues of universality and relativity of the international human rights of these populations. The author concludes that most, if not all, indigenous peoples in Africa and Asia believe that universal human rights standards should prevail, and that the governments of the states in which they live should protect and promote their rights and treat them equitably.

Without in any way justifying violations of the human rights of indigenous peoples, one may also raise the question of the acceptance of the universality of these rights within these communities, as distinguished from their rights against the state and other external sources of violation. As can be seen from several case studies, the universality of human rights is problematic on both sides.[9] In the same way that some states tend to object to external efforts to monitor and protest against human rights violation within their own territories as encroachment on their national sovereignty and domestic jurisdiction, indigenous peoples raise similar objections regarding such violations within their own communities. In other words, to what extent should the communal integrity and autonomy of these communities be respected when they violate the rights of their own women or children? I recommend that the same mediation approach indicated earlier and further elaborated in the next section be used to promote the universality of human rights within communities of indigenous peoples as well as to promote their rights against violation by the state.

Mediating the Contingent Universality of Human Rights

To recall the main points I made in the first section of this chapter, critics of the notion of the universality of human rights have a point that must be taken seriously but not allowed to defeat the possibility of that universality. Their point should be

taken seriously because of the difficulty of realizing the universality of human rights when all such normative systems are deeply embedded in cultural and contextual specificity, in a world of profound and permanent cultural and contextual diversity. Yet this difficulty must be overcome because of universal need for human rights in a world of national governments that exercise so much power over the lives and well-being of persons and groups living under their jurisdiction. As suggested above, the way to mediate this quandary is to see the universality of human rights as the contingent outcome of a process of constructing an overlapping consensus through internal discourse within cultures and cross-cultural dialogue among them. Moreover, I have also emphasized the contingent nature of this process on a synergy of possibilities of multiple foundations for the universality of human rights, as accepted or contested by a wide variety of actors and factors interacting in different local, regional, and global levels and contexts. I will now attempt to focus that analysis and explain the suggested methodology of mediation in light of whatever insights one can draw from the sort of "area expressions" discussed in other chapters in this book at various levels.

To begin with, it is necessary to understand and act upon the profoundly political nature of the whole project. The normative formulation and practical application of the universality of human rights presupposes the political will to allocate the necessary resources and take appropriate administrative or judicial action, including making hard choices in cases of apparent conflict with other national priorities or concerns, and so forth. Therefore, the critical question is how to generate and sustain the necessary political will to respect and protect these rights in different societies over time. So far, it seems to me, too much emphasis has been placed on a narrow, state-centric, legalistic, and reactive approach to international human rights standards that also presupposes certain institutional and material capacities that many not, in fact, exist in many parts of the world. By state-centric and legalistic, I mean the tendency to perceive the legitimacy and authority of human rights standards as founded on the legal obligation of states under international law. Accordingly, advocates of these rights tend to focus on definitions of discrete or isolated rights and pursuit of specific remedies for individual violations in a reactive manner, instead of trying to be proactive in seeking to preempt violations by addressing their underlying structural and cultural/contextual causes of violations.

It also seems clear to me that there are two aspects to these two processes, one internal to the particular community and another external in its relationship with other communities or constituencies. On the internal front, advocates of universality must be able to use whatever arguments are likely to be persuasive to the specific community, or able to address their apprehensions and concerns, in relation to whatever frame of reference is accepted by that community as authoritative or applicable. For instance, they may find it necessary to address religious, cultural, political, and/or economic issues of concern to the community. In other words, the objective here is *persuasion*, by showing people how human rights norms "make

sense" in their own daily lives, without being too threatening for them to accept. Of course, some are bound to object to the human rights demands of others, whether they are oppressive political leaders, business entities violating workers' rights, officials who torture criminal suspects or political opponents, or men who abuse and harass women. The question is therefore whether the arguments human rights advocates can make are capable of overriding such objections by appealing to more fundamental or widely held values or capable of building alliances to overcome such objections rather than expecting it to be acceptable to all.

One should also take into account at this internal level whatever conditions or circumstances that are likely to influence the persuasiveness of the utility and relevance of human rights in any given context. This could relate to local history, ethnic relations, and so forth, as well as external threats that may cause the community or group to become defensive or conservative in an effort to protect its own sense of identify, or vital economic, social, moral, or political interests. It should be noted, however, that one is concerned here with strongly held perceptions of the issues, regardless of their so-called objective or verifiable bases in fact. For instance, a community may become more conservative in guarding some elements of its "tradition" against change when it believes itself to be the object of hegemonic designs of another, regardless of the independent validity of such a perception.

It is from this perspective that one can appreciate what is probably the most critical external factor in the persuasiveness of the universality of human rights, namely, a community's perception of how seriously others take the whole premise and specific implications of this claim. That is why perceptions of "double standards" in the domestic or foreign policies of other countries regarding human rights in general are so damaging to the universality of these rights. The point here is not that the failure of some countries to consistently respect human rights in their own policies somehow "justifies" disregard for those rights by other countries. Rather, it is that such failure undermines the credibility of the notion of universality itself from the perspective of other countries. This is particularly true when there is no generally acceptable reason for failure to accept the validity of certain rights, as in the case of the refusal of Western countries to acknowledge economic, social, and cultural rights as human rights, noted earlier, as perceived by poorer developing countries. Western rejection of the "human rights standing" of these rights is so damaging to the possibility of universality of human rights because it undermines that notion at the conceptual and legal level by legitimizing the rejection of some human rights on ideological or cultural reasons, as explained earlier. If Western countries, which played a founding role in the modern human rights movement, can object to some rights on such grounds, developing countries would feel justified in doing the same for their own ideological or cultural reasons.

Both the internal and external dimensions of the process outlined above can be illustrated with reference to the recent international terrorist attacks of September 11, 2001, on the United States and their aftermath. On the one hand these attacks

have clearly shown that even the most powerful and technologically developed country in the world is vulnerable to serious threats to the most basic security and economic well-being of its citizens. On the other hand the United States started to retaliate militarily on a global scale since October 7, 2001, and exclusively on its own perceptions of the immediate or anticipated danger to itself, without any assessment of those perceptions through accepted institutional arrangements and processes of international law. I am neither suggesting that the United States should passively submit to repeated atrocious attacks against its citizens and interests at home and abroad nor drawing any conclusions about possible legal justification(s) for its military campaign in Afghanistan. Rather, my position is simply that the actions of the United States since October 7 constitute a failure of international legality because they are neither authorized by the normative, institutional, and procedural requirements of international law nor subsequently held accountable to those requirements. Whatever legal justification(s) may be claimed for the actions of the United States, it cannot act as prosecutor, judge, jury, and executioner in its own cause and still claim the legitimacy of international legality. To simplify and illustrate in domestic law terms, it is as if someone's house was attacked and the aggressor was killed in the attack, but the victim took his gun and went into the town killing whoever he deemed to be responsible for or associated with that attack.

In my view the scholarly and highly focused study of area expressions of the universality of human rights, as reflected in various chapters in this book, provides deep and contextual knowledge of local conditions as a resource for strategies of overcoming objections to the universality of human rights. But to play this critical role, the limitations of studies of area expressions must be appreciated and redressed. For example, there is the conceptual problem of the two competing concerns reflected in the positions of the American Anthropological Association briefly discussed in the first section of this chapter. One concern is the risk of ethnocentricity, in "constructing" other people into one's own image, and the other is perceiving them as so different and alien that they cannot possibly subscribe to the same human rights values as one's own society. Both types of concerns can be seen in the analysis of some of the chapters reviewed in the preceding section, such as the criteria of regional classifications or selection of rights for comparative study in the chapters by Poe and Richards.

Another type of limitation of studies of area expressions is its emphasis on clear analysis of the nature and/or causes of the problem, coupled with an unwillingness to propose concrete solutions or engage in deliberate advocacy for change. This is of course due to deeply ingrained worry about compromising "the objectivity" of scholarship by inadvertently distorting the analysis in pursuit of explicit policy objectives. Reasons for this aversion, which can be seen in the chapters by McMahon, Sahliyeh and Hitchcock, include the double concern of assuming that other people are either exactly like us or too different to share the same values. Moreover, these scholars are probably carefully avoiding making promises they cannot keep in the

real world of violent conflicts and gross differentials in power relations. In order words, my remarks here are not intended as criticism of the authors of these studies because they have good reasons for stopping short of making categorical policy recommendations, let alone engaging in explicit advocacy for change. But the end result is that scholarly studies of area expressions need to be supplemented and operationalized in order to bridge the famous gap between theory and practice. Indeed, one can see that the above-mentioned authors are trying to take their analysis as far as they can go in that direction without compromising the integrity of their scholarship. Nevertheless, the gap remains and has to be bridged somehow if things are to change on the ground.

This problem is compounded by the fact that the opponents of the universality of human rights are not constrained by this primarily because their explicitly political project is to maintain the status quo rather than engage in advocacy for change. This crucial difference between the two types of approaches can be illustrated by comparing the work of Islamic groups and human rights organizations in the Middle East and South Asia. Whereas Islamic groups represent their role as the guardians of culture and tradition, including discrimination against women and religious minorities, human rights organizations are calling for transformation of culture and tradition in order to eliminate such practices. Taking advantage of access to traditional local funding, like the religious tax (*zakat*) and charitable endowments (*waqf*), Islamic groups provide services, like education and health care, to their communities. Being able to do that, and to operate in traditionally "secure" spaces, like mosques and local religious schools (*madrasa*), Islamic groups appear to be the "natural" expression of civil society activism.

In contrast, human rights advocates have to seek foreign funding to support their "monitoring and advocacy" activities that attract the hostility of government officials, without being able to show the community any immediate concrete results for their efforts. That is, human rights organizations in developing countries are neither accountable to their own local communities nor believed to be effective in what they do, at least in the short term. It is not surprising, therefore, that governments as well as Islamic groups cite the reliance of human rights organizations on foreign funding as conclusive proof that human rights advocates are "agents" of Western cultural imperialism. Yet the best scholarly studies of area expressions can do is to analysis and document the situation, while avoiding even the appearance of direct advocacy in support of human rights organizations for the good reasons indicated above.

Against this background, I suggest that the utility of academic study of area expressions can be improved in two ways. First, by being brutally honest about the limitations of a human rights approach and exploring radical alternative approaches to safeguarding human dignity, such studies can better define the challenge of constructing universality, instead of assuming its desirability and only lamenting failure to pursue it effectively. Good examples of that approach in this book are the chapters

by Corinne Packer and Mahmood Monshipouri, which take the universality project seriously enough to be willing to admit its limitations. To avoid confusion here, the point is *not* that African societies are not committed to the universality of human rights over harmful traditional practices, or that South Asian societies are not fully committed to eliminating child labor as a violation of some universal human rights standards. Rather, it is that the analysis presented in those two chapters demonstrates the inadequacy of rhetorical appeals to the universality of human rights without doing what it takes to realize it in practice. That is, if universality of these rights does not apply to harmful traditional practices in African and child labor in South Asia, then there is no universality of human rights anywhere. What other countries are doing may be good social policy or respect for domestic constitutional rights but is not observance of universality of human rights if it does not apply to every human being, wherever he or she may be, rather than as citizens of specific countries.

Second, scholarly studies of area expressions can help in better defining the scope of universality in ways that make its achievement more realistic. At the beginning of this chapter, I raised the question of whether universality means that all human beings are entitled to the exact rights in precisely the same manner or is there room for a degree of variation, and to what extent or on what grounds. Brems's analysis of the European doctrine of margin of appreciation, outlined in the previous section, clearly shows that it is probably necessary to mediate the poles of diversity and uniformity in the interpretation and application of legal human rights standards. In reflecting on the potential of this doctrine on the universal level toward the end of her chapter, she observes that international human rights discourse needs to come to terms with the tension between the universality of human rights rules and the diversity of contexts in which human beings live. Holding that the same standards should prevail everywhere in the world does not preclude accommodation of diversity in the way these standards are realized in specific situations through interpretation, balancing, and enforcement. As a legal approach, this doctrine has its limitations but also advantages in that it "can be used as a more objective, neutral tool, an instrument to work toward solutions rather than a forum for taking positions." But to serve this purpose, the doctrine needs to be more explicit. The judicial or juridical institution employing this approach, whether the European Court or an international treaty body such as the Human Rights Committee of the UN, should strive to provide clear reasons for widening or restricting the margin of appreciation.

As Brems also notes, the challenge of following a coherent approach to the limits to the accommodation of diversity at a global level are more difficult than the relation to relatively homogenous region like Europe. But even within such a region, with its particularly favorable conditions for the protection of human rights, universality cannot mean total uniformity. In that context, the doctrine of margin of appreciation can be used or abused, depending on the scope and context of its application. For instance, she argues that the European Court of Human Rights

should reduce the scope of the margin of appreciation when certain core aspects of a right are concerned. In her view, since all rights can be conceived as having a core and a periphery, the further an element is removed from the core, the more room for diversity. From this perspective, the universality of human rights is undermined by contextual diversity of interpretation regarding the core of a right, but not if they pertain only to peripheral elements of the right.

Notes

1. For more discussion of this point, see Abdullahi Ahmed An-Na'im, "Problems of Universal Cultural Legitimacy for Human Rights," *Human Rights in Africa: Cross-Cultural Perspectives*, eds. Abdullahi Ahmed An-Na'im and F. M. Deng (Washington DC: Brookings Institution Press, 1990), 331–67.
2. For a brief review of controversies over possible justifications for the foundational assertion of Article 1 of the Universal Declaration that all human beings are born free and equal in dignity and rights, and so on, see Tore Lindholm, "Article 1: A New Beginning," *The Universal Declaration of Human Rights, A Commentary*, eds. Asbjorn Eide et al. (Oslo: Scandinavian University Press, 1992), 31–55.
3. American Anthropological Association, "Statement on Human Rights," *American Anthropologist*, vol. 49, no. 4 (1947): 539–43.
4. See, for example, Adamantia Pollis and Peter Schwab, "Human Rights: A Western Construct with Limited Applicability," *Human Rights: Cultural and Ideological Perspectives*, eds. Adamantia Pollis and Peter Schwab (New York: Praeger, 1980), 1.
5. Abdullahi A. An-Na'im, "Human Rights and the Challenge of Relevance: The Case of Collective Rights," *The Role of the Nation-State in the 21st Century: Human Rights, International Organizations, and Foreign Policy*, eds. Monique Castermans-Holleman, Fried van Hoof, and Jacqueline Smith (The Hague: Kluwer Law International, 1998), 3–16.
6. American Anthropological Association, *Declaration on Anthropology and Human Rights*, adopted by AAA membership June 1999. Retrieved 10 November 2001 from *www.aaanet.org/stmts/humanrts.htm* [12 October 2002].
7. American Anthropological Association, *Declaration on Anthropology and Human Rights*.
8. See Abdullahi An-Na'im, "Introduction," *Human Rights in Cross-Cultural Perspective: A Quest for Consensus*, ed. Abdullahi An-Na'im (Philadelphia: University of Pennsylvania Press, 1992).
9. An-Na'im, "Introduction." See, for example, the various case studies of these issues in different parts of the world.

Overviews