

Origins and Universality in the Human Rights Debates: Cultural Essentialism and the Challenge of Globalization

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ABSTRACT

Preoccupation with cultural relativism has until recently crowded out most other theoretical questions in the field of human rights theory; today globalization and other problems are receiving much more attention. The worry addressed here is that despite this timely broadening of the analytic focus we tend to view these new problems through the lens of cultural relativism. As a result, we are asking the wrong questions about globalization and human rights and looking for the wrong kinds of answer. This essay pleads for a critical reevaluation of contemporary approaches to globalization and human rights and proposes an alternative framework.

I. INTRODUCTION

Globalization is widely viewed—at least by its critics—as a threat to human rights. The destabilizing activities of transnational corporations (TNCs), the destructive impact of structural adjustment policies (SAPs), the capricious movements of financial capital, the dismantling of the social welfare state, the erosion of state power, environmental degradation, refugee crises, and the global sex trade are among the most frequently mentioned charges in

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the indictment of globalization. This growing concern about globalization's deleterious effects marks something of a departure in the theoretical study of human rights, which for the past two decades has been dominated by the debate between relativists and universalists (the "cultural relativism" debate). Strangely, while there is no consensus among scholars that there are any such things as universal human rights, there is nonetheless widespread agreement that globalization poses a universal threat to human rights. This paradox reveals a deep and pervasive analytic confusion that undermines efforts to comprehend globalization's effects on human rights—or so shall be argued here.

Preoccupation with cultural relativism has, until recently, crowded out most other theoretical questions in the field of human rights theory; today globalization and other problems are receiving much more attention. The worry addressed here is that despite this timely broadening of our analytic focus, we tend to view these new problems through the lens of cultural relativism. As a result, we are asking the wrong questions about globalization and human rights and looking for the wrong kinds of answer. This essay pleads for a critical reevaluation of contemporary approaches to globalization and human rights and proposes an alternative framework.

More specifically, I shall argue that to grasp fully the challenge posed by globalization requires paying attention to the origins and the universality of human rights in connection with the rise and spread of capitalism. But a pervasive essentialism born of twenty years of wrangling over relativism means that questions about the origins and universality of human rights are typically formulated as questions about validity or authenticity. This essentialist framework generates confusion when applied to questions concerning globalization's effects on human rights. I argue that a non-essentialist account of the origins and universality of human rights can remedy these confusions and transform our critical perspective on globalization and human rights. Obviously a detailed historical study of human rights and economic development is impossible here. Instead, I revisit the theory of natural human rights articulated by John Locke, challenging the view—widely held among human rights scholars—that human rights emerged in Locke's theory as a response to the new threats posed by capitalism. I show that Locke's arguments provided justifications for the radical social and economic restructuring that accompanied the birth of capitalism and draw parallels between that process and contemporary processes of globalization. These parallels suggest a structural, non-essentialist explanation of the universality of human rights. They also highlight a crucial distinction between the narrow neoliberal account of human rights associated with globalization (an account descended from Locke) and a broader conception of universal human rights whose potential efficacy as a political response to globalization has been obscured by essentialist confusions.

Before beginning, two potential objections to the basic premises of the argument just outlined should be addressed. The first concerns the meaning of neoliberalism. This term is often invoked by critics of globalization as a shorthand for the destructive (in their view) market-oriented social and economic policies emphasizing SAPs, which typically entail the shrinking of the public sector through deregulation, privatization, and decreased social spending; liberalization and integration into global markets through tax reform, easing of capital controls, and floating exchange rates; and, political reform through the promotion of stability, transparency, and the rule of law. The individualistic civil and political rights associated with neoliberalism as policy, and its underlying philosophical premise of the moral desirability of limiting state interference in self-regulating and natural economic processes as a way of enhancing freedom is routinely lambasted by critics as ideological cover for the interests of powerful global and domestic economic actors. There is much truth in this critique, and while the author disagrees with the economic conclusions often drawn from it, this is not the place to discuss those reservations. So the term neoliberalism and its cognates in this critical sense will be used throughout. As this suggests, I adopt a primarily economic definition of globalization throughout the essay. While globalization is obviously much more than an economic phenomenon,¹ the main worries theorists of human rights have identified with it are linked to its economic aspects. Adopting an economic definition thus sticks to the terrain that has been most extensively mapped out in the field and also helps to keep an already large topic from becoming completely unmanageable.

The second concern has to do with the historical treatment of Locke. It is increasingly common today to read and write political theory as history, to emphasize the linguistic or intellectual context in which particular arguments appeared and to assess their meaning within that context.² Advocates of this so-called Cambridge School approach argue that a proper understanding of the historical texts of political theory can only be gained by locating them in their linguistic context and then determining their use or function within that context.³ These positions are unduly narrow on method

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1. See Michael Goodhart, *Democracy, Globalization, and the Problem of the State*, 33 POLITY 527ff (2001).
 2. For a general introduction to and criticisms of this approach see MEANING AND CONTEXT: QUENTIN SKINNER AND HIS CRITICS (James Tully ed., 1988).
 3. One effect of this approach has been to diminish the significance of Hobbes and Locke in particular and of English liberalism more generally. Indeed, on the Cambridge reading of the history of political thought one "would not know . . . that England produced the first capitalist economy, the first constitutional monarchy, the first modern society"; these "momentous developments" apparently barely influenced the thinking of the time. JOYCE APPLEBY, LIBERALISM AND REPUBLICANISM IN THE HISTORICAL IMAGINATION 134 (1992).

and substance.⁴ The use of history here is somewhat different and warrants clarification. Locke is widely regarded (rightly or not) as the founder of the liberal philosophical tradition of which neoliberalism is a direct ideological descendant. That tradition interprets human rights as individualistic civil and political rights plus property—the “Western” interpretation so prominent in the cultural relativism debates which, many worry, is proliferating through globalization. Locke is thus (again rightly or not) implicated in the debates and confusions surveyed here. My argument is that Locke’s views on rights and property justified a distinctively modern system of liberties that facilitated subsequent capitalist development and that today this doctrine has acquired a decidedly conservative ideological cast. Beyond that, I have neither the need nor the desire to go.⁵ The hope is that understanding the contemporary conservatism of Lockean rights will clarify, conceptually if not contextually, the challenges of neoliberal globalization and the confusion surrounding the universality of human rights. It might also help us to make sense of the powerful grip Locke maintains on the contemporary political imagination—as hero and villain.

II. THE ESSENTIAL(IST) QUESTIONS OF ORIGINS AND UNIVERSALITY

At least since the publication of Pollis and Schwab’s *Human Rights: Cultural and Ideological Perspectives* in 1979, human rights universalists and cultural relativists have clashed over the validity and applicability of human rights outside the West.⁶ In their provocative lead essay, “Human Rights: a Western Construct with Limited Applicability,” the authors argued that “the Western political philosophy upon which the [United Nations] Charter and the [Universal] Declaration [of Human Rights] are based provides only one particular interpretation of human rights, and that this Western notion may not be successfully applicable to non-Western areas” due to ideological and cultural differences.⁷ Ever since, theoretical inquiry into human rights has been dominated by the debate between relativists and universalists.⁸ From

4. This is not the place to debate methodology in political theory. I have criticized the Cambridge approach elsewhere; see Michael Goodhart, *Theory in Practice? Quentin Skinner’s Hobbes, Reconsidered*, 62 *REV. POLITICS* 124 (2000).

5. My position assumes that texts can come to have meanings independent of those their authors might have intended—though I shall take no position on the question of Locke’s intentions here. Such questions are simply irrelevant to the argument I present.

6. HUMAN RIGHTS: CULTURAL AND IDEOLOGICAL PERSPECTIVES (Adamantia Pollis & Peter Schwab eds., 1979).

7. *Id.* at 1.

8. This is not to discount other important concerns, such as the feminist critique of human rights—which is closely related in some respects.

anthropological studies and cross-cultural comparisons to heated disagreements about African, Asian, and Islamic values and female genital mutilation, the universality of human rights has become the principal theoretical problem in the field.

Relativists⁹ hold that “cultures manifest so wide and diverse a range of preferences, morality, motivations, and evaluations that no human rights principles can be said to be self-evident and recognized at all times and all places.”¹⁰ There are no absolute values or principles by which any culture or society can be judged apart from those of the culture itself.¹¹ This brand of cultural relativism must be distinguished from a more thoroughgoing moral relativism: cultural relativists typically do not deny truth or morality, but instead hold that while “for every culture some moral judgments are valid, no moral judgment is universally valid.”¹² Relativists typically maintain that there is a fundamental link between the cultural origins of a value or principle and its validity for that culture.¹³ Thus if human rights are not indigenous to a particular culture, their validity and applicability are in doubt; in Ann Mayer’s words, human rights are “alien and therefore incompatible” with non-Western cultural or religious traditions.¹⁴ In many societies, beliefs, values, and basic concepts are often “nontranslatable”

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9. I realize that there are in fact many relativist positions, and many universalist ones; I necessarily paint with a broad brush in what follows. Since my purpose is to limit the main contours of the argumentative landscape—to fill in the proverbial “big picture”—this seems the right tool for the job.
 10. Jerome J. Shestack, *The Philosophic Foundations of Human Rights*, 20 *HUM. RTS. Q.* 228 (1998).
 11. *Id. cf.* Bhikhu Parekh, *Non-Ethnocentric Universalism*, in *Human Rights in GLOBAL POLITICS* 128 (Tim Dunne & Nicholas J. Wheeler eds., 1999).
 12. John J. Tilley, *Cultural Relativism*, 22 *HUM. RTS. Q.* 505 (2000). Michael Perry has put the point thus: relativism claims “that nothing is good and nothing is bad for every human being—nothing serves and nothing dis serves the well-being of every human being—because human beings are not all alike in any respect that supports generalizations either about what is good or about what is bad, not just for some human beings, but for every human being.” See Michael J. Perry, *Are Human Rights Universal? The Relativist Challenge and Related Matters*, 19 *HUM. RTS. Q.* 468 (1997). In practice many scholars sympathetic with the relativist position may be willing to accept that there are some universal rights but that this “hard core of rights that are truly universal is smaller than many in the West are wont to pretend.” See Bilahari Kausikan, *Asia’s Different Standard*, 92 *FOR. POL’Y* 34 (1993). Note that Tilley and Perry both describe the relativist position with sufficient nuance to rescue it from the self-contradiction implicit in claims like “there is no such thing as truth.”
 13. Adamantia Pollis, *A New Universalism*, in *HUMAN RIGHTS: NEW PERSPECTIVES, NEW REALITIES* 11 (Adamantia Pollis & Peter Schwab eds., 2000).
 14. Ann Elizabeth Mayer, *Current Islamic Thinking on Human Rights*, in *HUMAN RIGHTS IN AFRICA: CROSS-CULTURAL PERSPECTIVES* 137 (Abdullahi Ahmed An-Na’im & Francis M. Deng eds., 1990) (emphasis added). I use terms like “Western,” “non-Western,” and “the Rest” with regret. Their ubiquity makes them unavoidable, yet they beg the question of an essentialist link between origins and validity. While I omit scare quotes in the text, they can be inferred.

and “nontransferable”; “the liberal doctrine of human rights does not speak to the people’s worldview.”¹⁵

Universalists, by contrast, argue that at least some moral judgments are universally valid;¹⁶ human rights universalists generally hold that something like the catalogue of rights enunciated in the Universal Declaration of Human Rights (UDHR) and other international covenants and conventions is universally valid.¹⁷ The universality of human rights derives from claims or arguments held to transcend culture, arguments deemed valid regardless of where they first appear. According to Shestack, modern universalist theories of human rights can be based on natural law, justice, reaction to injustice, dignity, and equality of respect and concern;¹⁸ to this list, one can add human capacities,¹⁹ moral agency,²⁰ and self-ownership,²¹ among others.

The debate between relativists and universalists has created an essentialist conceptual framework that, like the debate itself, dominates the field. By “essentialist,” I mean simply the view that cultures have fundamental or “essential” properties, among them their values and beliefs. By an “essentialist framework” I mean one that reduces most important theoretical questions about human rights to the core question of whether such an “essential” connection exists between a given culture and “universal” human rights doctrines.²² Thus to ask whether human rights are Western is to ask whether they reflect the values and beliefs of European cultures, whether they embody the social, religious, economic, or philosophic

15. Adamantia Pollis, *Cultural Relativism Revisited: Through a State Prism*, 18 HUM. RTS. Q. 316 (1996). Most recently, Pollis has advocated a “recasting” of human rights theories that, freed from ethnocentrism of earlier versions of universalism, will synthesize elements of relativism and universalism into a “new reconstructed universalism”; Pollis, *A New Universalism*, *supra* note 13, at 13.

16. Tilley, *supra* note 12, at 505.

17. I make the distinction because what is really at stake is not just the universality of a few moral judgments but of a broader, related set of moral judgments and prescriptions. This point has been too frequently overlooked by those who think that by demonstrating a universal disapprobation for gratuitous killing or torture they have dispatched the cultural relativist challenge; see Kausikan, *supra* note 12. Human rights universalism is thus much more demanding than a “least common denominator” universalism would be.

18. Shestack, *supra* note 10, at 215–27.

19. Martha C. Nussbaum, *Capabilities and Human Rights*, 66 FORDHAM L. REV. 273 (1997); Martha C. Nussbaum, *Human Functioning and Social Justice: In Defense of Aristotelian Essentialism*, 20 POL. THEORY 202 (1992).

20. ALAN GEWIRTH, *HUMAN RIGHTS: ESSAYS ON JUSTIFICATION AND APPLICATIONS* (1982).

21. ROBERT NOZICK, *ANARCHY, STATE, AND UTOPIA* (1974). On moral agency, self-ownership, and several similar justifications of human rights, see PETER JONES, *RIGHTS* ch 5 (1994).

22. Cf. Heiner Bielefeldt, “Western” Versus “Islamic” Human Rights Conceptions? A Critique of Cultural Essentialism in the Discussion on Human Rights, 28 POL. THEORY 90–91 (2000).

character—the *Weltanschauung*—of the West.²³ Within the essentialist framework, all questions about the *origins* or the *universality* of human rights become questions about their validity; if human rights are Western they cannot be universal. The close connection between essentialism and cultural relativism is obvious; less obvious is the extent to which, despite their vigorous denial that human rights *are* Western in the essentialist sense, universalists also seem to accept that the essentialist framing of questions about the origins and universality of human rights is useful and appropriate.²⁴ Put differently, relativists and universalists agree that the key point at issue is whether human rights are essentially linked with Western culture; they disagree about the answer.

I will not join this debate (at least not on these terms), but rather want to point out that the essentialist framework in which it is conducted is ill-suited to conceptualizing the threat globalization poses to human rights in at least three ways. First, in treating the differences between the West and the Rest as essential (relativists) or as false or overstated (universalists), the essentialist framework discourages efforts to *explain* these differences, as is argued below with respect to the alleged distinction between individualist Western values and communal values elsewhere. Second, as noted at the outset, there is no consensus on universal human rights but widespread agreement that globalization poses a universal threat to human rights. This confusion is deepened by an essentialist tendency to conflate human rights, Western values, and neoliberal globalization and to conceive the proliferation of universal human rights as a form of cultural hegemony. There is an obvious tension between the values associated with neoliberalism and many traditional cultural values elsewhere, and it is also true that neoliberalism is a Western-driven phenomenon—facts that, on the essentialist view, are enough to establish an identity among globalization, Western values, and human rights. But collapsing these concepts can obscure how globalization threatens rights and values in the West; it is hard to conceive this threat in terms of the spread or hegemony of Western values. Similarly, the essentialist view that capitalism's origination in the

23. *Id.*

24. One might argue that human rights are essential to *all* cultures and therefore universal; efforts have been made to test this hypothesis empirically; see ALISON DUNDES RENTEN, INTERNATIONAL HUMAN RIGHTS: UNIVERSALISM VS. RELATIVISM (1990). Another approach is to discover or build a cross-cultural consensus on human rights; Charles Taylor, *A World Consensus on Human Rights?* 43 DISSENT 15 (1996); HUMAN RIGHTS IN CROSS-CULTURAL PERSPECTIVES: A QUEST FOR CONSENSUS (Abdullahi Ahmed An-Na'im ed., 1995); Parekh, *supra* note 11. The depth of existing consensus must be questioned, however (and the notion of *building* consensus confirms its absence). Note that both of these approaches implicitly recognize an essentialist link between origins and validity; the justification for the universality of human rights is that they are indigenous and authentic to each and every culture.

West makes it a manifestation of Western values, like the universalist view that origins are irrelevant, lacks sufficient nuance to help one grasp the singular threat to human rights that globalization poses everywhere. Finally, the essentialist framework makes it hard to comprehend the global appeal and potential efficacy of human rights as a tool for resisting globalization and its attendant threats. Emphasizing validity rather than effectiveness—or treating validity as a problem of genesis rather than of effectiveness—is perhaps useful in analyzing ontological and epistemological problems but is less helpful in assessing human rights as a *political response* to globalization. This is not to take a naïve view of human rights as an adequate response at present; it is rather to show how difficult it can be to recognize the appeal and potential of human rights as an effective counterweight to globalization when we lump human rights, Western values, and neoliberalism together.

We can begin to dispel the confusion surrounding human rights and neoliberal globalization through a non-essentialist account of the origins and universality of human rights.²⁵ Such an account should ideally correct the historical inaccuracies that falsely dichotomize an individualistic West and a communal “Rest” in a way that illuminates the transformative effects of capitalism and facilitates cross-temporal and cross-cultural comparisons. It should allow one to discriminate between the narrow set of rights and values associated with neoliberalism and a more expansive conception of human rights in a way that avoids reducing either to a caricature of Western values. It should, finally, point toward an alternative framework for thinking about the challenges globalization presents for human rights inside the West as well as outside it—and to evaluating and criticizing existing notions of human rights in terms of their effectiveness as responses to those challenges. It will be possible only to provide a rough blueprint for this alternative conceptual architecture here. My hope is that this sketch stimulates further discussion and that its shortcomings stimulate further research and analysis.

25. I should distinguish between cultural essentialism—the target of my criticism here—and a “universal essentialism” common in Enlightenment accounts of human nature or neoAristotelian depictions of human functioning; the latter is argued persuasively and with conviction in Nussbaum, *Human Functioning*, *supra* note 19; see also Nussbaum, *Capabilities and Human Rights*, *supra* note 19. Many proponents of universal human rights have supposed that some version of universal essentialism is indispensable in making their case. I shall argue here that we can account for the universality of human rights without resort to universal essentialism, though I must leave aside the difficult question of how best to determine the substance of human rights.

III. CAPITALISM AND THE WESTERN ORIGIN OF HUMAN RIGHTS

There is no debating the Western origin of human rights; it is a plain historical fact. What can be debated is this fact's significance; one need not accept the essentialist linkage between origins and validity. Jack Donnelly (with Rhoda Howard) has advocated what could be called a "provocation/response" model for understanding the emergence of capitalism and human rights in the West. This model is instructive in its insight into the historical link between these phenomena as well as for its (ultimately unsuccessful) attempt to explain the universality of human rights as a function of that link.²⁶

According to Donnelly, human rights emerged "in response to the social disruptions of modernity," primarily the advent of capitalism and the rise of the modern state.²⁷ "Capitalism and industrialism bring in their wake natural or human rights," he argues.²⁸ "Society, which once protected a person's dignity and provided a place in the world, now appears in the form of the modern state, the modern economy, and the modern city, as an oppressive, alien power that assaults people's dignity."²⁹ In Donnelly's view, the appeal and promise of human rights is a function of the response they provide to the threats posed by capitalism (and by modernity more generally). The universality of human rights follows from the similarity of the threats facing all modern human beings in a global capitalist economy.³⁰ Donnelly and Howard view attempts at culturally grounding human rights as a misguided enterprise premised on a confusion between human rights and human dignity.³¹ Human dignity is a universal value, but human rights originated in the West and require a liberal regime for their realization. For them, human rights are not equivalent with human dignity but are rather a means to the end of protecting human dignity.³²

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26. Criticisms notwithstanding, I am deeply indebted to Donnelly and Howard, whose work has guided my own thinking on this problem.
 27. Jack Donnelly, *Human Rights and Asian Values: A Defense of Western Individualism in THE EAST ASIAN CHALLENGE FOR HUMAN RIGHTS* 63 (Joanne R. Bauer & Daniel A. Bell eds., 1999).
 28. JACK DONNELLY, *THE CONCEPT OF HUMAN RIGHTS* 83 (1985); cf. JACK DONNELLY, *UNIVERSAL HUMAN RIGHTS IN THEORY AND PRACTICE* 49ff (1989). Donnelly's 1989 chapter is adapted from an article coauthored with Rhoda Howard.
 29. DONNELLY, *UNIVERSAL HUMAN RIGHTS*, *supra* note 28, at 60.
 30. Donnelly, *Human Rights and Asian Values*, *supra* note 27; Rhoda Howard, *Human Rights and the Culture Wars: Globalization and the Universality of Human Rights*, 53 *INT'L J.* 94 (1997–1998).
 31. Donnelly, *Human Rights and Asian Values*, *supra* note 27, at 66–69; DONNELLY, *UNIVERSAL HUMAN RIGHTS IN THEORY AND PRACTICE*, *supra* note 28, at 49ff.
 32. Donnelly, *Human Rights and Asian Values*, *supra* note 27, at 69; cf. DONNELLY, *UNIVERSAL HUMAN RIGHTS IN THEORY AND PRACTICE*, *supra* note 28, at 67; Rhoda E. Howard, *Group Versus Individual Identity in the African Debate on Human Rights*, in *HUMAN RIGHTS IN AFRICA: CROSS-CULTURAL PERSPECTIVES* (Abdullahi Ahmed An-Na'im, Francis M. Deng eds., 1990).

In defending the idea that human rights can only be realized in a liberal regime, Donnelly and Howard explicitly attack the view that liberalism conceives human rights narrowly as individualistic civil, political, and property rights. They offer a social-democratic reading of Locke that derives social and economic rights from Locke's requirements that there be "enough and as good left for others" and from his insistence that government serve the public good.³³ Donnelly also argues that the enjoyment of rights and privileges in nature "clearly" requires limits on accumulation, which if unchecked would threaten natural freedom and equality. In fact, he believes that it is possible to extend Lockean principles and traditions to discover that Locke's concern with "the preservation of all mankind" generates social and economic rights and that protection from arbitrary political power must include protection from threats of economic scarcity and deprivation.³⁴ Despite this strong reliance on Lockean liberalism, Donnelly calls the origination of human rights in the West a historical fact with no virtue in it. Where human rights first appeared has no bearing on their proliferation or their legitimacy, just as the Western origin of Newtonian physics had no influence on that idea's acceptance.³⁵ Again, it is the response human rights provide to the threats posed by capitalism and the modern bureaucratic state that accounts for their universality. That these threats first emerged in the West, Donnelly suggests, is merely historical accident.

There are two troublesome flaws in this "provocation/response" model. The first has to do with Donnelly's highly charitable reading of Locke. More shall be said about the details and implications of Locke's theory below; for now it is enough to note that Donnelly is in the minority in reading Locke as a precocious social democrat (although others have emphasized the radical *potential* in Lockean liberalism).³⁶ Further, Donnelly's reading of Locke implies that human rights, like Athena, burst forth fully developed from the head of their father. On this view, it becomes difficult to make sense of centuries of political struggle in the West over the content of human rights and over who actually enjoyed them. The second and more serious flaw has to do with Donnelly's claims about the universality of human rights. His case for universality is based on the ubiquity of the modern threat to human dignity and the necessity of a liberal response to that threat. There are difficulties on both the provocation and response sides of this view. On the

33. DONNELLY, *UNIVERSAL HUMAN RIGHTS IN THEORY AND PRACTICE*, *supra* note 28, at 88ff.

34. *Id.* at 102ff.

35. Donnelly, *Human Rights and Asian Values*, *supra* note 27, at 69.

36. See, e.g., RICHARD ASHCRAFT, *REVOLUTIONARY POLITICS AND LOCKE'S TWO TREATISES OF GOVERNMENT* (1991). Donnelly sometimes presents his position as a logical *extension* of Locke's. If this is right, my criticism would lose its bite, but so would Donnelly's claim that human rights is a distinctively liberal or Lockean concept.

provocation side, plausibility demands that the development of capitalism in the West must be independent of and unrelated to the values and beliefs of the West. The analogy with Newtonian physics is inappropriate because, unlike gravity or thermodynamics, capitalism might itself be distinctively Western.³⁷ It has proven notoriously difficult to sort out the relationship between the rise of capitalism and the cultural matrix in which it developed; Weber's Protestant thesis is only the most famous instance of this. But if there is a connection between Western values or beliefs and the nature of capitalism, then the spread of capitalism—the universalization of the threat that provokes human rights—would itself be open to the same kind of essentialist critique as human rights.³⁸ This problem is only exacerbated when people recall the unseemly story of capitalism's global proliferation over the past five centuries.

A similar difficulty arises on the response side of the model. Even if one rejects the idea that there is anything distinctively Western about the *threat* posed by capitalism, it does not follow that there is nothing distinctively Western about the *response* offered by human rights. The universality of the threat or provocation would only imply the universality of the response if it could be shown that human rights constitute a logically unique response to the threats—something Donnelly has never attempted to show. In fact, he concedes that there might “in principle” be effective alternatives to human rights.³⁹ Once this is acknowledged, however, the case for the universality of human rights falls apart.⁴⁰ People are left again confronting the awkward but unavoidable fact that human rights did originate in the West—landing one right back in the thick of the essentialist debate.

Donnelly and Howard are right to investigate the relationship between Locke, the rise and spread of capitalism, and the emergence of human rights. It is just that the provocation/response model does not get the relationship quite right.⁴¹

37. I obviously cannot engage this question here. The analogy is not as persuasive as Donnelly might hope: physics and moral theory make very different kinds of claims, and these differences probably invalidate such a direct comparison.

38. I am grateful to Susan Hoppe for helping me to get clear on this point.

39. Donnelly, *Human Rights and Asian Values*, *supra* note 27, at 69.

40. One way to characterize the Asian values debate would be in terms of Asia's “different response” to these threats.

41. In the alternative account presented below I wind up quite close to Donnelly on the *substance* of an adequate contemporary account of human rights. My difference with him is over the *origins* of human rights and their relationship with nascent capitalism in Locke's theory. This difference proves crucial to my attempt to establish a non-essentialist account of universality and thus to gain critical leverage on the challenges associated with globalization.

IV. THE LOCKEAN CONCEPTION OF NATURAL HUMAN RIGHTS?

Locke's most influential argument was his political justification of limited government and popular sovereignty. This argument is famously based on natural rights, on the natural freedom and equality of all individuals—"facts" from which he derived the consensual foundations of government.⁴² The simple premise that all men are free and equal undermines justifications for natural subjection and natural authority. "Men being . . . by Nature, all free, equal and independent," he argues, "no one can be put out of this Estate, and subjected to the Political Power of another, without his own *Consent*."⁴³ Universal equality and freedom based in natural human rights establish the foundation for popular sovereignty. "The doctrine of natural individual freedom and equality was revolutionary precisely because it swept away, in one fell swoop, all the grounds through which the subordination of some individuals, groups or categories of people to others had been justified."⁴⁴ The formal character of Lockean rights is thus directly related to the political goal of leveling natural hierarchies; by making rights individual, uniform, and universal, Locke undermines political claims based on rank, birth, and status.⁴⁵ Less often noted is the equally profound social and economic import of Locke's arguments. Locke's theory of rights and property helped to justify the development of early or agrarian capitalism in England and imbued liberalism with a distinctive economic and political conservatism; it "provided many of the ideas that would become central to legitimating capitalist economic practices."⁴⁶

These are controversial claims; James Tully and other Cambridge School historians have argued that Locke is essentially irrelevant to understanding capitalism and its legitimation.⁴⁷ They point to the dominant

42. JOHN LOCKE, *TWO TREATISES OF GOVERNMENT* §4 (Peter Laslett ed., 1960). (Unless preceded by a roman numeral one, all references are to the Second Treatise.)

43. *Id.* §95. The caveat "save that of God" is important for understanding Locke's views, which derived in part from his beliefs about God as man's owner and master; see §6; JOHN DUNN, *THE POLITICAL THOUGHT OF JOHN LOCKE* (1969).

44. CAROLE PATEMAN, *THE SEXUAL CONTRACT* 39 (1988).

45. This is not to say that such considerations are politically irrelevant; see LOCKE, *TWO TREATISES*, *supra* note 42, §54.

46. IAN SHAPIRO, *THE EVOLUTION OF RIGHTS IN LIBERAL THEORY* 80–81 (1986); NEAL WOOD, *JOHN LOCKE AND AGRARIAN CAPITALISM* (1984).

47. James Tully, *The Possessive Individualism Thesis: A Reconsideration in Light of Recent Scholarship*, in *DEMOCRACY AND POSSESSIVE INDIVIDUALISM: THE INTELLECTUAL LEGACY OF C.B. MACPHERSON* 35 (Joseph H. Carens ed., 1993); cf. JAMES TULLY, *A DISCOURSE ON PROPERTY: JOHN LOCKE AND HIS ADVERSARIES* (1980). This conclusion is both substantive and methodological: even if Locke had provided a justification for capitalism it could not in principle be relevant today. Much of the historical debate concerning Locke's views on rights and property has been shaped by Macpherson's famous "possessive individualism" conjecture; C.B. MACPHERSON, *THE POLITICAL THEORY OF POSSESSIVE INDIVIDUALISM: HOBBS TO LOCKE*

mercantilist outlook of seventeenth century England as evidence that Locke was not concerned with changing economic relationships at home but rather with drawing contrasts between an English or European system of property and that of the Amerindians—a contrast designed to license the expropriation of Amerindian lands and the imposition of European political control.⁴⁸ Tully's analysis is persuasive with respect to the North American applications of Locke's thought,⁴⁹ but one cannot infer from it that Locke was unconcerned with problems of changing social and economic structures at home.⁵⁰ Mercantilists certainly saw trade as a zero-sum game and pursued colonial policies guided by that view, but they were also concerned with internal impediments to economic growth and wealth creation. They aimed to eradicate local feudal privileges and customs, including internal duties and tariffs, to assist and justify enclosure, and to regulate wage labor—all of which facilitated the subsequent development of capitalism.⁵¹ Neal Wood demonstrates in persuasive detail that the language of improvement—which Tully links to a Calvinistic moral outlook—was commonplace as well among agricultural reformers, many of them Locke's friends and associates. Enclosure, Wood shows, was a crucial component of their broader strategy of shifting agriculture to a more stable and productive capitalistic foundation.⁵²

Locke's theory of individual, uniform, and universal rights helps to explain and justify these changes, and the massive social transformation of which they formed an important part. Medieval rights had always been linked to the privileges and obligations attached to one's place in the social hierarchy. This system of personalistic relations was explained and justified through accounts of a divinely-ordered organic community; overlapping networks of rights and obligations were seen as implicit in the natural order of things. Each member of the community had a specific role, a place and function in the social and economic hierarchy. Each role, irrespective of social rank, conveyed rights and privileges along with duties and obligations, all of which were allotted by birth, refined by local custom, and justified through the dominant religious cosmology of the day.

The individualism, uniformity, and universality of rights in Locke's theory contrast vividly with the medieval conception. In making rights

(1962). For other overviews of this debate, see David Miller, *The Macpherson Version*, 30 *POLITICAL STUD.* 120 (1982); JAMES TULLY, *AN APPROACH TO POLITICAL PHILOSOPHY: LOCKE IN CONTEXTS* ch. 2 (1993).

48. TULLY, *AN APPROACH TO POLITICAL PHILOSOPHY*, *supra* note 47, at 32ff.

49. See TULLY, *LOCKE IN CONTEXTS*, *supra* note 47, at ch. 5; cf. APPLEBY, *supra* note 3.

50. See WOOD, *supra* note 46, at 66.

51. MICHAEL MANN, *THE SOURCES OF SOCIAL POWER: VOLUME I, A HISTORY OF POWER FROM THE BEGINNING TO A.D. 1760* 473 (1986).

52. WOOD, *supra* note 46, at 57–71.

individual, Locke detaches them from their mooring in social relations and customary institutions. Nothing could be further from the view that rights and duties are anchored in specific roles and particular communities than an account in which all individuals possess identical rights inferred from their postulated isolation in a hypothetical state of nature. The “natural man” of early liberal thought is paradigmatically an individual in his own right rather than a member of a community, and his rights belong to him independent of and prior to any social obligations of performance or obedience tied to his role in the community. Indeed, they are natural and exist prior to the political community. The uniformity and universality of Lockean rights represent a similar contrast with the diverse and context-dependent character of medieval rights. On the medieval view the rights and obligations of peasants differed significantly from those of their lords, just as the rights of peasants and lords in one locality differed from those in the next. The natural men of Locke’s theory all enjoy the same rights; they are born free and equal and all share an equal right to natural freedom.⁵³

This Lockean system of rights and liberties (including Locke’s views on property) justified enclosure and virtually unlimited accumulation, the eradication of customary rights and privileges, and the creation of a market in wage labor. In so doing it facilitated important mercantilist aims while providing arguments that would justify social practices crucial to the further development of capitalism. With respect to enclosure, Locke breaks with medieval arguments based on common property.⁵⁴ He acknowledges that God gave the earth in common to everyone for their benefit, but he did so for the use of the industrious and rational, whose labor gives them title to it.⁵⁵ Locke contrasts land that is common by compact from the original “great Common of the World,” which was appropriated by individuals. God commanded man to labor, and labor gives men “distinct titles to several parcels of [the world], for their private uses; wherein there could be no doubt of Right.”⁵⁶

Avoiding waste or spoilage and the requirement that “enough and as good” be left for others initially limit the accumulation of property in the state of nature. But the introduction (through universal tacit consent) of money eliminates the spoilage restriction and justifies “an inequality of private possessions.”⁵⁷ The proviso requiring “enough and as good” becomes empty because “he who appropriates land to himself by his labor,

53. LOCKE, *TWO TREATISES*, *supra* note 42, §54. On the problem of sexual distinctions in Locke’s and other theories, see PATEMAN, *supra* note 44.

54. SHAPIRO, *supra* note 46, at 92ff.

55. LOCKE, *TWO TREATISES*, *supra* note 42, §34.

56. *Id.* §§ 35, 39.

57. *Id.* §§ 46, 49.

does not lessen but increase the common stock of mankind."⁵⁸ This is because enclosed land is 100 times more productive than common or unimproved land.⁵⁹ Shapiro argues that any right to subsistence implied by Locke's concern with the preservation and benefit of mankind or by the Lockean proviso must in light of these arguments be interpreted as a right to work for subsistence—at least under normal circumstances.⁶⁰

Locke's assumption of natural freedom and equality establishes a framework in which obligation is created consensually, through contract, and his emphasis on toleration—which extends beyond religion to one's health and estate—thus sets a precedent for noninterference in such relationships except where interference is required by natural law.⁶¹ Governmental interference to enforce limits on accumulation or to redistribute possessions would be unacceptable on Locke's view.⁶² In practice this insistence on the consensual foundations of obligation amounts to a "right to be free of inherited social obligations,"⁶³ a right crucial to the elimination of customary encumbrances on land and internal trade and development. This freedom from the social welfare obligations traditionally associated with land ownership proved crucial to capitalist development, freeing up the use and disposition of land and other possessions and eliminating customary levies and other privileges.

With respect to wage labor, one can note that for the peasants the right to property really only signified the emancipation of landowners from their social obligations. As Mann put it, the crucial question is really how the masses *lost* property rights and found themselves landless laborers.⁶⁴ A system of wage labor was well established in England by the seventeenth century, and Locke clearly has such a system in mind when he describes the appropriation of property by a master through the turf cut by his servant (the

58. *Id.* § 37.

59. Tully argues that the contrast between enclosed private land in England and unimproved land in America shows that Locke's theory was designed for the North American context, but there is no reason to think that it is not also relevant to the debate about enclosure in mercantile England; WOOD, *supra* note 46, at 66; *cf.* TULLY, *LOCKE IN CONTEXTS*, *supra* note 47, at ch. 5. This also undermines Tully's claim about Locke's prohibition on unlimited accumulation.

60. SHAPIRO, *supra* note 46, at 93–95. The enhanced productivity of enclosed land would thus decrease the likelihood that subsistence would become a relevant concern. Locke anyway felt that the exigencies of living hand-to-mouth were appropriate and beneficial for the typical day laborer; Wood, *John Locke and Agrarian Capitalism*, 89ff.

61. SHAPIRO, *supra* note 46, at 96ff.

62. Thus further undermining the case for subsistence rights. Locke advocated work as the remedy for poverty and unemployment—a view consistent with his views on property, improvement, and personal industry; *id.* at 93.

63. APPLEBY, *supra* note 3, at 52.

64. MANN, *supra* note 51, at 399.

labor is defined as the master's).⁶⁵ Individuals were of course free—in the juridical sense—to accept or refuse wage labor, but there is little doubt that Locke understood most laborers to be compelled by material circumstances to accept food for wages or to starve.⁶⁶ As both of these examples show, while Lockean rights might have been formally equal (uniform and universal), there was little equal about their effects. Indeed, the formal equality of Lockean rights (especially the right to use and dispose of—but not to own—property) and the idea that legitimate political obligations arise only through consent together mask the stark economic inequality that Locke's system licensed; the Lockean account puts an egalitarian gloss on distinctively inegalitarian social relationships.⁶⁷

Shapiro argues that Locke's theory of toleration casts a negative libertarian shadow over his theory of rights and politics generally.⁶⁸ Locke's deep commitment to toleration, stemming from his own dissenting religious views, establishes a strong *prima facie* case against government interference in private affairs and matters of conscience—except where such interference is necessary to thwart the ascendance of an intolerant party, to uphold natural rights, and to preserve the commonwealth.⁶⁹ This emphasis on noninterference, Shapiro concludes, endows liberalism with a decidedly conservative ideological slant—especially considering that the doctrine of toleration itself proved open to manipulation into a doctrine that increasingly entailed toleration of capitalistic social and economic practices by “an attentive but subordinate state.”⁷⁰

65. LOCKE, *TWO TREATISES*, *supra* note 42, § 28; WOOD, *supra* note 46, at ch. 5; SHAPIRO, *supra* note 46, at 139ff; *cf.* TULLY, *A DISCOURSE ON PROPERTY*, *supra* note 47; Tully, *The Possessive Individualism Thesis*, *supra* note 47.

66. APPELBY, *supra* note 3, at 53; Shapiro, *supra* note 46, at 139–41. It is remarkable that Tully should overlook this, given Locke's explicit statement in the *First Treatise* that servants consent to work for a master because they prefer this arrangement to starvation; LOCKE, *TWO TREATISES*, *supra* note 42, § 1.43; WOOD, *supra* note 46.

67. SHAPIRO, *supra* note 46, at 139. It is true that Locke's conception of property was quite broad and included ownership in one's capacities and actions, but *pace* Tully, this property in the person is crucial to (not incompatible with) wage labor; see Carole Pateman, *Self-Ownership and Property in the Person: Democratization and a Tale of Two Concepts*, 10 J. POLITICAL PHIL. (2002); *cf.* Tully, *The Possessive Individualism Thesis*, *supra* note 47, at 31–34.

68. SHAPIRO, *supra* note 46, at 100, 128.

69. *Id.* at 97–100.

70. *Id.* at 81. It has been suggested to me that Locke's commitment to toleration might provide an opening into a more relativistic notion of human rights than I shall attribute to his neoliberal progeny below. I think this suggestion is mistaken for two reasons. First, for Locke toleration applies only to matters of conscience—which do not include the content of natural law. What he calls “civil interests”—life, liberty, health, indolence of body, and possession of outward things—are matters of natural law, which the commonwealth has no choice but to uphold as it is instituted for precisely this purpose; JOHN LOCKE, *A LETTER CONCERNING TOLERATION* 26 (James Tully ed., 1983); LOCKE, *TWO TREATISES*, *supra* note 42. Indeed, Locke is concerned in the *Letter* to show, among other things,

One should emphasize, however, that it is not only Locke's views on toleration that determine liberalism's conservative slant. Crucially for our purposes, Lockean natural rights are pre-social and pre-political. This renders rights—and the consensual relationships that flow from them—private. Natural rights are thus de-politicized, protected from government interference because the limited transfer of right effected through the social contract gives government power only to uphold the law of nature (to protect men's natural rights).⁷¹ No interference in men's property—which includes their contractual relationships, their actions and freedoms—is justified unless warranted by the law of nature. So economic relationships are, on Locke's theory, private relationships. The government can undertake broad economic regulation, enforcing contracts and setting policy, but it cannot interfere in particular contractual relationships. Its very purpose is to guarantee the sanctity of such consensual relationships in upholding men's property in their rights, liberty, actions, and capacities. Locke was no Mandeville. He imagines no self-regulating market; but again, the precedent of non-interference in private contractual relationships provides a crucial component of the justification for such a market.

It should be clear that Lockean rights are not, as Donnelly argues, a response to the threat posed by capitalism; nor are they irrelevant to understanding the legitimation of capitalism, as Tully and others have maintained. *Locke's arguments facilitated the development of capitalism and proved useful in justifying the liberal theory of economic development.*⁷² This

that religious views constitute no ground for interference in property rights (*id.* at 47). Locke does sometimes recognize the possibility of disagreement about how to apply or interpret the law of nature in particular instances, but he offers little guidance—short of the famous and infamously vague “appeal to heaven”—about how to proceed in such instances. Toleration is implied by the fallibility of religious beliefs; no such fallibility, in Locke's view, attached to the rational precepts of the law of nature. Second, Locke's views on toleration seem to presuppose agreement “on the substantial and truly fundamental part of religion”; LOCKE, LETTER, *id.* at 36. He favors toleration of Catholics and Muslims only on terms most adherents of those faiths would likely find unacceptable and of atheists, who represent a threat to the commonwealth, not at all, *id.* at 51. At the very least this suggests that any straightforward extension of Locke's views to diverse modern societies would be highly problematic.

71. This limited transfer of right to the government, usually noted for its solution to the absolutist problem plaguing natural rights theories, thus also has profound economic implications. On the absolutist problem, see RICHARD TUCK, *NATURAL RIGHTS THEORIES: THEIR ORIGIN AND DEVELOPMENT* (1979); F.H. HINSLEY, *SOVEREIGNTY* (1986).
72. One might object that Locke recognized the radical potential and revolutionary nature of capitalism itself, thus rendering his theory less conservative than I have argued here. It is certainly true that when Locke wrote many of his positions were radical; it is also true, as Shapiro argues, that the ideological function of a text varies with the reader and the historical context. Locke may have been an economic radical in the 17th century, but his insistence on noninterference, on unlimited accumulation, and his acceptance of massive social inequalities as necessary and justified all render contemporary Lockean or neoliberal accounts conservative today; *cf.* SHAPIRO, *supra* note 46, at 80.

conclusion says nothing about Locke's intentions in propounding his theory; the argument is much more modest, though not less significant for it.

V. GLOBALIZATION AS LOCKEANIZATION?

Several important insights follow from the foregoing analysis. For heuristic purposes one can usefully conceive neoliberal globalization as involving the proliferation of a set of rights that share the formal characteristics and conservative bias of Lockean rights. These rights and the arguments that justify them are crucial to the successful operation of capitalism. Recognizing this allows one to resolve the confusions noted earlier by explaining rather than essentializing certain "cultural" differences relating to human rights. This explanation begins with the period of rapid capitalist development in Europe in the seventeenth and eighteenth centuries.⁷³

Particularly worthy of note is how this economic transformation triggered massive social upheavals and destroyed traditional forms of communal organization. While the process was vastly complex and varied from region to region, the enclosure of common lands, the displacement of peasants, huge migrations to towns, and the creation of a rudimentary wage labor market were commonplace. Traditional rights simply ceased to make sense once divorced from (newly defunct) structures of communal life: rights like grazing animals on the lord's land or cultivating a few strips of the common fields were irrelevant to displaced peasants who found themselves transformed into workers and forced into crowded slums or poorhouses. The lord's obligations to provide subsistence and relief to his tenants in hard times (mainly through the abatement of customary dues and rents) no longer obtained once those tenants were "released" from the land. Likewise guarantees of food, clothing, shelter, and other basic necessities: once the traditional ties were broken, the reciprocal rights and obligations that bound lord and peasant together came undone.

Whiggish histories of this period invariably hail the "emancipation" of the serfs as a crucial advance for the rights and liberties of individuals. As the total breakdown of traditional mechanisms of social protection suggests, however, emancipation was rather a hard bargain for the peasant. It did mark the end of forced labor and other duties, and many peasants were able to keep a portion of the land they had worked, but the dissolution of the communal relations in which their security was embedded was for most a brutal blow. But as Hobsbawm notes, in gaining freedom, peasants lost

73. Most readers are generally familiar with the key developments. For a good, brief overview see DOUGLASS C. NORTH, *STRUCTURE AND CHANGE IN ECONOMIC HISTORY* (1981).

many rights, including: assistance from the lord in time of bad harvest or cattle plague; collection of fuel from the forest;⁷⁴ aid from the lord in repairing or rebuilding a house; help, in time of extreme poverty, in paying tax; and, use of the lord's land for pasturing animals.⁷⁵ Worse, as Barrington Moore shows, there was a considerable amount of violence accompanying this "emancipation."⁷⁶ Some efforts were made to provide relief for the worst off—including the notorious Elizabethan Poor Laws—but on the whole society was unprepared to handle the waves of displaced people generated by this transformation. Some found wage-work on the land, others were absorbed by nascent industries; many were ruined.⁷⁷

While one must beware of ascribing too much virtue to a system whose extractive and exploitative apparatus routinely and severely impinged upon the lives and well-being of many of those subject to its rigors, one must also recognize that the stability and social protection the system provided compare favorably in some respects with conditions in many places today and certainly with the system that would soon replace it. If most people had little liberty, they were shielded from the vicissitudes that too frequently accompany it; if they enjoyed little more than bare subsistence, they were also unlikely to find themselves without food, shelter, or other such basic necessities in times of crisis. The disappearance of traditional social structures not only rendered peasants' rights incoherent and obsolete, it transformed—really, obliterated—their place in society. The widespread migrations and poverty experienced by many of the "emancipated" former peasants, the horrible conditions of disease and squalor that quickly took hold in towns, and the growing role of the state in the provision of social welfare and the administration of justice—which for the peasant typically meant various forms of parish relief, work houses, and debtor's prisons—resulted in the peasants' nearly complete alienation from a society now defined by their exclusion. As Hobsbawm concludes, "altogether the introduction of liberalism to the land was like some sort of silent bombardment which shattered the social structure [the peasant] had always inhabited and left nothing in its place but the rich; a solitude called freedom."⁷⁸

Let me be explicit about what is and is not being claimed here. My contention is that the newfound "freedom" of peasants was explained and

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74. Marx's participation in a debate in the Rhenish Lantag on "wood theft" profoundly influenced his early thought; see Karl Marx, *A Contribution to the Critique of Political Economy*, in KARL MARX & FRIEDRICH ENGELS, *THE MARX-ENGELS READER* 3 (Robert C. Tucker ed., 1978).
75. E.J. HOBBSAWM, *THE AGE OF REVOLUTION: 1789–1848* 191 (1962).
76. BARRINGTON MOORE JR., *SOCIAL ORIGINS OF DICTATORSHIP AND DEMOCRACY: LORD AND PEASANT IN THE MAKING OF THE MODERN WORLD* (1966).
77. KARL POLANYI, *THE GREAT TRANSFORMATION* 53–85 (1975).
78. HOBBSAWM, *supra* note 75, at 191.

justified, along with other components of the capitalist revolution, through Lockean arguments about natural rights. This is not to say that the existence of this account of rights had any causal relationship with the “emancipation” or displacement just described; in fact, the transformation had already begun in some parts of England before Locke developed his theory. The point is simply that Locke’s theory was useful in making sense of and justifying this process. Locke’s theory provided an account of rights that dislodged them from their social grounding and represented inegalitarian social relationships as free and equal ones. None of this is to say that Locke was regularly invoked by theorists of the new economy; it is simply to show how his arguments provided the conceptual and theoretical resources for making these justifications.⁷⁹

The importance of these claims becomes apparent when one compares this description of cultural and economic transformation in the early modern West with Polanyi’s insightful account of colonialism’s social and economic impact on local culture:

The catastrophe of the native community is a direct result of the rapid and violent disruption of the basic institutions of the victim (whether force is used in the process or not does not seem altogether relevant). These institutions are disrupted by the very fact that a market economy is foisted upon an entirely differently organized community; labor and land are made into commodities, which, again, is only a short formula for the liquidation of every and any cultural institution in an organic society.⁸⁰

In Polanyi’s view, the capitalist economy—including the account of individual, uniform, universal rights it entails—disrupts extant social, economic, and political relationships. Something like a Lockean account of rights helps to explain and justify this transition. And while the process is described in different terms—privatization, deregulation, market discipline—contemporary SAPs associated with neoliberal globalization have similar disruptive and transformative effects and rely on similar justifications.⁸¹

The problem is not that this connection between the spread of capitalism and the destruction of traditional communities and their values has gone unnoticed; it has not—not since the publication of the Communist

79. See APPLEBY, *supra* note 3, at ch. 2–3.

80. POLANYI, *supra* note 77, at 159; cf. POLLIS, *A New Universalism*, *supra* note 13, at 21.

81. See Jacquelyn Chase, *Introduction: The Spaces of Neoliberalism in Latin America*, in *THE SPACES OF NEOLIBERALISM: LAND, PLACE AND FAMILY IN LATIN AMERICA* (Jacquelyn Chase ed., 2002); Stephen Gill, *Globalization, Democratization, and the Politics of Indifference*, in *GLOBALIZATION: CRITICAL PERSPECTIVES* (James H. Mittelman ed., 1996); Stephen Gill, *Globalization, Market Civilization, and Disciplinary Neo-Liberalism*, 24 *MILLENNIUM: J. INT’L STUD.* 399–423 (1995); Sandra MacLean et al., *Structural Adjustment and the Response of Civil Society in Bangladesh and Zimbabwe: A Comparative Analysis*, 2 *NEW POL. ECON.* 149–64 (1997).

Manifesto.⁸² The problem is rather that the significant historical similarities between the Western and non-Western cases are often overlooked, making it easy to equate the language of Lockean rights that accompanies these social transformations with Western hegemony, useful primarily for lending legitimacy to the policies and practices of powerful global economic actors.⁸³ Kenneth Anderson describes how “as the global market economy pulverized traditional societies and moralities and drew every corner of the planet into a single economic machine,” human rights became the secular creed used to justify the neoliberal order, making human rights universalism “a sham.”⁸⁴ Given the violent and disruptive nature of the transformation and its inegalitarian effects, it is hardly surprising that the Lockean system of rights and liberties facilitating it should appear alien, selfish, atomizing, and anti-social. Nor is it surprising, given the current distribution of power in the global political economy and the coercive mechanisms employed to advance globalization, that the destruction of traditional institutions and values outside the West might manifest in a cultural conflict, as a product of clashing cultural values. No responsible analysis of contemporary development can ignore these realities.

When viewed from the alternative viewpoint sketched here, however, striking similarities with the capitalist revolution in early modern Europe appear: massive social disruption and dislocation linked with the introduction of exclusive property rights; erosion of traditional values and institutions for ensuring social welfare—in short, the wholesale restructuring of a way of life. In both cases, Lockean or neoliberal arguments are used to justify this transition. People can frame the transition as one from organic or traditional to modern societies, *Gemeinschaft* to *Gesellschaft*—the terminology is less important than the process itself. The argument turns not on the question of “modernity”—which as Howard rightly emphasized is too general a category to be analytically useful⁸⁵—but rather on how a capitalistic mode of production requires a certain system of rights and liberties for its successful operation and how a liberal ideology helps to justify the implementation of such a system. The advent of capitalism

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82. The “constant revolutionizing of production” triggers “the uninterrupted disturbance of all social relations.” Subsequently, “All fixed, fast-frozen relations, with their train of ancient and venerable prejudices and opinions, are swept away, all new-formed ones become antiquated before they can ossify. All that is solid melts into air, all that is holy is profaned. . . .”; MARX & ENGELS, *THE MARX-ENGELS READER*, *supra* note 74, at 476.
 83. Tony Evans, *Citizenship and Human Rights in the Age of Globalization*, 24 *ALTERNATIVES* 415 (2000); Tony Evans, *Introduction: Power, Hegemony, and the Universalization of Human Rights*, in *HUMAN RIGHTS FIFTY YEARS ON: A REAPPRAISAL* (Tony Evans ed., 1998).
 84. Cited in Michael Ignatieff, *Human Rights: The Midlife Crisis*, 46 *N.Y. REV. BOOKS* 59 (1999).
 85. Howard, *Group Versus Individual Identity*, *supra* note 32.

introduces fundamental changes in social structures (relations of economic and cultural production) effected in part through what is characterized as a Lockean rights regime.

Conceptualizing the transformation of Western and non-Western societies in terms of the same economic processes affords important insight into problems with the essentialist paradigm. Consider the supposed contrast between an “individualist” West and communal values elsewhere. Several prominent human rights scholars, including Howard and Pollis, have observed that communal values were typical in the medieval West.⁸⁶ But while such observations could be used to problematize the presumed dichotomy between Western and non-Western values around which so much of the discourse about origins and validity is structured, their analyses remain bound by the limits of the essentialist conceptual framework. Howard simply uses the observation in rejecting claims about difference in cultural values, while Pollis criticizes liberal human rights scholars for ignoring this extensive system of social and economic rights.⁸⁷ Unfortunately, neither pursues the possibility that the differences between Western and non-Western values might not be ontologically based.

This is unfortunate because their insights point toward an alternative conceptualization of the problem of origins and validity: rather than reify contemporary differences one might profitably seek to *explain* them. Put differently, instead of debating whether the modern Western view is valid or appropriate in non-Western contexts, one might more profitably ask what happened to transform the West from a communally-oriented society emphasizing harmony and guaranteeing social rights—including extensive rights to social and economic security—into a society characterized by the “rational, atomized individual in pursuit of his self-interest”?⁸⁸ The answer is that the advent of capitalism, facilitated by a framework of Lockean rights, transformed Western societies, as globalization is transforming non-Western ones, in ways that made the traditional arrangements untenable.

The significance of this line of argument is twofold. First, it militates against the idea that Western values are somehow radically different from

86. *Id.* at 169–70; Pollis, *Cultural Relativism Revisited*, *supra* note 15, at 319; Pollis, *A New Universalism*, *supra* note 13, at 15–16.

87. Pollis, like the liberals she chastises, seems to forget that the rational, atomized Western individual is a relatively new species even in the West. In traditional Africa, she writes, “the person was not a rational, atomized individual in pursuit of his self-interest, as in the West, but one enmeshed in multiple, cross-linking, interpersonal relationships overlaid by the spirit of his ancestors. The life and security of members of the community was a shared obligation.” This argument seems to belie her point about the similarities between the systems; Pollis, *Cultural Relativism Revisited*, *supra* note 15, at 341.

88. *Id.*

non-Western values. If the West, like the Rest, was once typified by a system of communal values that included group welfare obligations, essentializing contemporary differences on this point exaggerates them and obscures how socio-economic factors influence the expression and realization of values.⁸⁹ Moreover, it follows that if at least some of the apparent “cultural” differences between the West and the Rest are explained by socio-economic factors there is no *prima facie* case for associating Lockean or neoliberal ideology with Western values in any essentialist sense.⁹⁰

Second, escaping the essentialist framework helps one realize that the content of human rights is not fixed by cultural values, Western or otherwise. As one critic has aptly stated, “It is most important not to imagine Anglo-American Christian culture as some utopian idyll that, in fact, it never was. . . . The real West was not a singularly open culture that happily adopted all that was new and progressive.”⁹¹ Social welfare rights, equal rights and respect for women and minority groups, genuine religious toleration, and a range of other “progressive” ideals commonly held to clash with “traditional” values were just as alien to the West as they have been elsewhere—and in important respects remain so. Again, on the explanation offered here, the development of “progressive” values in the West must be treated as something to be explained—in this case politically.

VI. LOCKEAN RIGHTS, REVISITED

Above, I suggested that one difficulty with the provocation/response model is its inability to account for the centuries of political struggle to reform and expand the content of rights in the West.⁹² If the Lockean package of natural human rights was a complete response to the threats of capitalism from the beginning, why should such a struggle have been necessary? The perspective advocated here lets one see the limited and conservative ideological

89. As many observers have insisted, the notion of “individualistic” Western rights tends to ignore the substantial commitment to social well-being represented by the welfare state; see, e.g., Martin Chanock, *“Culture” and Human Rights: Orientalizing, Occidentalizing and Authenticity*, in *BEYOND RIGHTS TALK AND CULTURE TALK: COMPARATIVE ESSAYS ON THE POLITICS OF RIGHTS AND CULTURE* 23 (Mahmood Mamdani ed., 2000); cf. Donnelly, *Human Rights and Asian Values*, *supra* note 27. The perspective I am advocating allows us to make sense both of this commitment and its expression and realization through individuals rights—a point to which I return below.

90. Cf. Chanock, *supra* note 89; Inoue Tatsuo, *Liberal Democracy and Asian Orientalism*, in *THE EAST ASIAN CHALLENGE FOR HUMAN RIGHTS*, *supra* note 27.

91. Edward Friedman, *Asia as a Fount of Universal Human Rights*, in *DEBATING HUMAN RIGHTS* 66 (P.V. Ness ed., 1999).

92. For the classic account of this struggle, see T.H. MARSHALL, *CITIZENSHIP AND SOCIAL CLASS* (Tom Bottomore ed., 1992).

character of Lockean rights. It also allows one, however, to see how the universal language of natural individual rights proved adaptable to other, more radical and inclusive purposes.⁹³

From the beginning, some critics of arguments from universal freedom and equality worried about their possible democratic implications.⁹⁴ They were right to do so. The arguments used to exclude women and working people from the *demos* and deny their rights never convinced everyone; seventeen and eighteenth century debates clearly show that who counted as a “man” when it came to claiming the rights of men was bitterly contested. Those who were denied their rights through assertions about natural inferiority and pre-political subjection did not accept their exclusion, nor did they need to. They saw immediately that the boundaries of categories like man and citizen could be challenged using the language of universality itself.⁹⁵ Perhaps the best example of this is the work of Mary Wollstonecraft, who during the French Revolution defended the rights of man while maintaining that they would remain partial and unfulfilled until the rights of woman, in both the public and private spheres, were fully realized.⁹⁶ She and other critics of internally exclusive citizenship seized on the gap between the universal language of rights and their limited and inegalitarian application in practice. The scope and substance of liberal rights was also challenged: Wollstonecraft and Thomas Paine argued for social welfare rights and the Jacobins, in alliance with the *sans-culottes*, saw the broad social and economic reforms in the constitution of 1793 as complementary to the Declaration of 1789.⁹⁷ In each case, critics of the liberal conception did not reject individual, uniform, and universal rights; they argued that such rights, taken to their logical conclusion, entailed much more than liberals were wont to imagine. That is, they sought to win such rights for themselves and to put them to new purposes.

Again, two important implications follow. The first is that there is no inherent or necessary connection between the *form* of modern human rights and their content, as the Western experience demonstrates. Quite the opposite, there is a close connection between universal individual rights

93. As Marx (and many of his followers since) have doubted; see *On the Jewish Question*, in MARX & ENGELS, *THE MARX-ENGELS READER*, *supra* note 74.

94. ANTHONY ARBLASTER, *DEMOCRACY* 30 (1987).

95. Robert E. Goodin, Carole Pateman, & Roy Pateman, *Simian Sovereignty*, 25 *POL. THEORY* 821–23 (1997).

96. See Daniel I. O’Neill, *Are Women’s Rights Human Rights?: Or Burke and Wollstonecraft on Those “Other” Rights of Man* 23–33 (paper presented at the APSA Annual Meeting, Boston, MA, 2002); MARY WOLLSTONECRAFT, *A VINDICATION OF THE RIGHTS OF WOMAN* (Ashley Tauchert ed., 1995).

97. HOBBSBAWM, *supra* note 75, at 69; ALBERT SOBOLU, *A SHORT HISTORY OF THE FRENCH REVOLUTION: 1789–1799* 92ff (Geoffrey Symcox trans., 1977).

and the realization of freedom in modern times. From the Haitian revolution to the feminist movements, from the abolition and civil rights movements to anti-colonial struggles, the language of universal rights has been seized by the oppressed and excluded as a weapon in the fight for freedom and dignity. Moreover, if similar values can be expressed and realized in different ways and if universal individual rights are not limited to their Lockean ideological purposes, it follows that there is no *prima facie* case for assuming that any set of values is incompatible with or inexpressible through such rights. This has a direct bearing on how people conceive the universality of human rights. The essentialist framework constructs universality as a question of validity, but if, as proponents and critics seem to agree, capitalism is becoming a universal economic system through globalization, and if capitalism entails a system of individual, uniform, and universal rights for its successful operation, then people might profitably conceive the universality of human rights in terms of the globality of *formally* individual and universal rights and concentrate our efforts on the political struggle to make rights work for everyone.⁹⁸

Second, making the distinction between the formal characteristics of (neo)liberal rights and their substance helps one develop a more nuanced view of their introduction and proliferation than that suggested by an essentialist perspective. As the democratization of these rights shows, the destruction of traditional social structures has had positive as well as negative implications for human freedom and dignity. Many traditional cultures—and Europe would be a textbook example—are patriarchal and intolerant. So while the disruptive processes associated with the advent of capitalism certainly undermine traditional arrangements for the realization of communal security and solidarity, the universal theory of rights capitalism entails (but does not guarantee) the possibility of greater respect for women and toleration of all kinds of diversity. The point is not to valorize or villainize traditional culture or capitalism within the West or beyond it; rather, it is to emphasize that the realization of human freedom and dignity today requires that people move beyond the binary essentialist distinctions that plague the human rights debate. Contrary to the claims of many cultural relativists, it is the language of universality, humbly, fluidly, and self-critically adopted, that might offer the best hope for achieving respect for difference in our times.

The universality of capitalism today requires that one think about the universality of human rights as a question of effectiveness in achieving particular values rather than as a question of validity or of authenticity. For

98. On the “necessity theorem” of such rights to capitalism, see David Beetham, *Four Theorems About the Market and Democracy*, 23 *EUROPEAN J. POLITICAL RES.* 189ff (1993).

a long time the substance of rights in the West has been primarily a political question,⁹⁹ thanks in part to the (still incomplete) success of democratization. Part of this success is attributable to the use—really the cooptation—of the language of universal individual rights by progressive political movements. The argument, simply put, is that because formally individual, uniform, and universal rights are central to the logic of the capitalist system, which has spread them around the world through globalization, arguments couched within the framework of rights might prove particularly effective in achieving a range of important values. As David Beetham has emphasized, that many societies and cultures have gotten on well without human rights in the past doesn't mean that they will be able to do so in the future "given the globalization of the forces that have made [human rights] both possible and necessary."¹⁰⁰ In light of the threats posed by globalization, considerations of necessity and efficacy are of first importance.

VII. CONCLUSION: BEYOND ESSENTIALISM, URGENTLY

Real conflicts persist among different systems of values, and regardless of whether one attributes the differences to culture, religion, or some other source, they often remain intractable. I do not claim to have solved or obviated this problem (there is doubt that in many respects they admit of solution). I am making the much more limited claim that the essentialist formulation of problems concerning the origins and universality of human rights obscures their interesting and important implications for understanding human rights in the context of globalization. Clearly there are important and contentious differences among the values held by the world's peoples; the debate about these values should (and no doubt will) continue. So long as we frame the debate about the universality of human rights *solely* in terms of cultural difference, we risk overestimating the degree of these differences and underestimating the potential of universal human rights to counter the threats posed by globalization.

Our historical investigations show that in the West as elsewhere the introduction of capitalism was in violent conflict with a communally-based society and its traditional values, for good and for ill. Indeed, the values of pre-capitalist societies (or at least their collective or communal orientation) are in important respects quite similar, and capitalism seems to have affected them in similar ways. These similarities might have been clear enough had not our preoccupation with essentialism led one to mistake

99. Chanock, *supra* note 89, at 16.

100. David Beetham, *What Future for Economic and Social Rights?*, 43 POL. STUD. 47 (Special Issue 1995).

contemporary socio-economic differences for ontological ones. Once we do recognize the similarities, it should be possible to think more systematically about many of the challenges posed by globalization. To take one example, the threats to traditional or communal values of welfare and solidarity in the developing world and the threats to the welfare state in the West are rarely conceived as related. In the developing world the threat takes the form of massive social disruption and dislocation: SAPs destroy traditional economies and undermine communal welfare arrangements, while conditions imposed by international financial institutions mandate drastic reductions in government spending that might otherwise alleviate such hardships. In the developed world, globalization is regularly invoked to roll back gains in social security and economic protection achieved following the World Wars—gains which were made within the framework of individualistic, uniform, universal rights and which consisted primarily in the redefinition and reinterpretation of the *substance* of those rights to achieve communal values of welfare and solidarity. The postulate of a transnational “private” economic space has the effect of renaturalizing economic relationships that in the context of the modern welfare state had been successfully politicized through the struggle to democratize liberal economies.

Thus in the developed and developing worlds alike neoliberalization is eroding social and economic protections and threatening human rights. The essentialist framework obfuscates this commonality with claims about Western versus nonWestern and individual versus communal values, making it difficult to recognize neoliberalism as a threat to values like social welfare and community cohesion wherever and in whatever form they are realized. As one astute critic puts it, “It is less a question of Asian versus Western values than a problem of how the forces of a runaway economic and technological modernization are eroding traditional values in both Asia and the West.”¹⁰¹ Again, the threat manifests differently in developed and developing countries, but these apparently unique threats are really two sides of a coin. Increasingly, neoliberalism is the coin of the realm. To this extent at least, the debate over whether human rights are Western or whether they are compatible with non-Western cultures as they might be presently organized misses the point. We would do better to debate various approaches to realizing values like social security and economic protection within the global capitalist economy. The increasingly global nature of capitalism suggests that a universal or global approach might be unavoidable.

The argument also indicates how differentiating between Lockean or neoliberal conceptions of human rights and more democratic and genuinely

101. WM. THEODORE DE BARY, *ASIAN VALUES AND HUMAN RIGHTS* 8–9 (1998).

universal accounts can help us escape the essentialist dilemma of an all-or-nothing choice between traditional and modern conceptions of freedom and dignity. We need not, for instance, choose between the preservation of communal values and rights and dignity for women. Similarly, this differentiation helps one recognize that the rights entailed by global capitalism do not exhaust the political potential of universal rights. People need not persist in the Marxist error of supposing that the bourgeois character of the “rights of man” is an immutable feature of *human* rights. Capitalism entails rights of a certain form, but the substance of those rights is, again, a political question.

More controversially, the argument suggests that attempts to tame or reform capitalism through the preservation and promotion of traditional systems of rights, duties, dignity, or values are likely to fail. Capitalism’s leading edge (not its wake) is a narrow program of neoliberal rights and policy whose disruptive and transformative effects we have already noted. This suggests two strategies for preserving communal values: rejecting capitalism or adopting individual, uniform, universal rights and using them to reassert those values in a new form.¹⁰² This conclusion is not a terribly optimistic one in light of the painfully ironic need for rapid growth to combat the grinding poverty that paralyzes much of the developing world and itself represents a massive violation of human rights, on the one hand, and the lamentably slow and fragile success of reform even in developed countries, on the other.

The preferred course between this rock and hard place is a reformed global market economy that would harness the generation of wealth to eradicate poverty and empower communities and individuals. It would balance communal values with the universality necessary to assure freedom and dignity for all women and men. The brief—and it must now be said, tentative—experiment with social democracy has shown that rapid economic development coupled with meaningful democratic participation and fundamental human rights can lead to improvements in the lives of many people. Globalization requires that we rethink each leg of this tripod. This will involve difficult political and ecological choices: few advocates of social democracy and human rights in the West have faced up to the possibility that truly reformed globalization might entail a global “race to

102. In this connection we should note that claims about a so-called “Asian Way” often suggest that Asian governments are pursuing an alternative program of development. In fact, the Asian economic miracle was achieved through fairly well-understood and fairly conventional neoliberal policies; see Amartya Sen, *Human Rights and Economic Achievements*, in *THE EAST ASIAN CHALLENGE FOR HUMAN RIGHTS*, *supra* note 27. What these governments have done is to try to manage the effects of the socioeconomic transformation by invoking traditional values in support of their policies.

the middle," and few advocates of sustainable development have offered persuasive alternatives to growth for the alleviation of poverty.¹⁰³

I have gestured toward the connection between necessity and possibility in arguing that universal human rights are the best tools available for effective political resistance to and reform of globalization. This statement should not be read as a claim that human rights are perfect as they are; indeed, given the diversity of humanity and ever changing socio-economic conditions, a perfect definition of human rights seems as undesirable as it does unattainable. Norberto Bobbio has provocatively argued that our lack of success in finding precise definitions and philosophical foundations for human rights so far has not prevented real and important practical progress or the formation of a *de facto* consensus on human rights (recently affirmed in the Vienna declaration).¹⁰⁴ Bobbio argues that the concern with protecting and realizing human rights is *political*, not philosophical: "it is not a matter of knowing which and how many of these rights there are, what their nature is and on what foundation they are based, whether they are natural or historical, absolute or relative; it is a question of finding the surest method of guaranteeing rights and preventing their continuing violation."¹⁰⁵ If this struggle is to succeed, people need a broader, more integrative framework of universal human rights. Such an account might eschew philosophy and "foundations" altogether in favor of a practical or pragmatic commitment to central democratic values like freedom and equality and a functional assessment of how those values can best be realized in the context of globalization.¹⁰⁶ Put differently, we should insist that human rights become more democratic, and thus more political, as a way of making them more effective.¹⁰⁷

103. The thorny and neglected problem of how high levels of benefit provision in much of the West over the past fifty years has been linked to global economic inequalities and systematic underdevelopment elsewhere requires frank assessment; it certainly complicates the prospects for a common front among opponents of globalization in the developed and developing worlds.

104. NORBERTO BOBBIO, *THE AGE OF RIGHTS* 9–14 (Allan Cameron trans., 1996); on Vienna see Kevin Boyle, *Stock-Taking on Human Rights: The World Conference on Human Rights, Vienna 1993*, 43 *POLITICAL STUD.* (Special Issue 1995).

105. BOBBIO, *supra* note 104, at 12.

106. I cannot defend this proposition here, though I attempt to do so elsewhere. The approach is similar in some respects to that developed by Richard Rorty, *Human Rights, Rationality, and Sentimentality*, in *ON HUMAN RIGHTS: THE OXFORD AMNESTY LECTURES 1993* (Stephen Shute & Susan Hurley eds., 1993).

107. So far little attention has been given to this problem in the theoretical literature on human rights—though democratic theorists have paid equally scant attention to the integration of human rights into their own thinking. Three notable exceptions are DAVID BEETHAM, *DEMOCRACY AND HUMAN RIGHTS* (1999); Charles R. Beitz, *Human Rights as a Common Concern*, 95 *AM. POL. SCI. REV.* 269 (2001); DAVID HELD, *DEMOCRACY AND THE GLOBAL ORDER: FROM THE MODERN STATE TO COSMOPOLITAN GOVERNANCE* (1995).

As human rights scholars and activists grapple with the challenges posed by global capitalism, the essentialist framework increasingly becomes an intellectual cage. Caught between universalism and relativism, torn by the apparent need to choose between communal values and freedom and equality for all, people find themselves equally incapable of resolving the debate or leaving it behind. Meanwhile, our ability to make sense of the threats globalization poses to human rights everywhere remains atrophied, caught up in a philosophical debate that shows no signs of resolution. Even if we could find philosophical resolution of these issues, however, it would be of doubtful help in confronting the challenges of neoliberalism. Globalization is ultimately a political phenomenon, one that requires a political response. It is urgent that we begin to formulate our responses—and our questions—accordingly.