

## William Talbott's Which Rights Should be Universal?

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**Abstract** In this review essay, I first set out and then subject to criticism the main claims advanced by William Talbott in his excellent recent book, "Which Rights Should be Universal?". Talbott offers a conception of basic universal human rights as the minimally necessary and sufficient conditions to political legitimacy. I argue that his conception is at once too robustly liberal and democratic and too inattentive to key features of the rule of law to play this role. I suggest that John Rawls's conception of human rights comes closer to hitting the mark Talbott sets for himself and that Talbott incorrectly rejects Rawls's view. I conclude that what likely divides Talbott and Rawls is that Rawls, but not Talbott, explicitly frames the inquiry into the minimally necessary and sufficient conditions to political legitimacy in terms of a liberal democratic people attempting to determine, as a matter of its just foreign policy, whether or not to recognize other organized polities as independent and self-determining within the international order.

Professor Talbott begins his very engaging *Which Rights Should be Universal?* by distinguishing among three different kinds of account of human rights. First, there are "shock the conscience" accounts. In this paper, human rights are just those rights in which the violation of which would and does shock the conscience of any morally competent person. Discussions of humanitarian intervention, international duties to protect, and international criminal liability typically proceed from accounts of this sort. Second, there are "overlapping consensus" accounts. In this paper, human rights are just those rights that diverse peoples happen, as a matter of contingent fact, all to affirm, either now or in the future. Discussions of human rights as ingredient in positive international law via treaty making, reflective acquiescence to customary practice, or some other instance of voluntary undertaking typically proceed from accounts of this sort. Third, there are "minimal legitimacy" accounts. In this paper, the idea is that human rights are those rights necessary and sufficient to the

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legitimacy of any polity within the international order and thus to its right to nonintervention. Discussions of international recognition and toleration typically proceed from accounts of this sort. Professor Talbott indicates that we need not choose between these three kinds of account, for they may each play a valuable role in different domains of international political theory, practice, and law. I agree.

Professor Talbott devotes his book to offering a “minimal legitimacy” account of human rights. He recognizes that his main rival here is John Rawls. In *The Law of Peoples*, Rawls characterizes basic human rights as just those necessary and sufficient to the legitimacy of any polity within the international order, to its right to recognition and thus to nonintervention. However, on Talbott’s view, Rawls’s list of human rights is too thin. Although basic human rights are, for Rawls, a proper subset of rights essential to liberal democratic constitutionalism, they are a subset. There is, for Rawls, no basic human right to the full range of liberal freedoms, to liberal nondiscrimination norms, to full gender equality, to democratic decision procedures or universal suffrage, or to the sort of welfare provisions familiar to advanced liberal democracies. On Talbott’s view, Rawls offers no principled basis for his distinction between basic human rights and the rights essential to liberal democratic constitutionalism. Indeed, Talbott thinks that Rawls’s distinction reflects an unprincipled compromise between liberal and communitarian commitments and rests on little more than Rawls’s own all-too-Westphalian intuitions regarding the right to toleration and nonintervention within the international order.

I think Professor Talbott is wrong here. I think Rawls’s list of basic human rights is neither as thin as Talbott thinks it is nor too thin overall as an account of those rights necessary and sufficient to minimal legitimacy and thus a right to nonintervention within the international order. Nor do I think Rawls’s view little more than an ad hoc invocation of intuitions or an unprincipled compromise between liberalism and communitarianism (Talbott 11–12). However, I do not want to devote my time here to reconstructing and defending the Rawlsian position. I have been at that task in several recent essays. I want here to focus on Professor Talbott’s position. He sets out to do better than Rawls. He offers a principled consequentialist argument for a conception of human rights substantively more robust than Rawls’s. On Talbott’s conception, all persons have a basic human right to life in what amounts roughly to a liberal democracy. Thus, non-liberal or non-democratic polities have no right, even if they are well-ordered and decent constitutional republics, to recognition or nonintervention within the international order. Liberal democratic states might tolerate them for various strategic or prudential reasons, but they have no right to recognition or nonintervention.

I will proceed by setting out the key features of Professor Talbott’s view and then trying to put some pressure on it by noticing some matters to which he does not attend and which, once attended to, seem to press us back in a more Rawlsian direction. In the end, my worry about Professor Talbott’s position does not so much concern his arguments as it does the way he understands and sets up the problem the solution to which his arguments are meant to point.

I want first to notice an irony. Talbott finds Rawls’s view insufficiently liberal and democratic in content, insufficiently oriented toward autonomy as a necessary ingredient in or means to human well-being. Yet Rawls explicitly develops his view *from the practical point of view of a liberal democratic people concerned, as a*

*corporate moral agent, to identify the principled moral constraints on its foreign policy.* Thus, it is in a way surprising that Rawls's view would turn out to be insufficiently liberal and democratic. It is also surprising, given his own point of departure, that Talbott claims for himself the more liberal and democratic view. Talbott takes as his own point of departure that of the individual person theoretically concerned to identify universal moral truths regarding what may and may not be done to, or must and must not be done for, others. Given all the obstacles to establishing such truths as a theoretical matter, one might expect Talbott to arrive at a thinner, a less liberally or democratically inclined, conception of human rights than does Rawls. However, Talbott is optimistic about making significant theoretical progress along the path to universal moral truths of a fairly robust liberal and democratic character. Furthermore, Rawls is too willing, on Talbott's view, to forsake this progress and these truths, to ignore what we know, for the practical allure of an accommodationist toleration and a non-comprehensive political liberalism.

Talbott is rightly unmoved by two alleged bases of skeptical worries regarding universal moral truths sufficient to underwrite universal human rights. The first worry arises out of skepticism toward the existence of self-evident, universal first principles of morality from which one might deduce universally true moral propositions. On Talbott's view, this sort of skepticism is a problem only if we assume what he calls the "proof paradigm" of epistemic justification of moral beliefs (Talbott, 22–6). However, we need and ought not assume this paradigm (according to which mathematical and moral knowledge must both conform to the same epistemic constraints of deductive proof from self-evident first principles). Instead, we may and ought adopt what Talbott calls the "discovery paradigm" (Talbott, 33–5). On this latter model, we discover universal moral truths as we search for the best explanation and justification of our most enduring considered moral judgments in concrete cases. Proceeding in this way, starting from the bottom and moving up, as it were, and aiming always at wide and full reflective equilibrium, we will never arrive at "self-evident" first principles or at moral truths about which we can be "absolutely certain" as if we were infallible. However, we can arrive – and on Talbott's view, have already arrived – at some universal moral truths about which we can be as certain as any fallible beings engaged in reflective moral inquiry can be. Some of these truths are likely to be – in fact are – sufficiently general and abstract to count as basic moral principles or human rights. Their normative force and reach is no different from that of the "self-evident first principles" assumed by the "proof paradigm." Indeed, they apply to all possible beings with the requisite cognitive and affective capacities in all possible worlds (Talbott, 32). As Talbott puts it, his "discovery paradigm" couples "metaphysical immodesty" (that aspect of the "proof paradigm" most attractive to Talbott) with "epistemic modesty" (that aspect of moral skepticism most attractive to Talbott) in the domain of moral judgment and belief.

The second skeptical worry we might have about the possibility of arriving at universal moral truths sufficient to underwrite universal human rights arises out of a relativist anxiety generated by the manifest moral diversity in the world and the apparent impossibility of anything like a neutral universal standpoint from which to identify universal moral truths. To avoid moral imperialism or ethnocentrism, then, we must renounce all moral claims with a universal reach. Or so the worry goes. But following arguments by now familiar to most, Talbott argues that extreme forms of

cultural relativism collapse under the weight of their own incoherent moral insistence on universal toleration in the absence of universal moral truths.

Of course, one might argue for the kind of broad tolerance favored by relativists not from the rather extreme and doubtful premise that there are no universal moral truths, but rather, from the more modest premise, that there is some universal moral truth from which such tolerance may be deduced as a moral requirement. For example, one might argue that it is universally true that cultures or polities cannot make mistakes regarding the moral soundness of their own norms, or that different cultures or polities embody incommensurable moral visions or values or orders of value, or that it is simply impossible to judge the internal norms of another culture or polity in anything like an unbiased way, and that the tolerance favored by relativists simply follows from one or more of these truths. If universally true, any of these premises might be thought sufficient to justify a very broad and far reaching moral principle of toleration incompatible with anything like universal human rights. However again, following arguments by now familiar to most, Talbott rightly rejects these more modest, or less extremely skeptical, arguments against the possibility of universal human rights (Talbott, 39–47).

Furthermore, Talbott offers his own positive argument for the possibility of our making reliable, although not infallible, moral judgments true from any moral point of view and thus universal in reach. Making judgments of this sort is no small matter. We need well-developed moral sensitivity and empathy as well as a disciplined ability to identify and remove familiar sorts of obstacles that prevent us from seeing moral truths – for example, self-serving biases and moral blind-spots. However, Talbott insists, it is not beyond our ability to discover moral truths reliably true from any moral point of view and thus universal in their normative reach (Talbott, 48–86). Talbott’s discussion of the ways in which we can run off the rails when justifying our moral judgments is highly instructive.

I do not want here to engage Talbott’s positive arguments for the possibility of genuine moral knowledge except to note that one need not subscribe to the sort of moral realism to which he seems to subscribe to affirm universal or objective standards of moral correctness and thus to reject those species of moral relativism that refuse all such standards. For example, moral constructivists reject moral relativism without subscribing to any sort of robust moral realism. In any event, I am willing for the time being to allow Talbott his way of conceiving human rights – namely as expressing somewhat general or abstract moral principles objectively and universally true from any moral point of view and discovered through critical reflective inquiry into our more enduring individual moral judgments at the level of interpersonal morality.

On Professor Talbott’s view, “We now have sufficient understanding of the nature of human beings and of the moral constraints on how they should be treated to realize that governments everywhere ought to guarantee certain basic rights to everyone within their borders” (Talbott, 3). Okay, but which rights?

Those that make possible the development and exercise of individual autonomy, Talbott answers (Talbott, 11, 88, 105–7, 112, 172, etc.). Okay, but why these rights?

One possibility is given by familiar non-consequentialist arguments based on the respect owed the capacity for autonomy itself, based on its dignity or supreme intrinsic value. Talbott neither explores nor rejects arguments of this sort. Instead, he

offers a consequentialist argument according to which the development and exercise of individual autonomy are always either instrumental to or ingredient in each person's good and thus securing the rights necessary to the development and exercise of individual autonomy is essential to maximizing the good.

From a consequentialist perspective, polities, and hence governments, exist to secure and promote the good or well-being of their members (in a "distributively appropriate" manner, as Talbott routinely acknowledges, distancing himself from crude maximizing forms of aggregative utilitarianism). However, Talbott argues, following John Stuart Mill, we now know that normally competent adults know best when it comes to their own good or well-being. Indeed, this discovery of first-person authority with respect to judgments regarding the good or well-being of individuals is, Talbott says, the most important moral discovery of recent centuries (Talbott, 174). Normally competent adults may have many reasons to affirm and accept political authority – It is necessary to solve coordination problems or underwrite cooperation subject to a determinate and public conception of distributive justice. However, on Talbott's view, that their good or well-being is better or best understood by political leaders is never among the reasons normally competent adults have to affirm and accept political authority. Political rulers may *try* to justify paternalist state policies or non-democratic decision procedures on the grounds that they better or best understand the good or well-being of the citizens or subjects they rule. Furthermore, consequentialists cannot rule out this kind of reasoning in principle. However, as a matter of empirical fact, it is never a good reason. This is a universal moral truth we have only recently discovered. Accordingly, political authority is always unjustifiable and illegitimate when such paternalistic considerations constitute its sole or primary justification, at least with respect to normally competent adults.

Given every normally competent adult's first-person authority over matters concerning her own good or well-being, every polity must cultivate the ability of its members to exercise good judgment as competent adults and then solicit and reliably respond to those judgments in the formulation (and ongoing reformulation) of government policies. Where individuals can be left free to act on their own judgments regarding their good or well-being, they should be so left (Talbott, 134). And where collective decisions are necessary and unavoidably constrain individual liberty, those making them must receive democratic input and be subject to democratic accountability (Talbott, 140–1). A polity or government cannot justifiably believe that it is acting so as to secure and promote the good or well-being of its members (appropriately distributed), and therefore cannot, on Talbott's view, justifiably claim recognition as legitimate or a right against intervention, unless these conditions are satisfied.

Therefore, all persons have basic human rights to the material, social, and institutional conditions necessary both to the development and exercise of their capacity for good judgment regarding their own good and to a government or polity reliably responsive to those judgments as feedback regarding government policy. Human rights depend, then, only on our capacity for, and the first-person authority of our, rational judgments regarding our own good (Talbott, 175). Our capacity for what Rawls calls reasonableness – the ability to propose and honor fair terms of social cooperation – is undeniably essential to our ability to realize an institutional order faithful to our basic human rights. But, Talbott maintains, even if we had no capacity for reasonableness, no sense of justice, we would still have the basic human

rights he sets out (although the universal moral truths they express would remain unrealized or unfulfilled in our social, institutional world).

The universal human rights Talbott identifies are:

1. A right to physical security
2. A right to subsistence (including the right to earn subsistence)
3. A right to that which is necessary for normal physical, cognitive, emotional, and behavioral development during childhood
4. A right to an adequate education, including a moral education (which includes cultivating moral sensitivity and the capacity for empathetic understanding)
5. A right to a free press
6. A right to freedom of thought and expression
7. A right to freedom of association
8. A right to privacy or personal autonomy and hence against paternalistic government policy
9. A right to democratic government and an independent judiciary empowered to enforce rights against majoritarian decision-making (Talbott. 178).

These, and not Rawls's list of rights essential to a well-ordered and decent constitutional republic (roughly those set out in Universal Declaration of Human Rights Articles 3–18 as well as the Conventions against Genocide and Apartheid), mark the conditions necessary and sufficient, on Talbott's view, to be met by any polity possessed of a right to recognition as legitimate and thus to nonintervention within the international order. As with any "minimal legitimacy" conception of human rights, they do not guarantee the justice of any polity. However, they do guarantee that all polities will be more or less liberal, democratic, anti-paternalist and anti-perfectionist, and constituted so as reliably to better secure the good or well-being of their members and to better approximate justice over time (Talbott, 13, 160–163). So as to avoid the risk of particularly strong polities using human rights as a moral pretext for acting on essentially imperialist ambitions (and ignoring familiar worries about any centralized global coercive authority), Talbott recommends the international enforcement of these rights through something like an international judiciary and police force (Talbott, 182).

Now, it's hard to know exactly what to make of this list of basic human rights, as it is pitched at such a very high level of abstraction. Is the right to gay marriage covered by the right to freedom of association? Is the right to the production and distribution of pornography covered by the right to freedom of thought and expression? Is there a universal human right to first term abortions on demand under the right to privacy or personal autonomy? Is the death penalty consistent with the right to physical security? Does the right to subsistence include a right to hold and transfer property? What about property in the means of production?

Professor Talbott cannot simply waive these questions off by saying that they concern matters to be resolved locally through the national self-determination of distinct states, or at least, he cannot do so without begging the question as to whether the right to gay marriage is entailed by the basic right to freedom of association, or the right against the death penalty is included in the basic right to physical security. For these matters to be legitimately resolved locally as a matter of national self-



determination, on Talbott's view, the polities resolving them must honor those basic human rights essential to minimal legitimacy and thus to a right to nonintervention or national self-determination. But then, the right to gay marriage or against the death penalty cannot be a basic human right on Talbott's conception.

If we focus on the less controversial core of each right, Talbott's list is surely an attractive list. We ought all to hope for a world within which all these rights are incorporated to some substantial degree into positive international law by way of treaty making between or the reflective acquiescence of polities recognized as legitimate within the international order. But of course this is not, indeed cannot be, what Professor Talbott means when he says that these rights "should be universal." He is offering a "minimal legitimacy" conception of human rights and thus a conception of human rights already normatively universal before and apart from any positive voluntary undertaking via treaty or reflective acquiescence.

As a list of such "minimal legitimacy" rights, I think Talbott's list misses the mark, and it misses it in both directions. On the one hand, it is too robustly liberal and democratic. On the other hand, it omits key rights essential to the rule of law and thus to the legitimacy of any system of political and legal authority. But if he is to correct these defects, I think Professor Talbott will find himself being pushed toward a conception of basic human rights much closer to Rawls's. In what follows, I endeavor to push Talbott in this direction by raising a series of questions each of which poses a difficulty, I think, for his view.

Professor Talbott makes what essentially comes to liberal state neutrality a condition of recognitional legitimacy and the right to nonintervention within the international order. This is remarkable, as liberals themselves are still reasonably divided over issues of liberal state neutrality, with some claiming legitimacy or justice requires it and others claiming neither legitimacy nor justice requires or is served by it. It is remarkable also in that many liberals who do endorse liberal state neutrality do so not because they see it as required by the universal truth of "first-person authority," but rather because they see it as entailed by the so-called "endorsement thesis." Unlike the claim of "first-person authority," the "endorsement thesis" is not a claim about who is best qualified to judge what is objectively good for any person. Rather, it is a claim about the phenomenological conditions necessary for any person's life, no matter how objectively good, to be good for the person living it, to be subjectively their own life.

Now, if liberals themselves reasonably disagree over whether state neutrality is a necessary condition of legitimacy or justice within their own polities, and if it is, then why it is, then how can liberal polities reasonably insist on liberal state neutrality worldwide as a minimal condition of recognitional legitimacy and a right to nonintervention? To put it the other way around, do the members of liberal democratic polities not have a principled right to resolve this issue for themselves as an exercise of their own collective self-determination? Of course they do. But then, liberal state neutrality cannot be a necessary condition of recognitional legitimacy and a right to nonintervention within the international order, and cannot underwrite human rights within a "minimal legitimacy" conception. By building liberal state neutrality into his conception of basic human rights, Talbott has rendered his conception too liberal or democratic to serve as a "minimal legitimacy" conception of human rights within the international order.

If Professor Talbott is right about the basic human rights necessary and sufficient to recognitional legitimacy and a right to nonintervention within the international order, then there are far fewer legitimate states with a right to nonintervention than many people think there are. Indeed, legitimate states entitled to recognition and nonintervention would be an extremely recent phenomenon. Of course, there can be no doubt that there are today many illegitimate states with no right against intervention. But are Oman, the United Arab Emirates, and Kuwait really among them?

Perhaps, as an empirical matter, these states are much worse than a quick review of the US State Department profiles or a 2-week visit would suggest. Perhaps, if we were fully informed, we would share Talbott's intuition that these are indeed among the illegitimate states today without any right to recognition or nonintervention within the international order. But what, then, about some imagined non-aggressive constitutional, rule of law, republican polity well-ordered by a public (although perhaps common good) conception of justice, within which all adult members are treated as responsible persons (although not free and equal citizens) participating in a system of social cooperation (to produce a range of goods, including religious virtue and solidarity)? Suppose this imagined polity secures for all its members a contextually adequate social minimum so that they all have meaningful access to the material resources necessary to fulfill their station and exercise the legal rights extended to them. Suppose this imagined polity, while not a democracy, has institutional mechanisms for insuring that members can express their interests. In particular, its institutional structure secures to a meaningful degree a right to petition the government and to express dissent. Dissenters are not jailed or tortured; they are tolerated. Meaningful fora exist for the public, even if regulated, expression of dissent. In addition, the government officials of this imagined polity recognize and honor an obligation to publicly and regularly justify their official actions. Furthermore, suppose there is a limited but not insignificant right to freedom of religion (for example, there is no religious persecution, there are no undue prohibitions on private religious practices, and religious affiliation is largely irrelevant within the economy) and more generally to liberty of conscience, although there is a state religion – Certain political offices are reserved for religious leaders, and the state is not neutral in its policies regarding various conceptions of the good; it acts purposefully, although within the foregoing constraints, to promote religious virtue and solidarity. Finally, suppose the vast majority of citizens comply with the vast majority of laws voluntarily – because they internally accept them – and without significant state exercises or threats of force.

On Professor Talbott's account, this imagined polity would and should have no right to recognitional legitimacy and nonintervention within the international order. However, what exactly would be the consequences of adopting this view? A non-consequentialist might dismiss this question, but insofar as Professor Talbott offers a consequentialist account of those human rights necessary and sufficient to minimal legitimacy within the international order, I do not think he can.

To be sure, Professor Talbott might argue that there will usually be good prudential reasons for treating polities in substantial although not complete compliance with his list of basic human rights, like the polity just imagined, *as if* they were legitimate and thus possessed of a principled right against intervention. For example, it may be that



non-toleration, intervention, public refusals of recognition, and so forth simply generate more costs than benefits. Still, polities or states treated *as if* they were legitimate and possessed of a right to nonintervention will know that they are being so treated. They will know that they fall short of full compliance with the universal moral truths Talbott seeks to capture with his minimal legitimacy conception of basic human rights. They will know that they are not respected as full members within the international community, but are rather treated as if they were full members for various strategic and prudential reasons. They will know this in part because, in their interaction with liberal democratic states, liberal democratic states will not restrict themselves to acting only on and from moral principles these states could affirm as free and equal members of the international community.

A state so treated will likely commit to the international community and its normative order only as a *modus vivendi*. Accordingly, it will likely prove an unreliable ally to liberal democracies as they endeavor to contain and transform malevolent despotisms and other outlaw states. Further, a state so treated will likely feel drawn to devote substantial domestic resources to military uses so as to insure that the costs to liberal democratic polities of refusing it recognition or undertaking a coercive intervention remains sufficiently high, to insure that liberal democratic polities continue to be treated *as if* it were in fact legitimate and possessed of a right to nonintervention. Finally, a state so treated will likely prove an unenthusiastic partner in the development of international law and international legal institutions. In short, by setting the bar for recognitional legitimacy and a right to nonintervention within the international order too high, Talbott likely may leave liberal democracies with too few or insufficiently reliable and enthusiastic partners to join in some of the most pressing work to be done within the international order. Perhaps paradoxically, lowering the bar just enough to extend genuine recognition to polities like the one imagined above or, in the real world, to polities like Oman, United Arab Emirates, and Kuwait, may have consequences for human rights, international peace and the development of international law superior to holding the bar as high as Talbott holds it.

Professor Talbott thinks that, when it comes to setting out those human rights necessary and sufficient to recognitional legitimacy and a right against intervention within the international order, it is enough to know the truth about the legitimacy of a body politic from the universal standpoint. Others may reject that truth, but, as he says, sometimes we must be willing to say that others are simply mistaken (Talbott, 50).

Now Professor Talbott is surely right that sometimes others are simply mistaken and we should be unafraid to say so when they are. However, there is a difficulty here. First, sometimes others can be reasonable rather than simply mistaken. Liberal communitarians who worry about liberal state neutrality may be mistaken, but I doubt that they are simply mistaken. Their disagreement with proponents of liberal state neutrality is (at least typically) a reasonable disagreement, even if ultimately it is the proponents who have the truth on their side. Remarkably, given his commitment to “epistemic modesty,” Professor Talbott never discusses reasonable disagreement or its implications for a “minimal legitimacy” conception of human rights. I do not doubt that there are moral judgments over which there can be no reasonable disagreement; those who reject them are simply mistaken. In addition, Talbott’s conception of basic human rights ranges over many such judgments. However, it ranges also others over which, even if Talbott has truth on his side, I

think there can still be and indeed often is reasonable disagreement. And given this fact of reasonable disagreement, I am not sure how much is gained in moral life by insisting on the “truth” of one’s position.

For example, I can easily imagine the members or leaders of the sort of well-ordered and decent, but non-liberal and non-democratic, constitutional republic imagined above reasonably rejecting Professor Talbott’s conception of human rights on the ground that, in any well-ordered and decent constitutional republic, the rulers and members are bound as moral persons one to another by their natural duty to justice in a particularist but morally significant system of political–legal obligation and authority that is theirs to improve and perfect on their own terms and in their own time, even if through acts of civil disobedience. Nonparticipant outsiders are not morally bound to participant insiders in the same way participant insiders are bound one to another. In addition, it is this moral asymmetry that underwrites the claim by participant insiders to recognitional legitimacy and the right to nonintervention as a polity.

Now, whatever else we may say of persons tendering such a view, I do not think we can say that they are *simply* wrong. It is surely not unreasonable, even if it turns out to be false, to claim that within a decent constitutional, rule-of-law, republic persons are morally bound one to another in a shared and particularist undertaking that is in the first instance theirs, as a matter of their own collective self-determination, to control and direct. And if it is not unreasonable, then no amount of Talbott’s shouting “but it is false,” will advance the ball very far, morally speaking. For the moral question is not what is true, but what reasonable others might reasonably affirm from their own point of view, without pressure, coercion, deception, manipulation, and so on. At least, that is the moral question for liberals, and hence liberal democratic polities, committed to an ideal of reciprocity.

The question liberal democratic peoples face in the international order is when to recognize other polities as legitimate and thus to engage with their leaders in good faith and to refuse coercive intervention. A “minimal legitimacy” conception of human rights should answer this question. It should do so by tying basic human rights to a conception of political and legal authority. This conception should be one of political and legal authority as sufficient to underwrite particularist obligations of prima facie moral force, placing insiders and outsiders in an asymmetric moral relationship. Furthermore, it should be one that liberal democracies cannot reasonably reject.

It is remarkable, then, that Professor Talbott never discusses at length the nature or normative structure of political and legal authority in his book except to note that minimally legitimate states will empower their citizens or members to make reliable judgments about their own good and then solicit feedback from them so as to determine how state policies might better advance their good. I do not have the space to discuss the nature or normative structure of political and legal authority at length here, but I think it likely that any plausible account will make central the rule of law, the universal realization of what Hart called “the minimum necessary natural law content,” the institutional mechanisms essential to a political and legal order rooted in reason-giving rather than mere force or power (legal protections for dissent, the right to petition the government, the legal requirement that officials justify their official conduct, etc.), and the conditions minimally sufficient to render a polity a

rule-governed system of social cooperation. I find it a startling omission, then, that Professor Talbott does not include on his list of basic human rights those typically associated with the rule of law. Due process rights, for example, do not appear on his list (although in fairness Professor Talbott might think them presupposed by one or more of the rights he does include).

Had Professor Talbott framed his inquiry into the question of which rights should be universal from the point of view of a liberal democracy, committed to its own right to recognition and nonintervention in the international order and concerned as a practical matter to identify the principle that it ought reasonably to use in extending that same right to other polities claiming it for themselves, he would have been drawn directly into an inquiry into the conditions necessary and sufficient for persons to become bound to one another in a morally significant but particularist system of political and legal authority. Then, I suspect, not only would constitutionalism, the rule of law, and a rule-governed politics of reason-giving rather than force or power have figured more prominently in his thinking about and account of basic human rights, but also antipaternalist liberal state neutrality and the merits of democratic government might have figured a bit less prominently. But then, his position would likely have approximated Rawls's.

A "minimal legitimacy" account of basic human rights must mark the line dividing a politics of power and coercive force from a politics of respectful persuasion and reason-giving. Legitimate states do not force one another into reforms. They recognize the right of each to self-determination. In addition then, they give reasons. They persuade. They hold themselves out as examples. They do not manipulate, bribe, sanction, or otherwise coerce.

I do not think Professor Talbott's conception of human rights is very plausible as a minimal legitimacy conception, but I do think it is plausible and attractive as a conception of those human rights liberal democracies ought to work for within a peaceful international politics of human rights. I look forward to a world within which all legitimate polities voluntarily affirm, through treaty or reflective acquiescence to customary practice, Talbott's basic human rights as universal human rights within positive international law. In this sense, I agree with Talbott – The rights he identifies "should be universal."

Notwithstanding my criticisms, I must conclude by stating that Professor Talbott has written a very fine and engaging book from which I learned a good deal and which I enjoyed reading. For the most part, it is a book written for the non-specialist and accordingly will prove very useful as an assigned text in courses on global justice and human rights, as well as moral epistemology. Those not engaged in academic or professional philosophy will find the book especially useful as a good point of entry into philosophical debates too often pursued in ways that leave behind not only those working in other disciplines interested in them but also the general educated public.