# THE LIMITS OF INTERNATIONAL TOLERATION: A COMMUNITARIAN CASE FOR PLURALISM AND NON-INTERVENTION

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# Abstract

On the one hand, there are fundamental moral principles that apply to all people, regardless of the nation-states they are born into. On the other hand, it is desirable to prevent cultural homogenisation and enable each group to preserve its own customs and traditions. This thesis is an attempt to reconcile these two intuitions. It attempts to do so by defending a broadly communitarian position, with significant concessions to liberalism.

The first chapter introduces the different theories at issue in this universe of discourse, before situating the argument of the thesis in some detail. The second deals with the debate between John Rawls's position as expressed in his *Law of Peoples*, and its critics, who argue for the irrelevance of borders on either institutional or moral grounds. The next two chapters pertain to relativism and communitarianism respectively. I deal especially with normative relativism, the idea that there are no universal, true moral principles. I show that relativism, although an intuitively appealing response to Rawls's critics, must be rejected because it is self-defeating. Communitarianism is dealt with in Chapter 4, and the most central objections to it are also answered. The thesis concludes with some suggestions of a possible reconciliation of the liberal and the communitarian positions.

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# Introduction

In this thesis, I argue for a communitarian understanding of relations between different societies. While accepting the broad contours of Rawls's framework, I also claim that there may be a wider range of acceptable socio-political arrangements than he thinks possible. The thesis is inspired by the Rawlsian work 'A Law of Peoples' in which Rawls sets forth his vision of international toleration.[1] I take the term "peoples" which Rawls uses to designate the constituent units of international society to mean groups that share a common way of life or civic culture and whose members feel bound to each other as members of the same group. The concept of peoples is a moralised one, and is not coextensive with that of states. Rawls accepts a minimal framework of human rights which every society ought to respect. I agree with the form of this framework and accept that certain values do hold good independently of place, culture and time, but I believe that they are based on more fundamental common understandings than those rooted in the liberal political tradition. I do not restrict myself to making a pragmatic case for pluralism, but attempt to make a principled one. I believe that our moral landscape is a pluralistic one, in two senses – firstly, in the sense that there are multiple fundamental principles and secondly, in the sense that they may manifest themselves differently in different societies. I agree with Rawls and the cosmopolitans on the existence of objective values. Where my position is different is in allowing for a high degree of autonomy to local groups and populations. To establish this point, the thesis will draw on the communitarian critiques of liberalism, most notably the neo-Aristotelian variety espoused by Alasdair MacIntyre, in his *After Virtue*.

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[1] See John Rawls. 2003. *The Law of Peoples*: *with "The Idea of Public Reason Revisited"*. Cambridge, MA: Harvard University Press.

I will first consider a variety of approaches to the question of relations between societies. I eventually settle on communitarianism with conservative elements, although qualified by some non-negotiable cosmopolitan requirements.

In the opening chapter, I set out the different theories at issue, before situating my own position. The next three chapters are thematic and deal with different aspects of the debate. The second reconstructs the debate between Rawls and his critics, concerning his views in his *Law of Peoples*. The third chapter considers relativism as a possible response, but concludes that it is ineffective. The fourth chapter considers communitarianism, and defends it against several plausible objections. The thesis concludes with a proposal for reconciliation between particular and universal commitments, as exemplified by communitarianism and cosmopolitanism respectively.

# Chapter 1: The Conceptual Landscape

## 1.1 Mapping the Theories at Issue

In what follows, I briefly explain the theories concerned with the question of international toleration and cultural pluralism.

I shall begin this survey with realism. Realism is the position in International Relations which holds that the realm of relations between societies simulates a Hobbesian State of Nature.[2] The only valid morality, on this view, is the morality of national interest. Given the consequences of this blatant self-interest, however, this position seems to be quite untenable. States can no longer exist in complete isolation from one another and are today in relationships of mutual dependence. Even enlightened self-interest would suggest that an amoral attitude towards the international realm is unsustainable. It will not be dealt with in further detail here.

Pluralism is another possible position in this debate. I take pluralists to hold that although goods like liberty and equality are universally shared by us across societies, these goods often conflict with each other and there is no one good way of choosing between them, because there are multiple loci of value. This is the line taken by Isaiah Berlin and his disciple Bernard Williams.[3] Berlin and Williams argue that the totality of moral principles does not form one harmonious whole, as against what Ronald Dworkin suggests.[4] Rather, Williams suggests that there are clusters of internally consistent principles among true moral principles which cannot all be realised simultaneously. This allows for pluralism, without succumbing to

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[2] The origins of the Realist position are especially owed to Hans Morgenthau. See his *Politics Among Nations* (1948) and *Principles and Problems of International Relations* (1950).

[3] Isaiah Berlin. "Two Concepts of Liberty". See also Bernard Williams, 2005. *In the Beginning Was the Deed: Realism and Moralism in Political Argument*. Princeton and Oxford: Princeton University Press.

[4] Ronald Dworkin. 2011. *Justice for hedgehogs*. Cambridge, MA: Harvard University Press, 1.

relativism. I agree with the pluralists to the extent that some goods are definitely very widely shared across societies. However, ideals, such as democracy, equality, universal human rights and global justice are controversial, at least in practice. Their enforcement remains a matter of concern for cosmopolitans.[5] Further, while the pluralists in Berlin's tradition are committed to holding the incommensurability of values, I do not think that values are necessarily incommensurable. Values might be evaluated on the basis of the extent to which they contribute to flourishing.[6] Those values which contribute to this goal to a greater degree are demonstrably superior to those that fall short. It then makes sense to argue that some ways of ordering societies are superior to others, even while acknowledging that the inferior society has its own reasons for upholding its own practices, and subject to some absolute criteria, should be left alone, because its practices still have some degree of internal good, as embodied by tradition.

The Cosmopolitan thesis holds that there are universal requirements which hold without reference to particular societies. This is cosmopolitanism in the weak sense. In the strong sense, cosmopolitans tend to hold that individuals are the fundamental units of moral concern.[7] Strong cosmopolitanism argues that we hold rights and duties to each other not as members of particular societies, but in virtue of our common humanity. Thus, it is a strongly cosmopolitan position to hold that all individuals, wherever they are born, enjoy certain absolute and inalienable rights. Weak cosmopolitans may deny this requirement of equal treatment, while they still accept that principles such as social co-operation, the value of life, and the injunction against gratuitous violence are sufficiently general to apply to all societies, although their

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[5] It might be objected here that the recognition of a principle as binding matters more than the question of how far it is practiced. But the fact that a principle is not put into practice might, in some cases, be an indication that it is not generally recognised, and as such could reflect unease about its acceptance.

[6] For an overview of the concept of human flourishing and its use in moral philosophy, see Gilbert Harman, 1983, "Human flourishing, ethics, and liberty". *Philosophy and Public Affairs* 12 (4): 307-322.

[7] For some formulations of cosmopolitanism, see Robert E. Goodin, 1988, "What Is So Special about Our Fellow Countrymen?" *Ethics* 98(4): 663-86, Charles Beitz, 2000, "Rawls's Law of Peoples." *Ethics* 110(4): 669-96, Thomas Pogge, 1994, "An Egalitarian Law of Peoples.", *Philosophy & Public Affairs* 23 (3): 195-224 and Samuel Scheffler, 2001, *Boundaries and Allegiances*. Oxford: Oxford University Press.

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implementation may differ on a case-by-case basis. The position of this thesis may also be branded a weak cosmopolitan one. Cosmopolitan thinkers may derive these ideas from the notion of human dignity and rights, or on the basis of the commonalities of people's lives around the world.

Communitarianism is opposed to strong cosmopolitanism in the sense of according greater significance to community. For example, communitarians argue that individuals cannot properly define themselves without reference to the underlying social background. I take communitarianism to mean that cultures or subcultures may have good reason to be subject only to some minimal universal requirements, and to live, by and large, by their own collective understanding of the good. The argument in this thesis is, to reiterate, a communitarian one.[8]

I now turn to a variety of relativism. A controversial claim is that the nature of our moral obligations depends on our ability to understand them. It might even be used to argue that our moral obligations change from society to society. Perhaps, we could make sense of this more radical claim when we focus on concepts. Certain concepts are believed to be untranslatable without considerable loss of meaning. Now, what if there are untranslatable terms concerning ethical or normative concepts? If indeed there are, they might serve as the basis for quite a radical relativistic argument about morality. But considering this possibility is beyond the scope of the present thesis and I shall therefore set it aside.

A less radical hypothesis which can make sense of such fundamental differences is that different societies have different bases for their morality.[9] Defenders of this weaker claim

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[8] Some communitarian works are Michael Walzer. 1980. "The Moral Standing of States", Michael Sandel, 1982, *Liberalism and the Limits of Justice*. New York, NY: Cambridge University Press, Charles Taylor, 1994, *Justice After Virtue*". In *After MacIntyre: Critical Perspectives on the Work of Alasdair MacIntyre*, ed. Susan Mendus and John Horton and Alasdair MacIntyre, 1980, *After Virtue*. 2nd ed. Notre Dame: University of Notre Dame Press.

[9] For the defence of a similar claim, see S.N. Balagangadhara, 1988, "Comparative Anthropology and Moral Domains: An Essay on Selfless Morality and the Moral Self". *Cultural Dynamics* 1(1): 98–128.

might argue that while there is significant overlap between the ethical concepts of different societies, much of the moral discourse may not thus coincide. However, it seems to me that the commonalities between most, if not all, societies are significant enough to point to a way of bringing about potential understanding.

I now turn to the Rawlsian picture. Rawls's goal is to provide for a wider basis for international toleration than would be possible under an uncompromising cosmopolitanism. Some liberal cosmopolitan critics of Rawls argue, for example, that a society that is not democratic cannot be accepted in good standing as a member of the Society of Peoples.[10] This seems to me to go too far. But this need not commit me to a relativistic position. I accept that there are certain overarching fundamental principles, but I deny that goods like democracy are necessary to their realisation. One could argue, for instance, that a society in which benevolent absolutist rulers enjoy acceptance in the eyes of the people is entitled to continue with its political arrangements without being subject to external intervention, provided that the rulers' actions meet the minimal criteria agreed upon by all decent peoples. I accept this claim, and try to defend it. In this respect, I differ from Rawls, who claims that a benevolent absolutism does not qualify as an example of a decent society.

I now move on to conservatism. Conservative political thought within today's Western tradition is widely understood to have arisen in response to the perceived excesses of the French Revolution, as a response in defence of the established order. Huntington points out that conservative ideology is remarkable for the absence of a substantive ideal within it.[11] The claim

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[10] See in particular Simon Caney, 2002, "Cosmopolitanism and the Law of Peoples." The Journal of Political Philosophy 10(1): 95-123

[11] Samuel Huntington, 1957, "Conservatism as an Ideology." *American Political Science Review* 51(2): 454–73.

that one is conservative, then, says nothing about what kind of society one aspires towards. Depending on the nature of the order they wish to uphold, conservatives may have distinct conceptions of the good.

For the purposes of this thesis, I understand conservatism to stand for the claim that social and political arrangements that have persisted for generations enjoy for that reason a degree of legitimacy.[12] This is not to claim that antiquity is a decisive test to determine whether a practice should be continued, but it nonetheless tilts the scales. If a customary practice does not serve the good that it purports to serve, or ceases to do so owing to changed circumstances, or conflicts with some overriding external good, a conservative can concede that it may be challenged and overridden. Part of the theoretical challenge here is to give grounds to distinguish between reasonable and excessive respect for tradition, but that is a task I do not undertake here. As tradition plays such a central role in my reasoning, there is an element of conservatism in my communitarian position.

For the communitarian critique of cosmopolitanism to succeed against its opponents, a communitarian conservative would need to show why the internal structure of non-liberal societies must be respected. This is because a non-liberal society may depart from some non-negotiable liberal premises: for instance, the premise that the individual is the primary locus of moral value. The communitarian could argue that while individualism may be a sound basis for ordering societies which have evolved in certain ways, it may fail to be so for societies that have evolved differently. At the same time, this need not entail that different societies each live by their own wholly independent notions of the good. Whatever particular form individual or social life may take, there is generally substantial agreement about the most fundamental social

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[12] Support for this is perceptible in Burke. See Edmund Burke. 2009. *Reflections on the Revolution in France* (1790). L G. Mitchell (ed.), Oxford: Oxford University Press.

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expectations, at least as a matter of fact, if not in principle.[13]   But there is still room for a considerable degree of freedom within societies, including on questions such as the form of government, the degree of hierarchy - subject to some absolute standards of decent treatment - and the question of basing the polity on any particular religious or philosophical doctrine; again, subject to some constraints. In what follows, I will adduce grounds for such constraints in the clearest way possible.

One critique of such conservative positions is that they seem to leave us with very weak grounds for criticising the *status quo*. A disturbing implication of taking the claims of tradition seriously is that they can underwrite oppressive and corrupt social practices on the grounds that they have always been around. But tradition need not be stultifying. One significant ethical question, framed by Charles Taylor, is as follows. To what extent should our ethical theories be tied to existing practice?[14] If tied too closely to tradition, this would amount to tolerating the intolerable. One solution to these deeply conservative undertones might be to hold that no existing practice can be accepted as legitimate unless it can be justified in terms of an independently-existing good. [15] However, the principled advocate of the status quo, while he may concede that we must guard against uncritical acceptance of the state of affairs, nonetheless can argue on the grounds of internal goods. Given that a practice as embodied in an institution typically fulfils some need, once an institution is dismantled or a practice done away with, the conservative may claim that it is seldom easy to meet the needs that it used to, with the same effectiveness. There may be crises which justify doing away with traditions altogether. Short of such extraordinary circumstances, conservatives argue that a presumption in favour of stability must be affirmed, because stability and continuity have a value of their

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[13] That there is such agreement is reflected by documents such as the UN Declaration of Human Rights.
[14] Taylor, *Justice After Virtue*, 30.
[15] *Ibid*., 31.

own, and tilt the scales in favour of the status quo, deciding the issue unless a fundamental contrary interest is involved

Conservative-minded thinkers, in the tradition of Edmund Burke, hold that this presumption in favour of the status quo is grounded in the notion that individual rationality is limited, and that the collective experience of a community is of greater significance for its flourishing than the limited knowledge of individuals.

## 1.2 Introducing the Law of Peoples

In this section, I show how my argument flows from Rawls's position in the *Law of Peoples* and its preoccupation with pluralism and coexistence.

1.2.1 A Brief Outline of the Law of Peoples

Rawls lays down the Law of Peoples using his familiar device of the Original Position as articulated in *A Theory of Justice*.[16] He argues that peoples, in the sense of groups with a shared sense of themselves as distinct from outsiders and often, although not always, co-extensive with states, are the fundamental moral units of international society.[17] He assumes that reasonable pluralism is a fact of life in the international arena. It is inconceivable, he argues, given the diversity of peoples in the world and the variety of their conceptions of the good, that all could come to agree on questions of fundamental importance. Significantly, Rawls claims that the fact of pluralism entails that all societies need not be liberal, despite being a liberal in his own commitments. He therefore claims that a weaker requirement for international toleration obtains, and formulates it in terms of decency. However, a decent society need not be democratic, or regard people subject to its laws as free and equal citizens. This is deeply

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[16] For the construction of the Original Position, see John Rawls, 1971, *A Theory of Justice*. Cambridge, MA: Belknap Press of Harvard University Press, 21-22

[17] For an explanation of the nature of peoples, see Rawls, *The Law of Peoples*, 23-24.

resented by committed liberals who believe that if claims of free and equal citizenship hold good in liberal societies, there is no good reason to claim that they do not hold in others as well.

1.2.2 Criticisms of Rawls's Law of Peoples

Simon Caney, Kok-Chor Tan and others have criticised the Law of Peoples on the grounds that it is too permissive and tolerates the intolerable. They further accuse Rawls of double standards, as has been alluded to in the discussion above[18]. If liberalism is true, then shouldn't its dictates be upheld the world over? This is the substance of their claims.

If we accept these objections, I see two responses open to us. The first is to hold that Rawls's view is incoherent and that a society must be governed by liberal political institutions to claim the right of admission into his society of peoples. A second is to bite the bullet and argue that aside from a few minimal constraints, societies are free to structure themselves as they see fit. I accept the latter option. The constraints to be imposed on societies could include a requirement of non-expansionism, and the absence of evils such as genocide and slavery. Importantly, they should be based not on mere custom or agreement, but on some principles to be upheld by all peoples.[19] An attempt to criticise slavery on communitarian grounds has been made in the next chapter.

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[18] For a sample of these cosmopolitan criticisms, see Fernando Tesón, 1994, "Some Observations on John Rawls's *The Law of Peoples*". In Proceedings of the Annual Meeting (American Society of International Law).88, The Transformation of Sovereignty. Cambridge University Press. 18-22, Caney, 2002, "Cosmopolitanism and the Law of Peoples", and Kok-Chor Tan, 2006, "The Problem of Decent Peoples". In Rex Martin & David Reidy (eds.), *Rawls's Law of Peoples: A Realistic Utopia?* Blackwell.

[19] A critic of the standard of decency might ask why autocracy is to be tolerated, while slavery is not. I try to defend this apparent dichotomy in the upcoming section.

## 1.3 The Position of the Thesis

Given the messiness of the conceptual landscape, it is vital to state clearly what I am arguing for. This is what I do in this section. Each sub-section deals with a central aspect of my own point of view. It can be distilled as follows:

1.3.1 Admission of the centrality of tradition

I accept MacIntyre's claim that a practice that has come down to the present through generations has some good internal to it. I try to specify the conditions that need to be met for a tradition to be superseded in favour of another. However, my arguments will stress the centrality of continuity. Admittedly, the arguments best go through in societies which change slowly. If the general rate of change in a society increases, this naturally renders more and more traditions impracticable and, therefore, anachronistic. The arguments presuppose that social change is as a rule rather slow, and that a given generation can learn from the experience of past generations. The rate of change in modern societies seems to weaken my claims, but an opponent can still be resisted by pointing out that modernity comes with its own issues: extreme individualism, social breakdown, and dependence on the state rather than the clan or tribe being only a few of them. At this stage, my opponents might argue that the fact that no society is perfect is not an argument against the necessity of change from worse to better states of affairs. This is true, but it gives us reason to take the claims of established practices seriously, and accord *prima facie* legitimacy to them regardless of their flaws. An associated anthropological claim that can be used to ground a defence of established practices is that human beings are so constituted that we are unable to adapt to rapid change, which alienates us not only from others, but also from ourselves. [20]

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[20] I am thankful to Janos Kis for bringing this to my notice. For a good survey article about the alienating effects of technology in particular, see Karam Adifibar. 2016. "Technology and Alienation in Modern-Day Societies". International Journal of Social Science Studies.

What reasons might we have for believing this? Until the advent of modernity, the rate of change was typically so slow that it was barely perceptible within the lifetime of an individual. Today, however, shorter and more radical bursts of change are the norm.[21]

One way to ground the undesirability of such a state of affairs is to posit an innate human need for stability. It may be formulated as follows:

Need for stability: Human beings have an interest in living in relatively stable social, economic and cultural environments.

This claim can be attacked in many ways. First, an opponent may urge that we can hardly deny the necessity and goodness of technological progress, for example. The rate of change, it may be maintained, has nothing to do with the desirability of change.

Secondly, while it may be true that the progress associated with modernity has come with its own associated distortions, the advocates of progress may view them merely as a necessary price to pay for lasting improvements in our material condition.

In reply, conservatives must concede that technological progress is desirable. It must also be admitted that in extreme circumstances, when the society breaks down and there is no community to speak of, it is meaningless to speak of holding out against change. However, any non-expansionist community, especially in societies that have not been totally affected by

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[21] This accelerated pace of change and social life has been observed by social commentators for decades, for example Robert Chambers. 1997. *Whose Reality Counts: Putting the Last First*. London: Intermediate Technology Publications, 1 and David Harvey. 1989. *The Condition of Postmodernity: An Enquiry into the Origins of Culture Change*. Oxford: Basil Blackwell. 240. This has been observed across fields: from economic sociology to demography. See Thomas K. Rudel and Linda Hooper, 2005, "Is the Pace of Social Change Accelerating? Latecomers, Common Languages, and Rapid Historical Declines in Fertility." *International Journal of Comparative Sociology* 46 (4): 275–96.

modernity, has a vested interest in preserving its own way of life against changes. The language, the stories told, the memories of ancestors, and the local festivals celebrated within communities are too valuable to be allowed to wither away. To associate with a living, vibrant cultural form that one recognises as one's own is, it seems to me, a fundamental interest. The problem with accelerated change is that it is disorienting. It leaves people confused and unable to make sense of change, because it leaves few, if any, cultural constants against which to orient oneself in a time of flux.[22]

All this may appear meaningless in times of dizzying change. But I think I have pointed out a reason why these conservative views retain their appeal, despite their apparently anachronistic character.

1.3.2 Presumption of non-intervention in the affairs of other states

What seems to be most appealing about the Rawlsian position in the *Law of Peoples* is its view that societies and states are entitled to organise themselves in any way they see fit, subject to the requirements of decency. I agree that some such overarching requirements are needed. In order that conservative forces do not overwhelm the society, tradition must be subject to tests. Reason may be used to evaluate traditions against some overarching good. For example, if we agree that life is a central good that cannot be outweighed by most other considerations, then it would be logical to conclude that any tradition which entailed the gratuitous loss of life would have to be abrogated in favour of the overriding principle.

But goods such as political autonomy are subject to much greater debate. Consider for example the case of benevolent absolutisms. Rawls does not count them as *bona fide* members

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[22] For a more thorough engagement with the problematic aspects of social change, see especially the article by Piotr Szompka, 2000, "Cultural Trauma: The Other Face of Social Change." *European Journal of Social Theory* 3(4): 449–66.

of the Society of Peoples, but I see no reason why they could not be included therein. It seems to me that if it has been the practice within a society to uphold such a form of rule, advocates of democratisation must take this fact into account, in view of the estimated costs of change.

A practice may be critiqued internally, with respect to failure to meet its ostensible goals within a society or externally, with reference to some overriding good that applies to all people impartially. But subject to such legitimate criticism: internal and external, a practice has an authority of its own and each society can have its own practices.

I also agree with Rawls that a society that is expansionist, whose leaders wish to impose their ways of life upon others, should not be tolerated and should be treated as an outlaw state. [23]

### 1.3.3 Conservative Universalism

My position is both conservative and universalistic, in the sense of holding that the same principles of continuity and gradualism hold good in all human societies. What conservatives have in common are a presumption in favour of existing practices and the *prima facie* idea that each time-honoured practice is valuable. On these grounds, they insist that great caution must be exercised in changing established ways of life.

One who calls for all individuals in the world to be happy, to live a flourishing life, etc. would be interpreting this cosmopolitan requirement in an individualistic sense. But this claim can be qualified by the communitarian view that it is our collective pursuits which make life most valuable. We all belong to organisations and are attached to causes which we find

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[23] See Rawls, *The Law of Peoples*, 94.

meaningful. Many of our unchosen commitments are also of deep significance to us. Our different views of the right and the good represent different ways of life, which are valuable because they represent the collective experience of generations within particular groups. People who wish to foster such time-honoured practices should be free to do so, subject to according due respect to other individuals and societies who wish to maintain their own way of life, and to individuals, including critics, who wish not to engage in them. I defend this view later in the thesis, notably in the chapter on Communitarianism. There are two aspects to this position.

First, to the question whether every society ought to acknowledge the full set of liberal rights, my answer is a qualified 'No'. This is not because there are no moral principles which are held by all reasonable people in common, but because liberalism presupposes a certain picture of the individual and the community which, from the point of view of non-liberal societies, there is no good reason to accept.[24]

Secondly. whereas all societies may have different ways of organising themselves, the plurality of practices should not obscure the fact that people within most societies tend to seek similar goods. Goods such as social cohesion, co-operation, and absence of gratuitous violence, although quite complex, are shared across societies because they are so vital to our survival as groups. These commonalities can and do serve as the basis for certain cosmopolitan obligations, including duties of non-aggression and assistance in the international arena, or the United Nations' Declaration of Human Rights. However, unlike the Cosmopolitan view that argues for the moral insignificance of borders, my view takes borders as being morally significant.

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[24] For a statement of this critique in similar terms, see Allen Buchanan, 1989, "Assessing the Communitarian Critique of Liberalism." *Ethics* 99(4): 852-82.
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The claim of limited individual knowledge also serves to justify the view that a practice, by the mere fact of having persisted for generations, holds a certain degree of *prima facie* value, because it reflects the collective wisdom and accumulated experience of ages. Further, the call to exercise great caution before changing a practice can be encapsulated in the following argument:

P1: A practice that has stood the test of time must have some meaning to it.

P2: We are not in a position to understand the effects of changing or removing a time-honoured practice. This is because even an apparently insignificant change may have substantial unforeseen effects

P3: It will be unjust to subject coming generations to the results of hasty changes in the present.

Conclusion: Thus, great caution must be exercised in changing time-honoured practices.

To take one example, traditional beliefs and customs about the sanctity of certain forest spaces or groves might be eroded due to their condemnation as irrational and superstitious. However, following the erosion of such a belief, it is possible that future generations may not see the forests as more than a storehouse of resources, and may not, as a result, take their duty of conservation seriously.

As I accept this conservative argument, I must acknowledge that my communitarianism is of a conservative character.

In support of my argument, I rely substantially on Alasdair MacIntyre's notion of a good internal to a practice.[25] I would like to suggest, in particular, that practices that have come down to us through the generations manage to do so because there is some good internal to them. Thus, when we come across an unfamiliar society whose practices we wish to criticise, we must seek first to understand the good internal to such practices. To take a very broad example, the good of continuity is internal to all traditional practices in general. But it is possible that a practice has ceased to do good, due to social breakdown, massive changes in values, or the perversion of the practice itself.[26] In such a situation, criticism is not only legitimate, but arguably morally required. This leaves the way open for potential criticism and reform even of very old and highly regarded practices.

This ends the introductory chapter, which clarified my view in light of the existing literature. In the following three chapters, I deal thematically with three significant threads of the debate: first, the debate between Rawls and his cosmopolitan critics; second, a possible relativistic response to Rawls, and third, the communitarian family of views, which is closest to my own ideas.

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[25] See Alasdair MacIntyre. *After Virtue*. 11-12. For a slightly different take, see also Taylor, "Justice After Virtue", 34-5.

[26] An example of such a state of affairs might be the traditional system of arranging marriages in many societies, which seems to be breaking down today.

# Chapter 2: The Rawlsian-Cosmopolitan Debate

In this chapter, I concern myself with the way in which Rawls, in his *Law of Peoples* (hereafter *LP*), has approached the issue of international toleration. After a reconstruction of the main elements of the Rawlsian position, I move on to Rawls's conception of what it means to be decent and the repudiation of his formulation, followed by my response. Matters of economic justice will not be discussed here, except as a means of motivating the cosmopolitan critique.

## 2.1 Recovering the Rawlsian Position

There is genuine disagreement about what Rawls hopes to get at through *LP*. On the one hand, he claims that the programme he proposes is a realistic utopia – an ideal situation and the best we could reasonably hope for. On the other, he also suggests that his project is a more modest one, that of determining what the foreign policy of liberal peoples *vis-a-vis* non-liberal peoples should look like.[27] Some of the themes I take to be central for our discussion are touched upon here.

(a) Reasonable Pluralism

One of the central claims made by Rawls in LP is that the principles of justice that apply within a liberal society are not identical to those that apply between societies.[28] Thus, his theory of justice does not have a single principle – or set of principles – applicable at different levels. This is evident, for example, in the absence of a global principle of distributive justice similar to the difference principle he recommends for a liberal society. Even when it comes to the

[27] This latter suggestion is made by Freeman, Samuel. 2006. "The Law of Peoples, Social Cooperation, Human Rights, and Distributive Justice". *Social Philosophy and Policy* 23 (1): 48.

[28] Rawls, John. *The Law of Peoples*, 65.

nature of the polity, he explicitly claims that a society does not have to be liberal or democratic in order to be a bona fide member of his Society of Peoples. Peoples, here, are not co-extensive with states, although most existing states correspond closely with Rawlsian peoples.

(b) Decency

Rawls posits a weaker criterion of decency, by fulfilling which a state could be accepted as the legitimate representative of a people. This includes the idea that the state should (i) be peaceful and non-expansionist; (ii) respect basic human rights; (iii) be based on a common good principle of justice, and (iv) have a decent consultation hierarchy.[29]

Rawls also holds, but without too much argument, that a decent society would accept the same Law of Peoples as a liberal one.

(c) The substantive principles of the Law of Peoples

The Law of Peoples is composed of eight principles, affirming the following:

(i)     Peoples, being free and independent, must respect the freedom and independence of other peoples.

(ii)    Peoples are equal parties to their own agreements

(iii)   Peoples have no right to aggressive war.

(iv)    Peoples must observe a duty of non-intervention.

(v)     Peoples are to observe treaties and undertakings.

(vi)    Peoples are to observe certain specified restrictions on the conduct of war.

(vii)   Peoples are to honour human rights,

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[29]*Ibid*., p. 65.

(viii)    Peoples must assist other peoples who are unable to create a decent society where they live due to economic or institutional issues. [30]

One of the central arguments Rawls offers for the acceptance of these principles by the representatives of decent societies is that they would have no choice, given the requirements of what counts as decency, but to assent to his proposal on due reflection.[31]

## (d) Toleration of decent non-liberal societies

Rawls posits an example of a decent non-liberal society, that he calls Kazanistan. Kazanistan is an Islamic state, and non-Muslims may not hold the highest political office or rise to the top decision-making positions. Nonetheless, other religions are tolerated and may be practiced without fear or loss of civic rights. Rawls argues that liberal societies should tolerate societies such as Kazanistan.[32]

While Rawls believes that it would be better for us all if these societies sooner or later became more liberal, he argues that coercive sanctions or inducements are undesirable, because they fail to sufficiently respect the right to self-determination of the society in question. [33] Rawls, at least in *LP*, therefore seems to have a much more minimalist picture of justice than his cosmopolitan critics do.

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[30] Rawls, John. *Ibid.*, p. 37
[31] *Ibid.*, 41-42.
[32] *Ibid.*, 78.
[33] Rawls, John. *Ibid.*, 61-62. For his criticism of incentives, see *Ibid.*, 81-82.

**2.2 The Cosmopolitan Repudiation**

2.2.1 Institutional and Moral Criticisms of Rawls

Cosmopolitans with an institutional objection to Rawls's position are concerned by his failure to incorporate requirements of distributive justice into his view. They argue that states are connected in morally relevant ways, and that Rawls fails to take seriously the moral obligations that this generates for inhabitants of affluent societies.[34]

Other cosmopolitans, who attack Rawls on moral rather than institutional grounds, condemn him for what they see as unreasonable concessions to illiberal societies, which take his view closer to the realist position and also raise suspicions of relativism[35].

2.2.2 The Informal Argument

In his informal argument for his domestic liberal theory of justice, Rawls points out that one of his goals is to do away with factors "arbitrary from a moral point of view" when it comes to the distribution of goods.[36] This fact is seized upon by some cosmopolitan thinkers who claim that by positing weaker distributional criteria between states than within them, Rawls concedes that we have special obligations to our compatriots that we do not have to humanity as a whole. But this is inconsistent with the spirit expressed in his informal argument. Are not one's place of birth and one's country of citizenship morally arbitrary facts just as much as any other variable? The critics might argue that Rawls gives undue weight to a factor that seems irrelevant.

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[34] See Beitz, "Rawls's Law of Peoples", Pogge, "An Egalitarian Law of Peoples" (1994) and Scheffler, "Boundaries and Allegiances" for statements of this claim.
[35] For the most forthright criticism of this sort, see Caney, "Cosmopolitanism and the Law of Peoples".
[36] Rawls, *Theory of Justice*, sections 11-13, 72.

### 2.2.3 The Challenge of Institutional Cosmopolitans

Beitz, for example, points out that there is a global basic structure, a global system that distributes rights and obligations. Given the presence of such a system, he claims that it is morally incumbent on the affluent societies to work to make things fairer.[37] Our world is not best described as one of self-sufficient states, each striving for its own survival and perpetuation. Given the interdependence between societies, states that are better off must aid those worse off. Pogge, on similar grounds, claims that the internationally accepted practices around borrowing and resource use are amoral, which means that rulers are able to borrow internationally and legitimately dispose of their own resources, regardless of the nature of the state. He proposes a resource tax of 1% to remedy this state of affairs. Pogge further claims that wealthy societies cannot remain indifferent to the situation of poorer ones because the former have arguably created the unfair structure that the latter find themselves in. It is, then, the task of prosperous societies to reform the global order, so as to ensure that inhabitants of less well-off societies are able to participate in global economic processes on an equitable basis. Given these facts, it is desirable to have stronger requirements of justice between states than is currently accepted.[38]

### 2.2.4 Critique of the Permissive Criteria of Decency

Amartya Sen argues that it is a mistake for Rawls to have excluded requirements such as democracy from his qualifying criteria for decency. He argues that these are not simply Western values, but that elements of these are to be found in all societies.[39]

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[37] This claim is first made in Charles Beitz, 1979, *Political Theory and International Relations*. Princeton: Princeton University Press.
[38] Pogge, "An Egalitarian Law of Peoples", 208.
[39] Amartya Sen, 1999, *Development as Freedom*. Oxford: Oxford University Press, 147-148, 154-155.

## 2.3 Rawlsian Defences

Two principal defences have been proposed. The first offers a plausible re-interpretation of Rawls's goal in *LP*, and the second argues for a standard of legitimacy, rather than justice.

2.3.1 The Re-Interpretive Solution

Many commentators have suggested that Rawls's principal goal in the *Law of Peoples* is more minimal than his opponents believe. His first priority is peace, not justice. This is suggested by his claim that he dreams of a world without the great evils of human history – genocide, starvation, slavery, etc. Seen in this light, Rawls's theory may be seen as a minimal framework, which is not inconsistent with specifying stronger requirements of justice.[40]

2.3.2 The Legitimacy Solution

The second defence claims that we can make sense of this inconsistency by positing a standard of legitimacy which is weaker than that of justice. In order to be legitimate, a state need not be perfectly just.[41] Justice is an ideal, which may not be attained in practice for various reasons, including deeply-rooted customary practices and the associated resistance to change. But it would be better to live in a world of legitimate states than one in which some states did not meet even this standard. If we cannot live in a just world without incurring substantial costs in the course of the process, perhaps it is better that we settle for the best realistic scenario. The costs could be direct, such as resentment over perceived arrogance, or the indirect weighted

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[40] See Heath, Joseph. 2005. "Rawls on Global Distributive Justice". *Canadian Journal of Philosophy* 35: 193-226, Freeman "The Law of Peoples", Christopher Heath Wellman. 2012. "Reinterpreting Rawls's *The Law of Peoples*". *Social Philosophy and Policy* 29 (1):213-232.

[41] See Leif Wenar, 2006, "Why Rawls Is Not a Cosmopolitan Egalitarian", in *Rawls 's Law of Peoples: A Realistic Utopia?* ed. Rex Martin and David Reidy, 95-113.

costs of the improbability of success. It is true that we cannot foretell the future, and hence may be unable to estimate the costs involved. But uncertainty can be dealt with by a policy of non-interference in ambiguous cases.[42]

## 2.4 Evaluation and Arguments

Following the expository sections examining Rawls's theory and the important responses to it, I will now turn to evaluating Rawls's position and then offer an argument about benevolent absolutisms.

### 2.4.1 The Necessity of Broad-Based Toleration

There arguably are some very fundamental ideas held in common in nearly all societies across cultures and eras: these include notions like the value of life, the interest in flourishing, and the centrality of belonging to a community. It is true that all societies can theoretically be brought on board with some such minimal program. However, the difficulty of doing this is underscored by the fact that even some foundational concepts are highly controversial. For example, the use of the term 'human rights' is problematic. Consider the fact that ethical systems may be based on duty, or virtue, as opposed to rights. A society that deprecates gratification and focuses on obligations might not readily accept the centrality of the notion of a 'right', although its members need not deny the importance of interests. Similarly, the relevant universe of moral concern is still being debated, although the idea that interests are shared not only by all human beings, but all beings capable of experiencing pleasure and pain, is increasingly popular.

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[42] Shelly Kagan, in *Normative Ethics* (Boulder: Westview Press, 1998), 64 refers to the impossibility of knowing the future as perhaps the most common objection to consequentialism.

So long as understandings shared within a society are not fundamentally incompatible with core cosmopolitan interests, as Rawls suggests, it seems to me that they should be tolerated. Further, this toleration is not only on grounds of wanting to avoid conflict as far as possible. A principled case can be made for their retention on the grounds that they are *ipso facto* valuable and offer a credible alternative to currently existing frameworks and ways of life. To argue in favour of such toleration, I now consider the relatively concrete case of benevolent absolutisms, that Rawls briefly touches on in *LP*.


2.4.2 The Case of Benevolent Absolutisms

The Rawlsian Kazanistan is only one plausible example of a non-liberal social system. Rawls takes it for granted that there are other forms of non-liberal society, and leaves it underdetermined.[43] Let us consider another such hypothetical society. For example, a society whose citizens enjoy civic rights – the right to life, freedom from arbitrary detention, liberty of movement and occupation, formal equality before the law – with few restrictions, but do not live under a democratic regime. Such a society should, on both Rawls's view and the strongly cosmopolitan view, sooner or later be brought to accept a more democratic social order. But what if the people in that society were suspicious of democracy? Even if they have an authoritarian ruler, they may have strong social and moral constraints on such authority and regard it favourably. In these idealised circumstances, there could be some provision to ensure that the ruler is advised by distinguished and skilled elders and ministers who view themselves as acting in the society's best interests, and keep the former in check. The ruler is scrupulous, and there is strong pressure, perhaps deriving from the comprehensive doctrine endorsed by

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[43] See Rawls, *The Law of Peoples*, 5, 75.

the state, to maintain those principles. Imagine further that crime is low, the administration is efficient, and that art and scholarship are encouraged.

It would be a mistake, I believe, to insist that such a society transition to a liberal democracy. The picture drawn here may be criticised as an idealised caricature. However, in a fractious polity that is mired in inter-communal squabbles, democracy might actually be an undesirable form of government, due to the difficulty of reaching any lasting consensus.

Benevolent absolutisms fall short of the standard of decency in not providing for a consultative process for communication between the rulers and the ruled. At the same time, as they are not expansionist and respect the minimal human rights of their subjects, they satisfy many of the criteria of decent societies. Rawls admits that they have a right to self-defence and may not be subject to coercive intervention. To that extent, their independence is secure. But they are not counted among members of the Society of Peoples. They are not, therefore, included in the original position of decent peoples, and thus do not ratify the law of peoples. [44]

It has been pointed out that this uncomfortable position can be dealt with either by admitting that a benevolent absolutism qualifies as decent, or by arguing that it is not decent, since a degree of popular approval and participation in government processes is constitutive of decency.[45]

In support of the first contention, it may be argued that it is possible to imagine a prosperous and contented population living under benevolent absolutism. Admittedly, there is a decided asymmetry here, because by definition an absolute ruler is free to rule capriciously. The primary costs such a ruler may face in my hypothetical state is strong disapproval by the people and by an upright administration. It can only be effective if the ruler also holds values

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[44] Rawls, *The Law of Peoples*, .63.
[45] For a more detailed treatment of benevolent absolutisms, see Robert Huseby. 2018. "In or Out? On Benevolent Absolutisms in *The Law of Peoples*". *Journal of Ethics and Social Philosophy* 13 (2), 154.

that are consonant with those of the general population. An additional pitfall of this is that it depends on the rulers being imbued with exceptional personal virtue and integrity, which are seldom heritable. This is the case to a much lesser extent in liberal democratic societies built on strong institutional foundations. Admittedly, the system presupposes a certain lack of personal freedom and a high degree of agreement within society, at least on some fundamental issues. But in the presence of such safeguards, it is hard to see why a benevolent absolutist society could not be successful, and in a sense, a flourishing society. For benevolent absolutism to be credible, a further constraint that may be needed is some degree of freedom of speech. This point will be dealt with below, especially in the short concluding chapter.

But even if the society in question is found wanting with respect to political freedom, it should still, subject to certain non-negotiable constraints on its behaviour, be left alone. The basis for this claim is two-fold: first, self-determination and second, an interest in stability.

(i) Self-Determination

I hold that every society, politically represented as a state, must be free, in a pluralist world order, to advocate a particular conception of the good. This raises the question of how to treat those within the polity who do not share this conception of the good. It is doubtful if we can say of a society that it has such a thing as a unitary good or a homogeneous culture, especially in our times. One way to resolve such disagreements is to ensure by force or legal fiat that a society becomes more homogeneous. However, this is antithetical to leaving individuals the freedom to associate or dissociate with different ways of life. A more practical and ethically sound solution would be to acknowledge the presence of multiple ways of life and conceptions of the good, and to ensure that each community enjoys the greatest cultural freedom compatible with the existence of state sovereignty and with the freedom of other communities to do likewise. The conception of the good favoured by the state must not be imposed on those who

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are unwilling to accept it, or unconvinced by it. However, it could inform government policy and jurisprudence. subject to respecting followers of other conceptions.

It might be urged against this acceptance of particular conceptions of the good that it allows for the possibility of undemocratic, or even tyrannical regimes. It is true that such a pluralist state need not accept democracy.

The freedom to choose one's representatives, afforded by modern democracies, is not central for at least two reasons: first, effective democracy itself is widely held to require certain preliminary conditions to hold, including a baseline of socioeconomic prosperity and equality; and second, this freedom willingly goes unexercised even in many democratic states.[46] A people must be free to reject it if it so desires, provided that its vital goods are well cared for. However, I concede that the right to free speech and expression, amounting to the right to publicly discuss and debate the merits of different ideas, is a prerequisite to a pluralistic society and world order.

A similar point about accepting an order that is good enough rather than perfect holds, I believe, in respect of social institutions. An institution need not be perfect, but as long as it is acceptable to the people within the society and continues to perform a positive role within it, it should be tolerated. Some overriding goods such as life, liberty and the free exchange of ideas in a pluralistic society must, however, be recognised so fundamental that no amount of internal justification will suffice. If those goods are compromised, condemnation, the imposition of sanctions, or in extreme cases, even intervention may be required.

(ii) Stability

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[46] The claim is made in Freeman, "Law of Peoples", 37.

Institutions that are sustained for generations together gain a certain amount of legitimacy in the eyes of those affected by them. Further, an institution that embodies a practice must have some internal good, at least to those affected by it. This will be elaborated in the chapter on communitarianism.

## 2.5 Further Arguments on Slavery and Democracy

As Rawls's cosmopolitan critics have pointed out, the standard of decency is vague.[47] Further, if defining decency is merely a matter of arguing for the inclusion of certain rights on a list while excluding others, then the selection of any point on that continuum is arbitrary. If slavery falls below the threshold of decency, then what about full democratic rights? What about homosexual marriages? An appeal to decency, to the effect that no decent society would tolerate slavery, for example, is clearly circular. The use of phrases such as "acts which shock the conscience of mankind" is equally fraught with difficulty.[48] This is because the category is a historically contingent one. An act which shocks contemporary enlightened opinion may have been perfectly acceptable to the most civilised of our ancestors, and vice versa. We need a substantive account of why certain acts are unacceptable, independently of whether they are actually accepted. Only this will allow us to set standards independently of existing practices, which might function as ideals. Despite our common understanding of certain overarching common goods, different people in different societies conceive of them differently and assign varying priorities to them. We cannot rely on the fact that goods such as life and liberty are valued in all societies. Qualifying the claim to include only decent societies leads us back into the vacuity of appeals to decency. What we might appropriately use is a metric like flourishing.

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[47] See for example Beitz, *Political Theory and International Relations*, 151.
[48] For an idea of the extent to which this term was historically used, see Johannes Morsink,2010, "The Universal Declaration and the Conscience of Humanity" in Rainer Huhle (ed), *Human Rights and History: A Challenge for Education*. Berlin: Stiftung EVZ: 25-36.

From this point on, I argue that there is a categorical difference between a slave society and an undemocratic society. The reason for trying to establish this is that Rawls admits that decent hierarchical societies are members of his Society of Peoples, and that even benevolent absolutisms are not to be subject to intervention. However, a society that fails to honour basic human rights would be subject to intervention on Rawls's view. What I do here, then, is try to make sense of this differential treatment.

It seems to me that a weaker and broader-based conception of decency is especially appealing because being a significantly weaker minimum than equal treatment, it is accessible to people from a wider range of circumstances. Even today, there is bona fide controversy about the good served by democracy; not merely on self-interested grounds. At least some people genuinely believe that their society would be better off if it ceased to be democratic. In certain societies, democracy – as opposed to dictatorship or aristocracy – could be seen as alien to the prevalent ethos, as an imposition from without. For such societies, repudiating democracy could be viewed as an act of revolt against what is perceived as a hegemonic global establishment. It is my contention that even if we admit the worth and superiority of democracy, this is not sufficient reason to dismiss criticism as irrelevant or out of hand. I therefore offer some possibilities for someone who accepts the more minimal account of decency to repudiate slavery:

(i) The Flourishing-Based Argument

We may claim that if a society is to flourish, each member thereof must be given a respectable place therein. But respectable treatment is compatible with inequality, often – to egalitarians – troublingly so. For example, if a slave society recognised a moral obligation on the part of slaveowners to treat their slaves fairly and not to abuse them, on pain of harsh social and legal consequences, I think that while we may concede that such a society is immeasurably more

humane and decent than one which treated its slaves like chattel, it would fail even the weakened test of decency we are working with. But this seems to be very odd.

(ii) The Argument from Unconditional Wrongness

Perhaps one of the reasons we hold slavery to be unconditionally wrong and despicable, apart from the inhumane treatment of slaves, is the idea that certain ways of treating human beings are simply inadmissible and inappropriate. But even the widespread moral intuitions of today may come to be superseded tomorrow. These intuitions, then, are contingent on historical circumstances.

To take an example of such change, it is more and more widely acknowledged that non-human animals are morally considerable in at least some ways, on the grounds that they are the kind of beings that have morally significant interests. But if tomorrow, a more radical account of the interests of non-human animals came to dominate discussions, it is not clear how a defender of the status quo could evade the charge that his behaviour was inappropriate. At the same time, given the pervasive status quo, it is not easy to bring about any lasting change in this respect. No doubt it would be a better world (in some respects at least) if we truly strived to bring into practice a principle like that of equal consideration of interests. But the change should be brought about with great caution, especially given the goods served by pre-existing practices: a point I will return to later.

(iii) A Consequentialist Argument

The foregoing discussion seems to offer another line of argument. Slavery is inappropriate because it has been shown that there is a viable alternative that has done more good than the institution that it superseded. The abolition of slavery was good for society overall. Those

subjected to unfreedom ceased to be so subject, and in time, could devote their energies to being full members of the community.[49] But this, again, is not a principled line of argument. Its validity seems to hinge unacceptably on the consequences of slavery.

(iv) Argument from the Golden Rule

If we acknowledge a basic rule of reciprocity akin to the Golden Rule, which has been found applicable in many cultures, the injunction against slavery can be formulated in such a manner, on the grounds that even though we may not all be equal in our rights and obligations, we are still entitled to be treated with a minimal degree of decency, entailing the absence of slavery.

At this stage, I return to the discussion on democracy. Democracy, as things currently stand, is in fact the subject of much greater debate than slavery. It is widely argued that democracy can best flourish given certain conditions[50]. As things stand it is doubtful if such conditions will be attained worldwide in the near future. Under present circumstances, I think it is entirely plausible to argue that a dictator or a monarch who pulls an impoverished country out of poverty has done more good than harm, despite the suppression of some civil liberties considered vital in democracies.

My opponents, together with Rawls, may concede this point, but claim that this is the result of historical accident. They may say that the present state of the world reflects

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[49] For a fuller consequentialist critique of slavery, see Richard M. Hare, 1979, What is wrong with slavery? *Philosophy and Public Affairs* 8 (2):103-121. Being a consequentialist rather than a principled argument, this may not be strong enough. Perhaps slavery can also be condemned on the grounds that it prevents individuals from participating fully in dialogue about the merits of different cultures and traditions. For intimations of this argument, see my concluding chapter.

[50] See Robert Dahl, 1971. *Polyarchy; participation and opposition*. New Haven: Yale University Press. For the later, opposing view, see Richard Krouse, 1982, "Polyarchy & Participation: The Changing Democratic Theory of Robert Dahl." *Polity* 14(3): 441-63. It must be admitted that in recent times, the view that there are almost no preconditions to democracy has gained currency.

unfavourable conditions, which are remediable at least in principle. If these are remedied, we may be able to establish the just democratic world we could reasonably hope for. The only difference between Rawls and his critics boils down to this – whereas Rawls claims that societies that meet the criteria of decency must be tolerated, his critics are not eager to stop at anything short of a just democratic world order.[51] My own position is closer to Rawls's, but I also claim that democracy in particular is especially contentious, in the sense that there is reason to doubt its universal efficacy as a means of decision-making in practice, and even in principle.

### 2.5.1 The Case Against Universalising Democracy

I have argued that a democratic polity works best in cases where the polity is united, in the sense of being able to act in concert with each other in the national interest. However, this also suggests that where such unity does not obtain, democracy as a form of government is less than ideal. Another peculiarity of democracy is that given the role of the masses in decision-making, the demographic make-up of the community assumes great significance, which need not be so in a non-democratic polity. A democrat might urge that the merits of democracy are sufficient to override these objections. Perhaps she would be right. I do not claim to have come across a form of government better than democracy. I restrict my claim, for the present purposes, to pointing out that that its universalizability is open to question, for the above reasons.

Further, non-democratic rulers bound by strong moral and cultural restraints might serve the purposes of certain kinds of society better. For example, I have pointed out the necessity of a strong ruler in a heterogeneous state. We may also think of this with reference to the prevalent ethos in the society. Societies that are collectivistic, traditional and in which

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[51] Notable among such critics is Ackerman. See Bruce Ackerman, 1994, "Political liberalisms". *Journal of Philosophy* 91(7):364-386.

deference to authority is a norm, and in which the higher authorities have corresponding obligations to those under their care, may flourish in the absence of democracy.

## 2.5.2 Objection from the Reality of Social Change

An obvious problem here is the fact that societies are not inert, unchanging and essentially distinct wholes. Societies change, sometimes radically so, and much of the change is owing to exchange with other societies. It seems to me that a complete account of societal change must take account of popular opinion. If, for example, a foreign invading power were to be welcomed by the general population as a liberating force, we would think that a less serious infringement had taken place than if the population was clearly hostile. If the populace at large is hostile to change, we may expect the moral outrage concerning intervention to be especially strong.

## 2.6 Paternalism

A social institution can be said to be paternalistic if it regularly makes decisions on behalf of others, who are deemed to be less able to decide. The term is often used to describe attitudes or actions. I bring in paternalism here because a benevolent absolutism, a type that I claim should be included in the Society of Peoples, would qualify as a paternalistic regime.

## 2.6.1 An Argument for Paternalism

An argument in favour of paternalistic authority, as exercised by benevolent absolutisms, could be outlined as follows:

P1: An individual member of a polity is seldom capable of participating fully in policy decisions.

P2: Given the limited energy they can devote to public affairs, it is desirable for people to submit their judgment to any authority that has been shown to consistently act in their interests on their behalf.

P3: The political authorities in a benevolent dictatorship are of this nature.

Conclusion: Therefore, it is desirable to submit to benevolent absolutism.

### 2.6.2 An Objection to Paternalism

A common response to paternalism views it, when unjustified, as an infringement of autonomy. The justification offered by its defenders – that individuals are incapable of shouldering the burdens of judgment and therefore must defer to some superior authority – cannot convince a liberal, in this case.[52] This is because it is antiliberal to desire to save people – at least those capable of acting on their own – from themselves. Contrary to the Kantian injunction, it fails to treat people as ends in themselves. Given the centrality of autonomy as a liberal value, such deference to claims of the form that people do not know what is best for them is profoundly anti-liberal. It is implausible under the liberal assumption that individuals are free to pursue their conception of the good.

### 2.6.3 Interventionism as a Form of Paternalism

While the anti-cosmopolitan paternalist might argue that the authorities in one's own state, even if undemocratic, tend to act in one's best interest, cosmopolitans place greater faith in

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[52] The phrase 'burdens of judgment' is here adopted from John Rawls, 1993. *Political Liberalism*. New York: Columbia University Press, Lecture II, Section 2.

international institutions. Thus, advocates of paternalism at the domestic level criticise their opponents for apparent paternalism internationally.

2.6.4 Arguing for Domestic Paternalism

An argument in favour of domestic, as opposed to international paternalism can be made as follows:

P1: If paternalistic tendencies in rulers are inevitable, it is better that they should be expressed by an authority that one identifies with.

P2: It is easier for a given populace to identify with rulers in a decentralised as opposed to centralised polity, provided these rulers sincerely act in one's interest.

Conclusion: Therefore, domestic institutions should have *prima facie* priority over international ones.

The bias in favour of decentralised administration also has the advantage of pre-empting the possible tyranny that could arise from the concentration of power.

Those who insist that all societies be liberal are, in their own way, being paternalistic. Likewise, on the other hand, advocating for the autonomy of peoples as collectives seems to impinge on the legitimate freedoms of individuals to do as they wish. A cohesive society bound by some common understanding of the good might enable collective flourishing, but at the cost of individual liberty.

A proper balance between individual freedom and social stability must be found, and I think it can be found when practices are not shielded from criticism and potential change, while at the same time changing slowly enough to prevent general disorientation and alienation within the society. This balance could also be achieved if the members of a society, whatever

comprehensive doctrine it may be based on, are sincerely committed to toleration and plurality, which entails that the doctrine will not be imposed on unwilling outsiders, but would be first among equals in constituting the basis on which the state is run.

# Chapter 3: The Rejection of Relativism

## 3.1 Normative Relativism

When John Rawls's critics attack him for being too deferential to serious forms of oppression, a natural response for those sympathetic to his position is to bite the bullet and admit that one is a relativist. In this chapter, I consider this response, and conclude that it is inadequate because there are underlying commonalities between human beings regardless of their circumstances.

I am here concerned not with relativism in the descriptive anthropological sense, which holds that all societies have different customs and traditions, but with a stronger, normative relativism, which holds that there are no universal principles on the basis of which we can attain to cross-cultural moral judgments. An even stronger relativistic view goes that as human nature is entirely constituted by culture, there is no basis for us to build a common humanity upon. But this is an especially radical thesis which one may reject without having to deny normative relativism. I therefore turn my attention to the normative relativistic view.

## 3.2 The Bases of Universal Human Rights

Talk of human rights is pervasive today. While there are cultures based on other foundations, such as virtue, that historically had no conception of the rights one had simply by virtue of being human, the pre-eminent view today is that the notion of human rights, although demonstrably of modern Western origin, is nonetheless intelligible to all and can be used to make claims on behalf of human beings.[53] The UN Charters affirm that all human beings enjoy certain equal and inalienable rights without distinction. It is today commonly accepted that all

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[53] For the first thorough articulation of modern human rights theory, see John Locke, 1821, Two Treatises on Government. London: W. Wilson. (1689).

human beings, regardless of their circumstances, are entitled to some basic rights. Some of the justifications offered for this view are discussed below.

(a) Natural law theory

There are, on this view, certain God-given or Providence-endowed rights that can be derived from natural law. Human-made law is only just insofar as it does not conflict with natural law.[54] This justification is attractive, but may not satisfy those who question the coherence of the concept of natural law. Even accepting the concept, it is not clear what it requires of us.

(b) Rationalism

On the rationalist view, because human beings are rational, they hold human rights independently of culture or other particular traits. This view sees human rights as remedial, meant to challenge existing norms[55]. For the rationalist, a right's existence is independent of its enforcement. In societies where a right is not enforced, it may serve as a pointer to rectify current social problems.

(c) The Positivist position

This view bases the claim of universal human rights on the fact that human rights conventions have been ratified in nearly all societies. The source of human rights, for the positivist, thus

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[54] For this position, see Lloyd Weinreb, 1987, *Natural Law and Justice*. Cambridge, Mass.: Harvard University Press.

[55] See Jack Donnelly, 1989, Universal *Human Rights in Theory and* Practice. Ithaca, NY: Cornell University Press.

lies in international law.[56] The problem with this view is that it fails to justify human rights for people who do not live as subjects of modern states.

(d) The Capabilities Approach:

This stresses the commonalities we share as human beings and the desiderata we require to function properly as able members of a society. They define what it means to be human. Sen's more limited approach may be usefully contrasted to the elaborate and ambitious list of central capabilities advanced by Nussbaum, which includes the ability to control one's government, a right denied by absolutist regimes. [57]

## 3.3 Some Intuitions in Favour of Relativism

To bring out intuitions in favour of normative relativism, I shall bring out some examples pertaining to interpersonal relations.

Take the case of arranged marriages. To those who are convinced that marriage is essentially about intimate companionship, especially in the West, arranged marriage could represent an oppressive tradition that violates the right of individuals, men and women, to choose their partners. But it need not be viewed in this way. Instead, it could be viewed as expressive of a different view of marriage, one which holds that such life-altering decisions cannot be taken on the basis of mere feeling, however deep, and must be left to one's elders in their wisdom. On this view of marriage, one's partner is not primarily regarded as a partner in seeking pleasures, but as someone who helps one take on the obligations to be met in one's life. So long as those convinced by the merits of this practice do not insist on its

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[56] Higgins, R., 1994, Problems and Process: International Law and How to Use It. New York: Oxford University Press.
[57] See Amartya Sen, 1995, *Commodities and Capabilities*. Amsterdam: North-Holland and Martha Nussbaum, 2011, *Creating Capabilities: The Human Development Approach*. Cambridge, MA: Harvard Press, 33–34.

universalisation, I do not see why they should not be allowed to live according to their own convictions. Similarly, in some traditional societies, attitudes which many would consider regressive obtain with regard to divorce. While regarding divorce as taboo undoubtedly hurts individuals, especially women, in unhappy or abusive marriages, it is arguable that it strengthens one's support system, and society overall.

It could be argued that as the world is changing beyond recognition, this line of argument is an outmoded one. But even today, given that there are numbers of rural, pastoral and forest-dwelling communities, touched to some extent by modernity but retaining their old ways, it seems to me that they are entitled to organise their lives, including their collective lives, as they see fit. In her paper, Elizabeth Zechenter. points out that while murder and rape, say, are open-and-shut cases which all but the hardened relativist would agree are condemnable, there are other more subtle forms of social control which outsiders may perceive as oppressive, but insiders may not.[58] For example, if a community discouraged its women from seeking work outside the house, it amounts to coercion. However, the family unit within that community may be so structured as to mandate a strict division of labour. Again, these practices cannot be fully understood without due regard to the history of the community, their traditional occupation, the position of women within the household in other respects, the women's view about this practice, the presence of exit options and so on.[59] In traditional societies, the cost of exit was undeniably very high; rebellion could mean excommunication and potential death. This is not entirely the case today. But life even within such a community was not entirely devoid of its redeeming features, and as such it is probable that many women made their peace with this state of affairs.

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[58] Elizabeth Zechenter, 1997, "Universal Human Rights versus Cultural Relativity". *Journal of Anthropological Research* 53(3).

[59] It might be objected here that even if a woman, in our example, consents to the coercion of a social system over her, she is not in a position to exercise informed consent. This is probably true of all traditional societies.

## 3.4 Rejecting the Claims of Relativism

Whatever one's cultural background, there are good reasons to accept a minimal set of inalienable rights, consistent with known facts about human beings in general, which cannot be overruled by particularistic considerations.

Consider, for example, Gellner's claim that no culture, however strange or bewildering it may appear, is wholly unintelligible to outsiders. If it were wholly unintelligible, anthropologists would not have been able to make sense of cultural difference. On similar lines, Steven Pinker has suggested a genetic basis of the acquisition of language.[60] These strongly suggest that there are commonalities underlying human consciousness regardless of the many differences that also characterise it. A stronger, in-principle claim that individuals' utterances can be interpreted without knowledge of the particular natural language they use is made by Davidson.[61]

Griffith suggests that the diversity of practices obtains not mainly due to the absence of universal principles owing to the absence of a common humanity, but rather due to different material conditions.[62] This consideration also seems to decisively undermine normative relativism. At the same time, communitarians might claim that despite all our similarities as human beings, some of the differences between societies are so fundamental that it is hard to resist the claims of multiplicity. They may insist that given all these differences, the final authority to decide the direction of a society or culture must rest with its own members, subject of course to non-expansionism and a degree of respect for other societies, among other constraints. But it is hard to say what would constitute a just decision procedure in the eyes of

[60] See Steven Pinker, 1994, *The Language Instinct*. New York: William Morrow and Company.

[61] See Donald Davidson, 1973, "Radical Interpretation". *Dialectica* 27 (1):314-328.

[62] See James Griffin, 2015, "The Relativity and Ethnocentricity of Human Rights". In *Philosophical Foundations of Human Rights*. Rowan Cruft, S. Matthew Liao, and Massimo Renzo (eds). Oxford: Oxford University Press: 556.

the relativists. Apart from the appeal to tolerance, it is hard to see what constraints a relativist might place on just institutional arrangements.

But at the same time, the particularistic claims of the relativists seem especially plausible. Perhaps, in an ideal world, all reasonable people would endorse a truly universal morality. There may well come a time when national and natural borders are irrelevant and we learn to see ourselves as citizens of the world. But till such a time, we cannot neglect differences even if they arise out of contingent historical and economic factors. On the contrary, we should be open to learning from other societies about praiseworthy features they embody. The defence of communitarianism for independent reasons will be taken up in the next chapter.

## 3.5 Critiques of Relativism

I will now consider and evaluate some critiques of relativism.

(a) The Incoherence of Equal Validity

There is something questionable about the claim that all forms of social organisation, and all actions, are equally valid. Benedict claims, for example, that all cultures are "equally valid patterns of life".[63]

Kluckhohn criticised Benedict's position, on the grounds that genocidal and expansionist regimes responsible for mass murder are just as reprehensible anywhere in the world.[64]

[63]Ruth Benedict, 1934, *Patterns of Culture*. Boston: Houghton Mifflin, 278.
[64]Clyde Kluckhohn, 1955, "Ethical Relativity: Sic et Non". *Journal of Philosophy* 52: 666.

(b) The apparent centrality of popular approval

Does popularity determine whether a view is worthy of acceptance? Popularity combined with antiquity might show that a view is not wholly unreasonable. A view might gain or lose adherents, and as such it may change rapidly from being a marginal position to becoming the default, or vice versa. That masses may be persuaded to hold irrational or arbitrary views is nothing new, but to the extent that there are still views that represent time-honoured traditions, they indeed deserve to be taken seriously.

The cosmopolitan universalist may claim that she takes the holders of different views seriously, in virtue of their humanity. One may posit a distinction between a person and her views. I may respect an interlocutor as a human being, while simultaneously condemning her views. But this is not the sense in which I make the claim about taking different views seriously.

To make my views sufficiently clear, I digress briefly to present the following argument in favour of existing social arrangements.

P1: The antiquity of a practice is representative of its durability.

P2: Durability is a significant factor in determining the goodness of a practice, or its fitness for a particular social context.

Conclusion: Social arrangements that have sustained societies for a long time deserve at least *prima facie* respect.

A critic may question the truth of the second premise. It must be admitted that even harmful practices and traditions may stand the test of time. Perhaps such a claim could be weighed against the harm principle on a case-by-case basis, after considering all affected interests. The acceptance of established practices as prima facie legitimate does not mean, then,

that egregious practices should be tolerated. Thus, relativism is again shown to be untenable in the end. [65]

(c) A monolithic view of tradition?

The view of traditions as homogeneous wholes is open to question, especially if the tradition in question is not set out in writing. Cultural relativism presupposes a monolithic view of tradition and legitimises the most outspoken, perhaps the most obscurantist sections of people claiming to speak for it. This is especially true if there is one hegemonic custom that is accepted as normative for the entire society in question. In practice, however, the objection may be weaker than it seems, because even within a society, there may be multiple groups, each upholding a tradition of their own but refraining from imposing it on others. But such a society would then not be relativistic in the strict sense, because it would accept at least one universal principle, that is, tolerance or coexistence. Any group that systematically violated this principle would put the balance of this society in danger.

(d) The incoherence of claiming that there is no universal principle

For the uncompromising relativist, tolerance becomes a de facto universal principle, which flies in the face of the claim that there is none. Of course, relativists might agree that they accept a single principle: 'Cultural differences should be tolerated'. But they have to posit some grounds as the basis of this claim. These grounds, in their turn, might entail further principles.

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[65] Admittedly, this does not get us very far, because there may be very different internally consistent notions of what counts as harm. But what would be achieved by such a process is that all views, and especially time-honoured ones, would be given a procedurally fair hearing.

(e) Relativism favours ultra-conservative outcomes

Gordon (1993) and Moore (1998) argue that the relativists fail to take seriously the oppression of women within traditional societies. Normative relativists are thus charged of failing to appreciate that in any society, there are power relations and that some members benefit at others' expense in an unjust situation. For a committed normative relativist there is no way out. If there are no universal principles to regulate behaviour, the vulnerable, women in this case, are left at the mercy of their oppressors and without remedy. Does this amount to condoning the oppression of the voiceless? It seems to me that this depends on whether those who have a stake in the practice perceive it as oppressive. If insiders to the practice consistently claim that they do not perceive a practice as oppressive despite outsiders perceiving it as such, the soundness of the tradition must be presumed.

(f) The Charge of Cultural Hegemony

A related and more general worry raised by Zechenter goes that cultural relativism indirectly endorses the vision of the good life that the powerful impose on the disenfranchised within their society. It is true that power differentials obtain both within societies and between them. The problem of cultural hegemony is therefore very real. But it could be pointed out that consistently with the spirit of relativistic and communitarian claims, we could argue that societies should be pluralistic even internally. Dissenting sections of the population can have their own customs and observances, again subject to some overlapping requirements, which would be more demanding than in the international case, but nonetheless minimal enough to allow for a very wide range of ways of life.[66]

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[66] As long as the nation-state retains greater power to enforce its laws and to shape society in a certain way, such laws would cover much greater ground than the body of international law. It should be the responsibility of the state to work in harmony with different communities and interests, in order to ensure that all significant voices are heard on an issue. At the same time, states can allow for leeway in their laws to permit distinctive communities to continue to practice their customs, provided that this is not to the detriment of others' interests.

But in any case, the right to associate or dissociate from a tradition, to engage or refuse to engage in a practice must be among the basic rights in any society, for it to remain in good standing. Claiming the existence of such a universal right clearly negates the relativistic position.

Political freedom, in particular, would no doubt be substantially curbed in an illiberal state. For this reason, it seems to me that a decent society – to use the Rawlsian term – should allow the right of emigration, and some freedom of expression so that challenges to the predominant view are heard and answered appropriately in light of the traditions prevalent in that society.

The objection from cultural hegemony can also be levelled against communitarians, and will be discussed in the forthcoming chapter. One way to respond, as indicated above, is to insist that groups within societies must be persuaded, on moral grounds and in the interests of co-existence, to give up their claims of domination and adopt a live-and-let-live policy. Such a constraint could yield the advantages of cultural plurality without tyranny.

# Chapter 4: The Case for Communitarianism

## 4.1 Cosmopolitanism and Communitarianism: A Recapitulation

I begin this chapter with a recapitulation, to put the communitarian position in the right context.

Cosmopolitans are united in the view that the individual is the locus of moral significance. They claim that there are universally valid general concepts of rights applicable to humanity as a whole. Another common claim is that all human beings share a capacity for reason, which can serve as the basis for moral principles to improve the status quo. For institutional cosmopolitans, the international arena must ultimately be organised into a global order with stronger international institutions. Among the demands of the cosmopolitan position is that the restrictions on international intervention arising from the UN Charter and from state sovereignty be relaxed.

Communitarians, in contrast, stress the centrality of cultural identity, and argue that there is a plurality of interacting cultures with incommensurable values. In the international arena, communitarians tend to argue that our world is a world of states. They stress the fact that the international arena is dominated by states. Communitarians are suspicious of calls to universalise democracy, by writers such as David Held (1995).

Communitarians argue that what rights and justice require is to a large extent determined by culture. They need not claim, however, that self-determination is the only worthwhile value. To the extent that one takes cultural pluralism seriously, one may see value in the communitarian position even if some limits on pluralism by other values are called for Communitarians, however, must affirm that the diversity and heterogeneity among communities is an important value in itself, at least *prima facie*.

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What it is important to recognise, for communitarians, is that the sovereign state is subject to few restrictions in its conduct, especially at the international stage. The idea is that international organisations should not seek to supplant the sovereign state as the highest decision-making body for its domestic population except in some very limited cases such as genocide or social breakdown. What the substantive law should mandate in a particular situation must, for communitarians, be decided within a particular society, in light of its own traditions and practices, subject to the requirements of international law and of the most fundamental human rights.

It may be argued that a fair decision procedure requires consultation with all affected interests, which is best achieved democratically. However, admitting that a non-democratic procedure is not fully just, it is enough if it is legitimate in the eyes of the people. The ultimate power to decide on behalf of the people may rest in the ruling classes, provided they meet some such conditions of legitimacy, and make sincere attempts to act in the best interests of every section of the community, consistent with their own non-universalisable conception of the good. The key principles to uphold are those of the self-determination of peoples, and the legitimate rights of a state to manage its own affairs and to defend itself from interference. States should respect one another's independence.

An important corollary of this commitment to multiple ways of life is that a state, as well as the various subcultures within it, must be expected to be tolerant and accept the claim that there are other identities whose representatives have as much of a right as they do to live by their own cultural standards.

The centrality of the state internationally must be reconciled with the felt need to place limits on its powers internally, especially if the nation-state is a diverse one and is required to make significant provisions for the autonomy of linguistically or culturally distinct peoples.

## 4.2 The Difficulty of Universal Agreement

Even if we agree on a short list of non-negotiable human rights, it seems to me that the content of rights is generally impossible to agree upon because they only have meaning in terms of the social fabric of the particular societies and cultures that proclaim them. Thus, while we may all agree on the prohibition of cruel and unusual punishment, at least in principle, there might be legitimate differences as to the content of this concept. The debate between abolitionist and retentionist governments concerning the death penalty shows continued divergence on this count. More controversially, we might all agree that murder is unconditionally wrong, but may differ in borderline cases whether a murder has occurred. Thus, in an honour-based society in which duelling is commonplace and enjoys popular support, a killing occurring in a duel perceived as fair would not even be punishable, let alone being considered a murder. Thus, there may be diverse conceptions of a given right or prohibition.[67] Yet, our disagreements are not so severe as to lead to a breakdown in communication. We all seem to recognise rights as an especially strong class of entitlements. Our differences are at the level of interpretation.

In order to distance my position from relativism, I now return to the latter in a new light, and attempt to show how my position escapes the charge thereof.

Human rights as they came to be accepted and understood represent an explicitly historical development. While it may be true that the notion as used today originated in the modern West, its particular origin need not disqualify it from being universally adopted. Not too long ago, it was typical for individuals to spend their whole lives in the societies in which they were born. This is not axiomatic any longer. Large-scale migration and the closer contact forged by peoples around the world, not to mention the intellectual and cultural impact of

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[67] See Jack Donnelly, 2007, "The Relative Universality of Human Rights." *Human Rights Quarterly* 29(2): 299.

globalisation, all call for the protection of a minimal set of interests of individuals, wherever they may be. Given that communitarians may accept this, it follows that relativism is not a necessary derivative of communitarianism.

Given that understandings of what rights require show significant variation, many interpretations will conflict, and there is no obvious neutral candidate principle to arbitrate such disputes. This fact, then, suggests that there is a need to refrain from universalising one's views, no matter how sincerely held they may be.

The extent of pluralism, however, is restricted by the need for tolerance. The intolerance of an ideology or belief system must be resisted for genuine pluralism to obtain.

## 4.3 Challenging Established Practices

Following MacIntyre, I presume that a practice that has come down to the present through generations has some good internal to it. In this section, I first try to lay down certain criteria for the acceptability of practices.[68]

It seems to me that to challenge and supersede a long-standing practice, we need to show

(i)     that it does not, in fact, have this good internal to it, or

(ii)    that the good in question is outweighed by the harm it does; or

(iii)   that a replacement, if proposed, would be appropriate in light of what the community requires.

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[68] MacIntyre, *After Virtue*, 11-12.

An example of an institution that can be evaluated in this way is the joint family. While the joint family facilitates cohesion, allows for efficient economic co-operation and provides a social security net for its members, it could restrict individual members' right to do as they wish, because even adult members of such a family are subject to the writ of the elderly, especially men. Given that there are significant goods that appear to conflict here, the debate ultimately reduces to a debate about the relative importance of each of these goods. While there may be no simple way to resolve such disputes, the disputants on both sides can bring themselves to see the reasonableness of one another's position, which is a preferable state of affairs to mutual incomprehension. However, it seems to me that in controversial cases, the mere fact that a practice has persisted for a long time must carry some weight. The primary reason for a conservative bias in situations of genuine disagreement is that it reduces uncertainty and, especially in settings where social change is relatively slow, enables a given generation to benefit from the experience of its predecessors.

It is true that with the acceleration of change, the appeal to experience seems somewhat far-fetched. But even in order to make sense of such change and keep up with the times, the legitimacy of some priors must be acknowledged. These priors may be passed from generation to generation.

I admit that some overarching requirements are needed to keep particularism and conservatism in check. In order that such forces do not overwhelm a society, tradition must be subject to tests. Reason may be used to evaluate whether traditions retain their internal good, besides being subject to some overarching, non-negotiable goods, such as the prohibition on gratuitous killing. For example, if we agree that life is a central good that cannot be outweighed by most other considerations, then one must conclude that any tradition which entailed the gratuitous loss of life would have to yield to a higher, non-negotiable principle on this account. But goods such as political autonomy are subject to much greater debate. Consider benevolent

absolutisms, which have been dealt with before. To reiterate, if a community has historically lived and flourished under such a government, that fact should be taken into account when deciding if it should be allowed to continue.

## 4.4 On the Notion of 'Fit'

Walzer argues that a 'fit' must be presumed between societies and the governments that run them. This fit obtains when the state which runs the society does so in accordance with time-honoured customs and traditions which prevail in that society. Outsiders may not be in a position to judge the merits of practices internal to communities, and therefore the ultimate authority to determine this 'fit' rests with the community.[69]

It may be pointed out that in invoking fit to defend a community's practices, I am using Mill's Best Judge Principle, an argument against paternalism, recast at the communal level.[70] A critic might argue that the principle does not work at the communal level. For example, in a democracy, the average voter may not be in a position to make sense of issues, especially given misinformation and cognitive biases. Elections may be won on sentiment as opposed to cold reason. The same applies, *a fortiori*, to the popular support enjoyed by totalitarian leaders.

In reply, I concede that a society would need to ensure the free expression of ideas, and to permit and even encourage debate, appropriately in light of its own traditions. In the absence of such debate, it is hard to sustain the validity of the societal best-judge principle. Take, for example, debates around migration. On the one hand, we have advocates of relatively free economic migration into an aging society, on the grounds that these immigrants would add to

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[69] See Michael Walzer, 1980, "The moral standing of states: A response to four critics". *Philosophy and Public Affairs* 9 (3):209-229.

[70] I am grateful to Janos Kis for bringing this to my notice. For a statement of the Best Judge Principle, see Mill, John Stuart. *Principles of Political Economy* (1848), ed. W. J. Ashley (New York, 1965), 942ff.

the labour force. On the other, we have advocates of a more homogeneous polity, worried about being demographically and culturally swamped by practitioners of an alien way of life. Finally, we have the interests of the refugees and migrants in free movement. All these interests must be sincerely taken into account if the dialogue is to get anywhere. The differences between societies and worldviews would reflect in the weight that is attached to each of these considerations. Whatever the decision, different stakeholders must be convinced that their arguments were not ignored or treated as irrelevant. This suggests that even in a non-democratic polity, there should be a consultative forum to bridge the gap between the rulers and the ruled. However, once such a consultative body arrives at a decision, it should be binding on both insiders and outsiders.

Another important objection to this notion of fit is presented by Eric Heinze. when he points out that authoritarian rulers in societies like Iraq are often resisted bitterly by the general population, and thus there was arguably no fit.[71] Conceding this point, I suggest that we combine Walzer's notion of fit with the Rawlsian idea of decency.[72] Thus, we might say that it is part of being a decent, or legitimate state that the rulers sincerely attempt to realise the good of every section of the population, in consonance with the reasonable conception of the good that it may promote. This could be achieved through what Rawls calls a "common good conception of justice".

Walzer also brings in the idea of "acts that shock the conscience of mankind", which has been discussed earlier. Moscowicz suggests that the relevant set of acts must be those that

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[71] Heinze, Eric. 2006. "'The Morality of Intervention in International Theory." Essay. In *Waging Humanitarian War: The Ethics, Law and Politics of Humanitarian Intervention*, 15–32. Albany, NY: SUNY Press. See also. Walzer, "The Moral Standing of States", 212.

[72] Rawls, *The Law of* Peoples, 37.

ought to shock the conscience, rather than those that actually do. I do not pursue this line further, but he suggests that ultimately, the two must converge.[73]

## 4.5 Walzer's Critiques of Liberalism

In his contextualisation of the debate between cosmopolitan liberals and communitarians, Walzer argues that two distinct and mutually incompatible kinds of criticism can be levelled against liberalism. The first is that the impact of liberal thought on contemporary society not only in modern Western states but increasingly throughout the world, has led to the loss of community values embodied in ritual, tradition and custom. That is to say, liberalism has succeeded in reshaping the world in its own image, with troubling consequences.

A second criticism, incompatible with the first, is that liberal individualistic societies are more communitarian than they realise. For those who would accept this line, there is in fact no individual prior to the community, however much their liberal critics would desire this. The liberal notion of the social contract drawn up by self-interested individuals, comes up for special criticism.

## 4.6 Possible Responses to the Critiques

While both criticisms cannot be simultaneously accepted at face value, each can be recognised as making a legitimate point. The response to these follows below:

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[73] See David Moszkowicz, 2007, "Michael Walzer's Justification of Humanitarian Intervention: Communitarian? Cosmopolitan? Adequate?". *Leiden Journal of International Law* 8: 295.

4.6.1 Reply to the first critique:

A liberal cosmopolitan may deny that particular traditions have any value in themselves. She may argue, on the lines suggested by Taylor, for instance, that a given practice cannot be accepted as legitimate unless tested against some independent criterion of the good, in her case, the flourishing of individuals.[74] If an individual, in her exercise of reason, chooses to dissociate from a traditional way of life, that should be the end of the matter. But this need not settle the issue. Communitarians need not deny the necessity of multiple political, social and religious doctrines. They may also acknowledge the need to afford a certain degree of latitude to the individual. But this can be done even in a communitarian, or more generally, non-liberal social order. Such a social order would insist on the desirability of co-existence, and would perhaps institute a principle of tolerance, with the aim of curbing authoritarian or homogenising tendencies.

4.6.2 Reply to the second critique:

Liberals need not deny that individuals have attachments. In fact, it is part of the essence of a liberal polity that an individual find meaning in her membership of political, religious and cultural organisations. What is important for the liberal is that individuals be free to dissociate from any identity, or any end they choose. A liberal need not deny that for her freedom is only a means to the pursuit of an end. But it is vital to the liberal position that the end is not spelt out in advance. A reply to a liberal exposition of the virtue of autonomy might be that though an agent may perceive herself as making a choice, any choice is only made subject to social and environmental constraints that are, by their very nature, unchosen. Again, a liberal might

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[74] See Taylor, "Justice After Virtue", 31.

not deny this, but claim instead that the fact of our choices being so preconditioned is an unfortunate circumstance which should be done away with as far as possible.

But a convincing communitarian reply to this is still possible. The communitarian may dispute the centrality of choice in the lives of individuals. He may point out that our ethnicity, citizenship, sex and ancestry are all unchosen facts about ourselves and remain so. Despite the fact that we did not choose our ancestry or our citizenship, many of us still retain respect for, if not pride in, our national or linguistic identities.[75] For the liberal critic, this may be a barrier to establishing a genuine order of world citizens, but particularistic attachments retain their relevance, at least for the foreseeable future. Thus, the critiques suggested above still retain their bite.

## 4.7 MacIntyre On the Interminability of Moral Dispute

In *After Virtue*, Alasdair MacIntyre points out that a central feature of contemporary moral dispute is its interminability. He claims that this is so because contemporary moral thought has all but abandoned the Aristotelian notion of a *telos*, an end. Without ends to guide us on the path of moral reasoning, our moral pronouncements lose their urgency. If moral discourse must enable us to move from our current deficient state towards an ideal, the ideal must be spelt out in advance. In other words, a moral theory must be staked out in terms of some conception of the good. Reluctance or failure to do this renders moral discourse incoherent, and expressions of moral belief are reduced to mere expressions of value preferences, a tendency he terms emotivism.[76] It is to redirect us towards ends that MacIntyre stresses the notion of a practice as

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[75] See Michael Walzer, 1990, "The Communitarian Critique of Liberalism." *Political Theory* 18(1), 10.
[76] MacIntyre, *After Virtue*, 11-12. For an insightful commentary on MacIntyre, see Brad Kallenberg, 1997, *"*The Master Argument in MacIntyre's *After Virtue"*. In Nancey C. Murphy, Brad J. Kallenberg & Mark Nation

a communally defined activity with goods internal to it.[77] To deploy the concept here, we may assess the desirability of a practice with reference to its internal goods. For example, the good of sanctity is internal to the practice of prayer. A practice may be critiqued even by an outsider for its supposed failure to realise its internal goods, or for failing to keep up with the times, but the ultimate decision as to the desirability of perpetuating it must rest solely with its practitioners, provided that their autonomy is not inconsistent with respecting some universalistic requirements.

A situation admittedly might arise when the old practices lose their relevance. The pace of urbanisation and globalisation might render traditional practices redundant or impracticable. In such cases, change is an inevitability. However, forest dwellers, pastoralists, shifting cultivators and other autonomous communities, especially in pre-industrial societies, should ideally, preserve their ways of life. To the extent that they manage to do so, they will offer concrete alternatives to those who are disillusioned with mainstream social institutions. Failing this, it is imperative that they retain some control over the pace and nature of the inevitable changes they undergo. The means of ensuring this could include consultation with governments, and a measure of autonomy through decentralisation, leaving such communities relatively free to manage their own affairs independently of the state.

Despite its challenges to the universalist claims of liberalism, communitarianism need not be viewed as aspiring to supersede liberalism. In what follows, I reiterate the appeal of both universalism and particularism, with particular reference to Taylor's "liberal communitarianism", and seek the possibility of a rapprochement between these demands. [78]

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(eds.), *Virtues & Practices in the Christian Tradition: Christian Ethics After Macintyre*. Notre Dame, IN: University of Notre Dame Press.
[77] *Ibid.*, 188-89.
[78] For the term "liberal communitarianism", see Yong Huang, 1998, "Charles Taylor's Arguments for Liberal Communitarianism". *Philosophy and Social Criticism* 24 (4):79-106.

# Chapter Five: A Call to Dialogue

## 5.1 A Recapitulation

The significance of Rawls's Law of Peoples lies in affirming that all societies need not be liberal. However, he still hopes that given favourable conditions, liberalism, as the most appropriate political theory, would be universalised over time. In the course of this discussion, I hope to have raised pertinent questions as to the soundness of this universalism. While accepting the contention that there are certain human attributes which hold across societies, I have argued against the view that liberal democracy represents a universally-desirable end state, or the "end of history".[79] I have also held that despite the pressures of globalisation, human societies are still too varied to expect all of them to converge in their social and political arrangements, and that despite some universal constraints, it is ultimately up to particular communities to adjudicate the desirability and legitimacy of their own practices.

## 5.2 The Need for Rapprochement

Charles Taylor's especially nuanced position highlights the fact that communitarian and universalist concerns each have their place and are important elements of a well-functioning society. Today, few doubt the existence of at least some fundamental rights that are not open to being trumped by cultural considerations. Also, given the intensity and the pace of globalisation, exemplified by the movement of both people and ideas on a massive scale, it is clear that the idea of autonomous cultures sealed off from one another is more anachronistic than ever before. At the same time, we have millions of people who either cannot or will not

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[79] The expression was first used by Francis Fukuyama in connection with the spread of Western democracy into the formerly Communist world. See Francis Fukuyama, 1989, "The End of History?" *The National Interest* 16: 3-18
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participate in these homogenising processes, and perceive them as alien impositions, as threats to their traditional way of life. While it might be tempting to attribute their insecurity to their own inflexibility or bad faith, this is not necessarily the case. One part of the solution to ease the transition into globalisation for these people would be to promote autonomy, both between and within states. Subject to respecting the basic requirements of international law, or the law of the land, as the case may be, peoples must be free to manage their own affairs as they see fit. Thus, short of expansionist aggression and egregious violation of human rights, what is desirable should be left to particular societies to decide. This condition can be met, in principle, even by a non-liberal state committed to a comprehensive doctrine, provided it acts to ensure that minorities, or followers of non-dominant doctrines. enjoy the same freedoms as those who hold mainstream views, and that the favoured comprehensive doctrine will not be imposed on the unwilling, subject to similar forbearances by others. Further, an individual would be entitled to associate with or to dissociate from any affiliation. To this extent, I agree with the liberal stance on the freedom of association.

Perhaps one way to achieve such a state of affairs is radical decentralisation. One could be a pluralist not only at the international stage, but also within societies. A possible compromise between grafting a common national identity and allowing for cultural particularity is to leave matters such as marriage and family customs in the hands of communities, while criminal laws would still be centrally administered. While such concessions to diversity may raise justified worries of separatism, particularly in the case of a politically organised and culturally distinct group, the conservative tendency within international law, which favours maintaining the existing order except in especially urgent cases such as genocide, can be invoked to keep such tendencies at bay. States are stronger today than they have been in the past, due mainly to improved transport, communication and administrative efficiency, not to speak of technology which allows them greater control over

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individual citizens. A state that forfeits some of its universalistic claims in order to enable the subcultures within it to maintain their distinctiveness nonetheless has means of enforcing its writ when the situation demands.

As has been pointed out earlier, a society in which all peoples are allowed to observe their particular traditions and customs would not be relativistic. Such a society would be especially watchful of conceptions of the good that seek to universalise themselves, whatever they may be. It would insist that in order to adapt and live peacefully in a pluralistic environment, those who uphold a conception of the good must give up its claim to universality.

## 5.3 Some Preconditions for Dialogue

But as Taylor also points out, one of the worries about taking communitarianism too far is that it leaves no room to critique existing practices within communities.[80] In order to facilitate this, there must be at least some room for free expression, to enable the exchange of ideas about different conceptions of the good. Ideally, this will lead to the adoption of the most convincing ideas. For this purpose, the right to criticise existing social and political arrangements, exchange views, and assemble peacefully, also must be taken for granted. This is in line with the ideal of the public sphere.[81] However, in the course of these debates, special care must be taken to ensure that marginal views are represented fairly, by people who can articulate them in the most reasonable way possible. Taking such constraints seriously would help in giving all views a fair hearing.

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[80] See Taylor, "Justice After Virtue", 26.

[81] See Jiirgen Habermas, 1989, *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society,* tr. Thomas Burger with Frederick Lawrence (Cambridge, MA: The M. I. T. Press.)
 For a critical view of his use of the concept, see Nancy Fraser, 1990, "Rethinking the Public Sphere: A Contribution to the Critique of Actually Existing Democracy." *Social Text* 25/26: 56-80.
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To reinforce the point just made with an example, consider the fact that some forest-dwelling peoples have a very liberal attitude to marriage. Now, an opponent of child marriage may seek to persuade them to drop this practice. Ultimately, however, the question of its retention should ordinarily be left to the community. Similarly, such peoples may be exempted from laws mandating monogamy, and permitted to have their own customs of inheritance. The presumption must be in favour of autonomy.

## 5.4 Conclusion

My proposal may be summed up as a conservative communitarian one, with concessions to liberalism when it comes to freedom of expression and association. I believe that it suggests a credible solution to the problem of reconciling the great diversity of ways of life with the need to establish conducive circumstances for dialogue between their representatives.

The debate, after all, may reduce to a question of synthesis. Perhaps the difference between the cosmopolitan and communitarian positions is merely one of emphasis. However, I remain convinced that a world in which peoples were left free to maintain their own customs and decide controversies through internal consultative processes, subject to very few overriding requirements, would be a better world than one in which a certain conception of the good, the right or the just, no matter how theoretically attractive or plausible, is sought to be universalised, even by peaceful means.

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