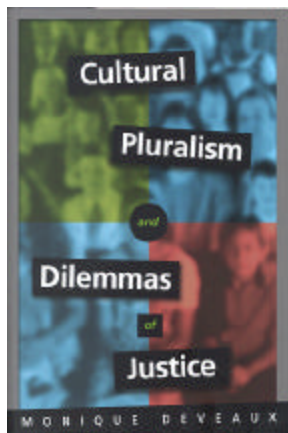




## **The Global and the Local: Reconciling Universal Human Rights and Cultural Diversity**

By Amy Eckert



**A review of Human Rights and Global Diversity edited by Simon Caney and Peter Jones. Portland, OR: Frank Cass & Co., 2001. 173 pp.**

and

**Cultural Pluralism and Dilemmas of Justice by Monique Deveaux. Ithaca: Cornell University Press, 2000. 205 pp.**

Liberal models of human rights often exalt the individual at the expense of the group. The focus on the equality of individuals jeopardizes the well being of cultural groups that sometimes require different, rather than equal, protection. The problem of preserving minority cultural identities assumes special importance in light of global transfers of information, capital, goods, and people, and the potential of these globalizing forces to destroy attachments to “local” cultural values. Human Rights and Global Diversity, a collection of essays edited by Simon Caney and Peter Jones, and Monique Deveaux’s Cultural Pluralism and Dilemmas of Justice, examine the difficulty of protecting cultural groups within the framework of universal human rights, while additionally acknowledging the unique and often fragile nature of cultural traditions.

The collection of essays found in Human Rights and Global Diversity grew out of a colloquium concerned with “the development of norms that are global in scope, and recognition and concern for the diversity of culture, belief and value to be found among humanity.” (p. 1) In attempting to promote both respect for global norms and local cultures, though, we often work at cross-purposes. The authors in this volume attempt to reconcile these two ends in such a way as to protect both the universality of human rights and dignity and a reasonable diversity of human culture.

## **Balancing Cultural Norms and Universal Principles: The Threat of Cultural Relativism**

The pursuit of these twin goals presents a special challenge in light of the danger cultural relativism poses to the protection of human rights. Cultural relativists reject the application of universal human rights standards, which they frequently characterize as reflecting Western imperialism, and that they claim conflict with cultural beliefs or principles. In seeking to protect the sanctity of these cultural beliefs and principles, particularly in cases of genuine conflicts between culturally-mandated practices and human rights practices, we may risk compromising the integrity of global human rights standards. Yet rights to participate in the cultural life of one's community<sup>1</sup> and to self-determination of peoples<sup>2</sup> are also regarded as human rights. The conundrum that emerges is how to preserve cultural norms and beliefs while protecting the universally recognized human rights of those individuals who compose cultural groups.

Several of the authors in Human Rights and Global Diversity address the question of how to reconcile global human rights standards and local cultural norms. Peter Jones attempts such reconciliation by focusing on freedom of belief in his contribution, "Human Rights and Diverse Cultures: Continuity of Discontinuity?" Some liberal scholars accept only comprehensive liberalism, which emphasizes the equality of individuals. Against this position, Jones defends the idea of diverse ethical perspectives, which may justify rights on some basis other than individual equality or may impose social responsibilities along with individual rights. Jones advocates respect for diversity of human opinion by respecting the right of each individual to freedom of belief. This two level approach separates individuals from their beliefs. While promising, this approach leaves some significant questions unaddressed, including the problem of intolerant beliefs. To tolerate beliefs indiscriminately based on the right of the holder to believe them, Jones asks us to tolerate the beliefs of those who would deny those rights to others.

At least some of the conflicts between cultural beliefs and universal human rights are illusory. In "Human Rights, Compatibility and Diverse Cultures," Simon Caney examines different types of relationships between cultural values and universal human rights. He correctly points out that many culturally based beliefs do not actually come into direct conflict with international human rights principles. Rather, the two enjoy some degree of compatibility. Caney articulates several types of relationships between human rights and ethical traditions, including:

- ❖ Incompatibility, in which human rights norms prohibit actions required by the ethical tradition in question;
- ❖ Compatibility, where ethical traditions require actions that are compatible with human rights standards;
- ❖ Convergence, where human rights norms and ethical traditions require the same actions, but for different reasons;

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<sup>1</sup> See, for example, Article 27 of the Universal Declaration of Human Rights.

<sup>2</sup> See common Article 1 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights.

- ❖ Identity, when both human rights and ethical traditions require the same conduct for similar reasons, though the reasoning may be expressed differently,
- ❖ Apparent incompatibility, when ethical traditions and human rights seem to prescribe different conduct, but these differences arise because of different circumstances, and
- ❖ Potential compatibility/convergence/identity, which arises when certain elements of ethical traditions can be developed in ways that support respect for human rights.

Only in the case of incompatibility does an actual conflict exist. In the other instances, human rights and ethical traditions are at least potentially compatible. Caney demonstrates his argument with a case study of one non-Western ethical tradition, Theravada Buddhism.

Caney contends that the Buddhist conception of well-being coincides with liberal conceptions of human rights. First, Buddhists believe that people can only bring fulfillment to themselves, and second, they emphasize emancipation. Though these ideas differ from Western liberal ideas about human rights, these values are not incompatible with human rights. Caney does not contend that Buddhist values compel respect for human rights, merely that they allow it. Still, the convergence between Buddhism and human rights possesses special significance because human rights are often criticized as being alien to traditional non-Western values. The compatibility of human rights and Buddhist principles provides concrete evidence against such claims and avenues for promoting individual human rights in culturally-sensitive ways.

Deveaux also addresses the question of balancing universal norms and cultural rights in Cultural Pluralism and Dilemmas of Justice. Deveaux sees the polarization between cultural practice and universal norms as stemming from the fundamental inability to incorporate cultural difference into prevailing theories of liberal thought. Surveying models of toleration, neutrality, liberal perfectionism, and deliberative democracy, she rejects these models in favor of her own version of deliberative liberalism.

While political theory tends to treat cultural diversity as a problem to be overcome, Deveaux seeks to fully integrate this diversity into a model of democracy that embraces difference. Before proposing her own model of deliberative liberalism, Deveaux surveys dominant models of liberalism and their resolution of the problems posed by cultural diversity. The first of these, political liberalism, sharply divides public and private life, segregating political and cultural life. This school of thought, as illustrated in the work of John Rawls,<sup>3</sup> conceives of people as individual citizens rather than as members of cultural groups. These citizens make decisions and advance their interests based on public reason. Such a model leaves no room for reasoning based on cultural values or beliefs. Political liberals, then, propose toleration as the model for dealing with cultural groups. Deveaux contemplates toleration as very limited, stating that tolerance implies “refraining from interfering with, and/or extending a kind of permission to, practices or beliefs with which they disagree.” (Deveaux, p. 43) She rejects toleration as inadequate in favor of a more robust model of respect for culturally diverse groups, as discussed more fully below.

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<sup>3</sup> John Rawls A Theory of Justice (Cambridge: Harvard University Press, 1971).

Liberal perfectionism, exemplified by the writing of Joseph Raz,<sup>4</sup> shares political liberalism's view of cultural minorities as individual citizens who shed their cultural differences when entering the political sphere. Unlike political liberals who remain neutral among different conceptions of the good, liberal perfectionists take account of their particular view of the good, including values such as personal autonomy. While this commitment to personal autonomy seems a promising mechanism for the protection of cultural diversity, Deveaux ultimately rejects liberal perfectionism as well. Liberal perfectionists condition their support for cultural diversity on the culture's support for individuals and their pursuit of the good life. Deveaux rejects this selective endorsement of cultures, arguing that some cultural minorities restrict individual freedom in the name of preserving nonliberal cultural norms as well as, in some cases, the existence of the minority group itself.

The model of deliberative democracy, based largely on the writings on Jurgen Habermas,<sup>5</sup> offers the greatest potential for incorporating cultural minorities, according to Deveaux. Unlike social contract theories, which rely on assumed consent, deliberative democracy requires actual consent arising out of discourse among individuals with differing interests, needs, and values. Nevertheless, Deveaux argues that deliberative democracy, while offering the potential to incorporate the values and needs of cultural minorities, still has some shortcomings. Discourse ethics still perceives participants as individuals and not as members of cultural minorities. Deveaux proposes to amend discourse ethics to include some individuals in a representative capacity in her alternative model, deliberative liberalism, which is discussed in greater detail below.

### **Protecting Cultural Groups**

In the presence of global norms, minority cultural groups often face actual physical extinction in addition to potential destruction of their norms, beliefs and values. Different approaches to preventing this destruction exist at the global and national levels. The authors of these two books discuss several of these various approaches.

Chris Brown's contribution to *Human Rights and Global Diversity*, "Cosmopolitanism, World Citizenship and Global Civil Society," rejects the existence of a global civil society, which is often touted as a more hospitable framework for the preservation of minority cultural identities. While these groups often find themselves marginalized in states, a global civil society could provide repressed minorities with an alternative source of human rights protection and political participation. Despite this promise, Brown argues that it is only within the North Atlantic community (coterminous with membership in the North Atlantic Treaty Organization) where a true transnational civil society exists. Other areas of the world lack the strong states that a global civil society requires. Rather than attempting to construct a global civil society, the more appropriate course of action at this point lies in a renewed focus on state-building. Once strong states emerge, a global civil society can follow.

International mechanisms for protecting human rights must inevitably favor individuals or groups. In "The Pendulum Theory of Individual, Communal and Minority Rights," Tom Hadden

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<sup>4</sup> Joseph Raz, *The Morality of Freedom* (Oxford: Clarendon Press, 1986).

<sup>5</sup> Jurgen Habermas, *Moral Consciousness and Communicative Action* (Cambridge: MIT Press, 1993).

argues that the emphasis shifts between these two poles. Prior to the creation of the League of Nations, individual rights predominated, as exhibited by the American Bill of Rights and the French Declaration of the Rights of Man. With the creation of the League of Nations and the minority rights guarantees that accompanied it, the pendulum swung toward the rights of cultural groups. The pendulum would later swing back toward individual rights with the creation of the United Nations (UN) and the flurry of human rights lawmaking that ensued. More recently, group rights have again reasserted themselves as the UN and the European Union have acted to protect cultural minorities. While declining to select an optimal point on the pendulum swing, Hadden emphasizes that an understanding of the pendulum's cyclical motion is essential to the effective protection of both individual and group rights. He likens human rights advocates' need to understand and manage these swings to economists' need to understand business cycles.

As a right of peoples rather than of individuals, the right to self-determination presents special challenges to balancing the rights of individuals with the rights of the national groups to which those individuals belong. Nationalism—the desire of groups for self-rule based on feelings of community—comprehends a wide variety of political arrangements, some of which inhibit individual liberty by prescribing practices of values inconsistent with liberal human rights. Kimberly Hutchings addresses these challenges from mainstream cosmopolitan, communitarian and post-positivist theories in “The Question of Self-Determination and its Implications for Normative International Theory.” Liberals and communitarians remain deadlocked ontologically, as liberal theorists tend to privilege the individual over the nation and, more specifically, the use of individuals as a means to an end. Support of liberals for nationalism derives from and relies on the nation's support for individual autonomy. Nationalism based on non-liberal, or anti-liberal, ideas about individual rights are therefore objectionable to liberal nationalists. Communitarians invert this relationship, arguing that the group right to nationalism sometimes takes priority over the rights of the individual.

Hutchings argues that critical theory, post-modernism, and feminism offer potential resolutions of this conflict. While favoring the Kantian ideal of the autonomous individual as an end in him or herself, critical theory challenges the conception of both the state and the nation as they appear in liberal and communitarian theory. Critical theory departs from liberal nationalism by its faith in the ability of individuals to transcend their particular identities through universal principles. While acknowledging that national identities constitute individuals, critical theorists reject this identity as exclusive. Rejecting knowledge outside of discourse, post-modernism raises an even more fundamental challenge and questions the existence of objective identities for both individuals and groups. Post-modernists challenge the constructs of states and nations as well as individuals, denying the existence of selves outside of discourse that would be entitled to self-determination. The identities of these selves, along with the obligations they owe to one another, are constructed out of discourse. Feminism presents a more complex case due to the various strands of feminist theory. In general, however, feminism generally addresses the overlay of gendered power relations on the tension between national and individual rights. Post-positivism thus challenges mainstream theory's conceptions of the possible subjects of self-determination, while informing us that “self-determination” also determines others to varying degrees.

In the final essay of Human Rights and Global Diversity, “Humanitarian Vigilantes or Legal Entrepreneurs: Enforcing Human Rights in International Society,” Nicholas Wheeler examines a

specific example of intervention to protect a cultural group: NATO's military intervention in Kosovo. NATO intervened to protect minority Albanians in Kosovo from the more dominant Serb ethnic group. Wheeler presents three models of humanitarian intervention: the *posse*, in which individual states act with U.N. Security Council authorization; the *vigilante*, which acts without authorization to enforce agreed-upon international norms, and the *norm entrepreneur*, which seeks to advance new norms. Ultimately, Wheeler asserts that NATO acted as a vigilante in Kosovo. While lacking specific authorization from the Security Council, which most legal scholars believe is legally required for humanitarian intervention, NATO was enforcing resolutions adopted by the Security Council. This vigilantism may have set a dangerous precedent for states taking the law into their own hands and will likely engender caution in the adoption of future principles.

While Wheeler has created models of international action to protect minority groups, Deveaux focuses instead on internal arrangements that might better protect cultural minorities and their values. Deveaux's model of deliberative liberalism differs from deliberative democracy by expanding the range of considerations beyond public reason. Cultural beliefs should play a role in discourse and public decision-making, though those same beliefs may prohibit the disclosure of these reasons. For example, indigenous cultures may believe that discussing their beliefs with others outside of their group is prohibited. Incorporating these cultural beliefs may mean abandoning deliberative democracy's requirement of strong consensus. Deveaux proposes replacing strong consensus with a weaker version of consensus that requires all to have a chance to present their concerns but does not require unanimity. Some minority groups, by virtue of their numbers and, perhaps, their unpopular ideas, could become "permanent minorities," effectively deprived of representation. Deveaux suggests that this problem could be rectified through altering representation or bargaining techniques. Deliberative liberalism would also recognize that some citizens possess diminished capacity for participation in discourse that leaves them marginalized vis-à-vis other groups. Deveaux believes that these modifications to deliberative democracy will deepen liberalism's appreciation for and integration of cultural diversity.

### **Reconciling Conflicts**

Ultimately none of these proposals constitutes a satisfactory explanation of how to both enforce global human rights norms while preserving cultural beliefs in the event of a genuine conflict between the two. While the principles proposed by Deveaux and the contributors to Human Rights and Global Diversity provide useful frameworks for resolving apparent conflicts, they do little to address circumstances where a genuine conflict exists between what universal human rights standards require and what cultural norms demand. Ultimately, we must resolve these conflicts in favor of universal human rights standards. To do otherwise would deprive those standards of their universalism and undermine the rights and dignities of those members of the cultural groups.

While cultural diversity undoubtedly contributes to the rich tapestry of our world, granting too much authority to cultural groups, particularly without discriminating between those that respect the human rights of their members and those that do not, risks sending us down the slippery slope of cultural relativism. Any global scheme for incorporating diversity and protecting cultural rights must include some safeguards for the protection of universal human rights. Cultural minorities must secure some measure of human rights for their members, and must provide some opportunity for

dissent. Certainly international human rights standards can be incorporated in a culturally-sensitive manner, and dissent—to the extent that it may bring about change—can play a vital role in the changes that cultures undergo over time.

It may ultimately be impossible to incorporate complete cultural diversity within the framework of liberal governance. In the cases where a genuine conflict exists between cultural principles and liberalism, resolving the conflict in favor of liberalism errs in favor of individual freedom for the members of the cultural group in question. Resolving the conflict in this way therefore provides these individuals with the greatest possible range of rights and freedoms. Resolving conflicts in favor of the individual may also ultimately benefit the cultural group. Members who have the freedom to determine the course of their lives, but choose to adhere to cultural traditions, provide the most persuasive evidence for the legitimacy of those beliefs.

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