THE JUSTIFICATION OF HUMAN RIGHTS AND THE QUESTION OF ITS CROSS-CULTURAL VALIDITY: UNIVERSAL THEORIES AND PARTICULAR PERSPECTIVES

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Efforts to justify Human Rights through an all-encompassing theory of cross-cultural validity have engrossed Western theorists. An exaggerated belief that all people think in a similar fashion and, thus, will affirm human rights as a project commonly agreed between liberal and non-liberal societies, has resulted in the absence of cultural differentiation. On one hand the East is called to surrender itself to a form of Western moral infiltration, and, on the other hand, the East raises arguments of state sovereignty and non-interference.

A West-East confrontation on the ideological level of justification is sterile, for it perpetuates unnecessary philosophical tensions and unresolved problems related to Human Rights implementation. Instead of being trapped in a vain search for a liberal philosophical justification inspired by the West, it would be more desirable to pursue a cultural emancipation by locating the humanistic core of human rights in each and every society.

1. Introduction

From the end of World War II until today, political theorists have devoted considerable attention to human rights, producing a sizable body of vigorous research and philosophical reflection. Contemporaneously numerous treaties and conventions of good faith have been signed by the majority of States. Human rights evolved as a moral doctrine the universality of which was explicitly assumed in an effort to alleviate the pain and catastrophe mankind had experienced during the second quarter of the last century. Such vast political, philosophical, and diplomatic activity would normally

ensure the unobstructed implementation of rights or, at least, secure the belief that whatever human rights violations occurred would be of a relatively small scale and easily resolved on the spot.

Far from it. Although human rights enjoy a high level of recognition as a settled norm of international relations providing nations with substantial economic and diplomatic benefits (Frost 1996: 111), nonetheless they are also subject to extensive misplacement in many parts of the world. As a result, human rights discourse tends to have a rhetorical character; one that makes them a fashionable subject in international agendas, but ultimately ineffective in practical terms.

For some, this contradictory situation results from a series of complex issues which revolve around the blurred conceptualisation and the subsequent problematic interpretation of the principle of state sovereignty, especially when this principle is used as a pretext against the enforcement of human rights rules by international instruments[1]. For others, it results from deep-seated doubts about the foundations of universal human rights[2]. Essentially, the problem may principally be rooted in the fact that moralities, and hence human rights, are inseparably linked to values and traditions of local character that have to be borne in mind on the road for a wide consensus on their implementation.

In this context, the validity of universal justification theories of human rights, as well as the degree to which these can be plausible in a world of rich cultural and moral diversity ought to be examined.

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[1] In cases like these, reference to the principle of state sovereignty prescribes that, in the face of a moral or political external intervention, countries are granted the freedom and power to decide any matter of local character. As such, it is frequently confused with cultural relativism. However, these two principles are not only different with each other; they are mutually inconsistent. For state sovereignty is a universal legal principle, whereas cultural relativism challenges the existence of such universalism (Freeman 1998: 11).

[2] Freeman used to argue favourably for a universal justification of human rights that viewed freedom and well-being, along with the principle of equal respect and concern for every person, as constitutive values of human agency (Freeman 1994), whereas in later writings he doubts the potential for such universality (Freeman 1998b: 8). Others are not so sure whether there can be a single justification of human rights and hold that a plausible list of *abstract* rights can be reached through reasonable steps from several starting points (Nickel 1987: 105).

Focus must be on the appealing, though often ignored, reality of the different cultural backgrounds from which human rights may be perceived, and also on the limited possibility that the justification of human rights can be a consensual project between West (liberal) and East (non-liberal) societies. It will be argued that reasons leading to such a lack of consensus foster relativist claims and encourage cultural dialogue activity, as far as human rights expression and implementation is concerned.

2. The Search for a Universal Justification of Human Rights

Ever since the doctrine of human rights was brought to the light, theorists have been obsessed with justifying them in relation to single, universal source, and attributing them to individuals simply by virtue of human agency. This approach emphasized that political, economic, or socio-cultural institutions could not affect the enjoyment of rights, a certainty that largely proved, and still proves, false in real world terms[3]. Efforts of an all-encompassing, universal justification of human rights are elucidated in natural law (Locke), social contract (Rawls), prudential (Gewirth), and human nature (Donnelly) theories of the Western thought.

2.1 Natural Law Theory

The tendency to secure human rights within the unwritten rules of nature has been very popular throughout the centuries. Natural Law theory, although underpinned in Sophocles and Aristotle, was first elaborated by the Stoics of the Greek Hellenistic period, and later by those of the Roman period. Natural Law, they believed, incorporated elementary principles of justice, which were embodied in nature and for this reason were unalterable and eternal. Medieval Christian philosophers put a great stress on Natural Law as

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[3] Elements of ethical universalism originate in ancient Greek Stoic philosophy, which used to see our deliberations as first and foremost deliberations about problems in particular concrete situations, not problems growing out of local or national identity that confines our moral aspirations. For an elaborate discussion on Stoic cosmopolitan ideas, see Nussbaum, M., (1997), "Kant and Stoic Cosmopolitanism", *The Journal of Political Philosophy*, Vol. 5, No. 1.

conferring certain immutable rights upon individuals as part of God's Law. Later, as feudalism declined, modern secular theories of Natural Law appeared, particularly as enunciated by Grotius. He argued that it was possible to rationalize the existence of Natural Law on a non-empirical basis by examining the axioms of geometry. The connection with mathematics demonstrated the importance of reason, of rules that did not depend on God to gain validity. Natural Law led to natural rights theory, the chief exponent of which was Locke. Elements of natural rights theory are visible in the French Declaration of Independence (1776), in the constitutions of numerous states created upon liberation from colonialism, and in the principal UN human rights documents.

The natural rights tradition seeks to explain the moral force of rights by embedding them in a system of rules which, by virtue of being natural rather than conventional, have a major moral force. Traditionally, natural rights and Natural Law had been thought of as independent of any given social or political order. Some philosophers see in Natural Law theory the thesis that the principles that determine the justice of social institutions and the rightness of actions are valid independently of their recognition by individuals or institutions (Nino 1991: 11, Simmons 1992: 88). Such independence empowered the role of natural rights to serve as external standards for the evaluation of institutions and to impose obligations on every body regardless of rank or position.

2.2 Social Contract Theory

Broadly speaking, contract theory takes its task to be the justifying reason for human rights on basis of a conception of pre-political existence, coupled with an analysis of the terms upon which political and social relations ought to be founded. For some, it is in this area that the real theories of rights are to be found; for a social contract enables all members of society to justify to one another their shared intuitions and the basic arrangements for the distribution of burdens and benefits in this society (Waldron 1984: 20). Rawls' work is considered a highly sophisticated product of the social contract tradition[4].

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[4] Rawls introduces a slightly different version of the traditional social contract theory in that the relevant agreement is not to enter a given society or to adopt a given

A social contract is a collective choice procedure mechanism for transforming the separate wills of some set of agents into a decision that represents their united will. In Rawls' contractual scheme, this mechanism develops through two components: an initial situation, which specifies the nature of the bargaining agents, the circumstances in which they are imagined to be reaching an agreement, the matters to be governed by the agreement, and the quantity of information available to agents, and a theory of rational choice. Rawls calls this initial situation an *original position*, and is convinced that it leads us to the most "appropriate principles for realizing liberty and equality once society is viewed as a fair system of co-operation between free and equal citizens" (Rawls 1992: 22), and hence to rights (Martin 1985: 25).

2.3 A Prudential Approach to Human Rights

Gewirth attempts to introduce a new version of rational justification, starting from the nature of human action and based on the belief that action and morality are strongly connected – action is the field within which all moralities are applied. His main thesis is that every agent, by engaging in action, is logically committed to the acceptance of certain evaluative judgments and ultimately to the affirmation of a supreme moral principle so that "it is possible and indeed logically necessary to infer from the fact that certain objects are the proximate necessary conditions of human action, that all rational agents logically must hold or claim that they have rights to such objects" (Gewirth 1982: 46). Action, for Gewirth, has a normative structure, which he tries to prove in three steps.

Every agent attempts, by his action, to bring about certain results that are worth aiming at or pursuing. The agent regards freedom as a necessary good, for without it he would not be able to act towards the fulfillment of his purposes and the satisfaction of his interests. This freedom implies non-interference by other agents, except insofar as such interference may help to ensure either his freedom, or the attainment of other valued purposes and his well-being. On pain of

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form of government, but to accept certain principles of social justice. The result of the agreement is not a set of obligations applying to individuals, but principles of justice applying to the basic structure of society.

self-contradiction, the agent is logically committed to accept value judgments about necessary goods, which in turn require him to accept certain judgments about rights. Since, therefore, freedom and well-being are necessary goods for his actions, the agent must logically claim that he has a right to them.

2.4 Human Nature and Rights

To the question "from where do we derive human rights?", Donnelly gives the answer that *"the very term human rights points to a source: humanity, human nature, being a person or human being"* (Donnelly 1985: 16). From this perspective, people are thought of as . sharing a common human nature that distinguishes them from other sorts of living organisms and describes them as generally beings who, by definition of being human, are entitled to rights.

3. Re-thinking the Justification of Human Rights from the Perspective of Cultural Diversity

How well have Western theories of rights served their purpose in the modern world? How well founded is the assumption that we can adequately rest on a theoretically universal grounding for human rights in respect to their full cross-cultural respect and implementation? There is probably no conclusive answer to these questions. The theories exposed certainly have been quite important for boosting human rights rhetorical discourse, but their contribution to the universal practice of human rights principles is largely debatable. After many years of abstract theorizing, it is rather the case that there is no universally agreed philosophical foundation of human rights and, given the cultural diversity of people, we should not expect to discover one (Freeman 1998b: 8).

At first sight, the grounding of human rights theories of the universalist camp are substantially weak in ensuring an egalitarian ascription of rights to persons. Natural Law theory presupposes the sufficient development of reason and rationality within the self as the vehicle to claim rights. The theory is so individualistic in scope that a *"man must have reached a level of self-consciousness which enables him to isolate himself in thought from his social environment. This presupposes a considerable capacity for abstraction"* (Macdonald 1984: 29). In plain words, it is strongly the case that only after a

certain level of development of reason has been reached, do men realize and, therefore, claim rights. Not all people are naturally equally in their intellectual abilities, however, and so not all could hope for an equal distribution of rights.

On another critique, more relative to the question of cross-cultural justification, natural rights are seen as *imaginary* on the basis that Natural Law is not constituted by a historical condition hence questioning the anthropological claim about the pre-social existence of human beings (Finnis 1980: 24, Kymlicka 1990: 60). The conclusion is that metaphysical notions that do not confer rights in the form of social recognition (Summer 1987: 116) resulting in the exclusion of a connection of rights in relation to culture as a social product of human history that shapes conditions and demands for their exercise.

The idea that there exists a constant, discernible human nature would, if proved, provide the strongest foundation for truly universal rights. Nevertheless, human nature theory relies strongly on a conception of the moral self, ignoring that this cannot be fixed and cross-culturally uniform. There is no standard human nature and, therefore, no single justification of human rights that can flourish out of it.

Although, according to Jones, Gewirth's theory rests on strong foundations and universal premises, namely the conditions of agency (Jones 1994: 100), his prudential approach to human rights is unavoidably tied up with the pragmatic situation of peoples' conflicting interests in society and, thus, points to a structural weakness, namely that right-claiming is dependent on one's bargaining power (Nickel 1987: 90). This is among Gewirth's most important problems: he gives an account of ideal moral agency, but not an explanation of how this can be moral enough to boost respect for other peoples' rights. Practically, Gewirth's theory ascribes rights to people, not in terms of being entitled to them (as with human nature theory), but being in fact able to exercise them – to have the *generic* features of agency to act (*principle of proportionality*)[5]. It is like the degree of human agency, not the socio-political context in which the individual lives, that determines the number and character of people's rights at given times. In this respect, assuming that

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[5] Gewirth characterises the rights to freedom and well-being as generic in that they are rights to have the basic features of successful action.

rationality is an intellectual feature of agency, Gewirth is open to charges similar to Locke's, like that people are naturally unequal in the possession of those features and, ultimately, in right-claiming. This is true also for individuals who fully lack the physical features of human agency and the potential for their development (disabled), giving rise to the question "isn't the agency theory unfair to those people who, against their own will, lack the abilities of action?"

While Rawls, finally, seems to be solving the problem of an equal ascription of rights through his rather egalitarian theory, the latter looks trapped in a logical contradiction located in his conception of the original position. The Rawlsian original position comprises a neutralizing mechanism that artificially puts people behind a *veil of ignorance* and deprives them of any information about their social position and status in society before reaching principles of justice. The contradiction lies in the overwhelmingly ambitious assumption that people can indeed achieve such an ideal level of *social neutrality* by being mutually disinterested and socially ignorant, whereas in other parts of Rawls's theory they are expected to remain simultaneously rational enough so as to choose principles of justice (Corlett 1991)[6].

Even if we override this logical contradiction by assuming the success of the original position in achieving consent of socially ignorant people on principles of justice, there is no evidence on how these principles will interact with, or take over pre-existed social legal norms once people restore knowledge about their social standing and become again conscious members of a given society. Additionally,

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[6] The notions of mutually disinterested people and rationality are indeed incompatible with each other. For Rawls, rationality applies to "*a simple unified agent with the powers of judgement and deliberation in seeking ends and interests*" (Rawls 1992: 50). According to that definition, rationality is an instrumental concept that considers the fact of purposive action and implies a strong conception of a knowledgeable self who realises who he is in the pursuit of his ends, and whose interests are to be fulfilled (Beatty 1982-83: 487-88). Such knowledge, however, greatly questions, let alone undermines, the impartiality of the original position. For, if individuals were to realise themselves, it would take far more knowledge than permitted by original position directives for such self-determination to be achieved. And if self-determination is attained, then it is not people behind a veil of ignorance we are talking about, but people with a great deal of knowledge about the course of their lives.

there is no guarantee that pre-socially agreed principles of justice will remain valid outside a veil of ignorance, in a society of self-interested people. In this light, Rawls upholds a theory which, as in Natural Law's case, confers imaginary principles of justice in that these have not been developed in interaction with real political and socio-cultural circumstances and, therefore, lack the status of relevant recognition.

A second objection targets more generally the character of the theories. All of them are the product of Western philosophy and thought; they appear to have deep doctrinal roots in the liberal tradition and, above all, may have many chances of success if applied on a typical Anglo-Saxon societal platform. Universalist justification theories view the contents of human rights as principally based upon immutable, liberal values that over ambitiously endow norms with a universal validity. Underneath the presumption of universality lies the exaggerated belief that the peoples of the world think in a similar fashion and that, when stripped of their cultural heritage, would be pure rational human beings to select liberal principles of rights (Renteln 1990: 50).

3.1 Cultural Relativist Objections

Cultural relativists find these assumptions extremely general and non-realistic on grounds that we, as humans, are inevitably bound to a given degree of difference arranged by culture, national peculiarities, and local social organization.

Tully symbolizes the age of cultural diversity with a wonderful sculpture, the *Spirit of Haida Gwaii*, showing a black bronze canoe the passengers of which are people and mythical creatures of different cultural backgrounds. Cultural diversity is attributed to the different ways and means people choose for the achievement of the same ends, and to the various ethical bases on which they justify them (Pawlowska 1970: 583).

This applies even if we take it that human rights are founded independently of any ethical framework and, therefore, can co-exist with all other ethical frameworks (Jones 2001). Jones' *discontinuity theory* assumes the simultaneous existence of a universal human rights moral system and of various others culturally determined systems and expects that each person would abide by two ethical frameworks: his own, and a human rights framework of equal moral

weight. Adopting such an external moral perspective secures, in Jones' view, respect for other people independently of the values they hold. Jones's conception presupposes a considerable level of moral neutrality, namely that the agent can easily step outside his own ethical framework, and cannot escape, thus, the similar objection to Rawls' original position about whether such neutrality is practically feasible and not just abstractly theoretical. By stressing the equal moral worth of the perspectives, Jones also falls into the trap of providing a principally liberal theory of rights that will not have many chances of universal success.

In a more militant fashion, relativists hold that culture is the sole source of validating moralities and seek to sustain ethical claims by appeal to the actual practices or traditions of judgment of particular social systems. Societies, it is claimed, are unique concentrations of individuals, traditions, institutions, and the circumstances with which they must cope and, hence, cannot be expected to affirm the same moral values. Cultural traditions are more suited to determine the existence and scope of rights enjoyed by individuals in a given society, simply because they manifest so wide and diverse a range of preferences, moralities, motivations, and evaluations, that no human rights principles can be said to be recognized irrespective of time and space.

For Brown,

> "individuals who make up the community are not a more or less random collection of people who happen to inhabit a particular territory at a particular time, but rather a group of people who are simultaneously the creators of community and created by it. The rights they assign each other are not the manifestation of a general moral code or the product of universal practical reason, nor are they simply the product of a political bargain; rather, they are more like reminders that the community gives itself as to what takes to be proper conduct" (Brown 1997: 50).

The assumption of a Western-tailored cultural *homogenization* that will allow human rights to be a consensual project between liberal and non-liberal societies is, thus, greatly questioned by relativists. Apart from a very broad consensus prescribing a thin universal moral code, such as the importance of human life and some abstract considerations concerning moral behaviour (An-Naim

1992: 21, Donnelly 1989: 112, Taylor 1999), there is an apparent set of peculiarities that forces us to admit a respectful validity of diverse patterns of life, religious-moral-political-social comprehensive doctrines, background justifications of values, and legal forms of enforcing these values, that could vary with good reason between societies (An-Naim 1992: 21, Rawls 1992: 12, 24, 36, Taylor 1999: 143). In response to Western morality and ethics, article 8 of the Bangkok Declaration (1993) states that

> *"While human rights are universal in nature, they must be considered in the context of a dynamic and evolving process of international norm setting, bearing in mind the significance of national and regional particularities and various historical, cultural, and religious backgrounds".*

3.2 Human Rights Values: Universal or Culture-specific?

The vast differentiation of peoples' cultures is linked to the structural components of values, their *principle* and *practice*. Principle considers values as descriptions of a common core notion of an act, sentiment, or practice described in broad and usually abstract terms to include all kinds of human activity, rather than as a culturally contextual concept. It is generally possible, therefore, to say that most cultures value a basic rule of punishing evil and establishing justice (*evil* and *justice* being themselves differently described across cultures). Cultures are committed to limiting arbitrary killing or violence and promote human co-operation and co-ordination as a good thing. In short, common values that draw upon a basic distinction between desired conditions of being alive rather than dead, or free rather than enslaved, certainly do exist.

Except from a *thin* universality of such vague moral standards, values also imply a number of locally determined implications that point, not so much to differences of polarity, but certainly to differences of spectrum and degree (Franck 1997: 605). The practice of values turns our attention to the way people contextualize these vague considerations into local cultural settings in the light of past and present economic, political, historical, and social influences.

In an empirical survey about societal values in Western and Asian contexts, Freeman has shown that the difference is not so

dramatic. *"East Asians value freedom of expression, openness to new ideas, the accountability of public officials...(and) societal harmony"*, he says (Freeman 1996: 355). There is clear evidence indicating that Asian cultures have upheld specific notions of human rights. For example, during the feudal period of Java, village people had the right to move to another territory under a new Lord when they felt that the previous one did not treat them justly. Also, among the ethnic groups of Indonesia there was the tradition of *musyawarah* supporting communal decisions that affected the life of the community. And among the *Minangkabaus* in Central Sumatra there was an old saying, *"the water becomes one through bamboo, and the word becomes one through discussion and agreement"*, which represents the classic democratic principle of public discourse and consent (Lubis 1990).

Similarly the Islamic world finds the idea of human rights compatible enough with its religious traditions, particularly because the Koran emphasizes notions of respect, justice, and mercy (Nickel 1987: 65-6), and because there are lucid ideas of freedom of expression and association, the right to elect and dismiss leaders, the right to migrate, the independence of the judiciary, and the limits on executive power (Muzaffar 1990: 136, Othman 1999: 189-90)[7].

So, it is not that Asian societies do not employ human rights ideas at all, but rather that they do not express them in a clear Western rights-language. It has to be borne in mind that whatever expressions of rights are included in Eastern cultures, these are not

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[7] Cross-cultural search for the uncovering of shared human rights values that can be upgraded into universal moral standards has been proposed by Renteln as a way to achieve a human rights consensus among differing societies (Renteln 1990: 78). Renteln's proposition has the merits of an anthropological-like approach that shows a relatively high degree of respect for specific cultures by avoiding accusations of forceful imposition of foreign moral standards onto cultural recipients unwilling or unsuitable to accept them. This approach goes the other way round to reveal values that are empirically proven to be commonly embraced by different cultural contexts, so that their upgrading into universal human rights standards cannot be denied on grounds of opposing value systems. In this respect, Renteln's theory seems to have Natural Law elements. By assuming that it is possible for people of differing backgrounds to engage in moral discourse on the basis of, at least, some common assumptions, we have to agree on some sort of *value objectivism*, of a general framework that distinguishes right-entitlement from social or moral status.

shaped in the individual form as created by influences of the Renaissance, the Reformation, capitalism, modern science, the Enlightenment, and the 19th century ideology of liberalism that covered them, but rather in the context of communities predetermined by fixed historical, cultural, national, or religious traditions that substantially lack the voluntary character of similar Western communities (Franck 1997: 603-4).

The cornerstone notion of liberal individualism inherent in the human rights tradition of the West is differently understood, if not greatly absent, in the collectivist societies of the East; for the latter lacks essentially what is widely evident in the former: a conception of the individual, not as a human being who gains his validity through the responsible fulfillment of certain well-defined courses of action within a greater *whole*, but as a human being whose actions carry the weight of personal responsibility, as a result of individual potential and creativity.

A good example that illustrates this is the way people treat religious tolerance. In a liberal, individualistic society the right to religious freedom is justified on the basis of tolerating diverse life styles, and of a notion of the autonomous individual who is free from outside interferences to choose the kind of religion that most fits his psychological needs and aspirations. In a non-liberal, collectivist society, where a specific religion is highly likely to be a national symbol, a unifying conception, or an inseparable cultural reminder, individual dissent from the established religion may be seen to pose a serious threat to the cohesion of the community, and may not be justifiable in the eyes of its members on grounds of individual autonomy when this autonomy threatens the collective. That creates a substantial distinction between liberal and non-liberal societies concerning the nature that characterizes the relationship of the individual with his rights, and hints that what could be a justifying reason for the former may not be such for the latter because the social, cultural, political context in which both operate is notably different.

For Donnelly, the difference between values' principle and practice is clearly explained by challenging the universality of human rights on three levels (Donnelly 1989: 110). There are different cultural, ethical perceptions of right and wrong (*substance*), expressed similarly in different legal, moral and cultural norms (*form*), that force us to affirm various interpretations and hierarchical structures

of rights (*interpretation*)[8]. Such explicit forms of relativism are to be traced, not only in *incompliant* Eastern societies, but also in geographical parts of the *righteous* West. In this aspect, the European Convention instruments have developed the Margin of Appreciation Doctrine (M.O.A.) in order to reconcile the need to achieve a relatively uniform European-wide standard of human rights with the demands of different cultural and socio-economic values embraced by the member states[9]. This calls for equal treatment and creates an analogous logical argument for non-Western societies in claiming respect for their particular circumstances.

4. Towards a Cultural Emancipation of Human Rights

It would be, therefore, vain to keep searching for a liberally-motivated, cross-culturally valid justification for human rights. Instead of perpetuating a vivid philosophical tension that raises suspicions of a Western moral infiltration of Eastern societies, it would be more desirable, and plausible, to accept that human rights can be argued for diversely in different cultural vocabularies. In this respect, the author is putting forward four requisites necessary for the actualization of this process.

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[8] Economically prosperous West, for example, prioritizes civil and political rights against rising East that considers the right to economic development more basic, even if this entails the limitation of peoples' other rights. The fact that economic reasons affect the practice of human rights is not to be dealt with superficially. Recent Western history has its *black pages* when slavery was called upon to carry the weight of economic development, diminishing the value and worth of human existence.

[9] Although the MOA is narrow (in the sense that local authorities cannot rely on national background and peculiarity, but bear the "burden of proof" to provide weighty reasons for the justification of human rights violations) in a range of violations like discrimination on the grounds of sex, usually the Strasbourg organs recognize a prima facie good faith of national authorities and justify state interventions in people's lives when necessary for pursuing such legitimate aims as the protection of public safety and the prevention of disorder or crime. The underlying justification for the MOA lies in the belief that national authorities are more suited than international judges to assess the requirements of public (and even private) morality in their society. See Arai, Y., (1998), "The Margin of Appreciation Doctrine in the Jurisprudence of Article 8 of the European Convention on Human Rights", *Netherlands Quarterly of Human Rights*, Vol. 16, No. 1.

Firstly culturally distinct interpretations of human rights rest on the principle of mutual respect which is thought to entail the right of non-Westerners to ground their commitment to human rights in their own cultural traditions. Secondly culturally distinct interpretations stem from respect towards rigid philosophical differences in relation to the concept of the self and its implications, in particular the western *liberal* versus the eastern *collective* concept of the self. Thirdly, awareness and tolerance towards the rich cultural variety of value systems and ways of legal enforcement in existence is required. Finally the case for culturally distinct interpretations of Human Rights rests on the empirical judgment that human rights principles are so abstractly set that interpretation in the particular circumstances which commit people is required. Consequently any moral imperialist claims will be avoided, thus ensuring better chances of success (Freeman 1998b: 16). Excluding the interaction of human rights principles from the web of cultural circumstances will prevent the flourishing of Human Rights in non-Western societies, except to the partial and often distorting degree that the governing elites of these societies have been to some extent westernized.

In the ongoing effort to provide a theoretically valid universal justification of Human Rights what is missing is an account of human rights as practice. Instead of constantly attempting the location of a universal grounding in some sort of an all-encompassing theory, the universality of human rights must be explored in terms of their actual potential for respect and implementation in different cultures. The challenge is to work towards the *indigenization* of Human Rights and their insertion within each country's own tradition and history. Cultural emancipation will ensure that Human Rights will have more chances of implementation success if grounded in the culture to which people are sentimentally attached, rather than stemming from the *benevolent* will of powerful outsiders (Freeman 1998b: 16). Welcoming different approaches to Human Rights can, in this respect, guarantee universality, enrich the intellectual debate, foster international solidarity, and complement rather than undermine Human Rights' cosmopolitan character (Tharoor 1999).

In a framework like that, the question that should monopolize our concern is not the discovery of a single, universal justifying reason of an enlightened liberal tradition, but rather how to gain universal respect and recognition towards the implementation and application of Human Rights while respecting the individual society's

local needs and socio-historical context. It should be borne in mind that "virtually any cultural heritage is morally rich enough that it can, if appropriately construed[10], under some circumstances make inspirational contributions to the struggle for Human Rights, democracy, and social justice" (Falk 1992: 54).

The proposition of culturally evolved Human Rights necessitates that it should be the community members, not corrupted governing elites or suspicious outsiders that will be the protagonists in the quest for justifying, claiming, and safeguarding rights. If a crucial side of the Human Rights debate is the political, moral, and socio-cultural status of human beings, then an account of rights must facilitate a conversation between and within cultures, rather than merely states, in the ongoing Human Rights discourse (Chesterman 1998: 98-9). The interlocutors of such conversation should represent as many community voices as possible, including the conservative and the more progressive interpreters of a culture, and should engage in a voluntary argumentation for the re-interpretation of cultural values from a perspective that views Human Rights not as a massively overwhelming dogma that has to drag by force all people in all places irrespective of particular circumstances and needs, but as a persuasive minimum standards morality that draws basic guidelines of moral behaviour to protect human dignity.

This is not to say that a cultural relativist approach to Human Rights is utterly problem-free. Violations of Human Rights can be frequently attributed to the arbitrary, doubtful, and misleading way, in which some rulers exercise their political power, and to an increasingly often misinterpretation of the structure, scope, and values of local cultures. Most Human Rights abuses are not always

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[10] It is largely true that cultural relativism ceases to be a valid proposition if the governing elites of societies artificially construct culture. There have been noticed cases in the Arab world, for example, where governments and fundamentalist groups spread propaganda against human rights, so as to distort the human rights message to serve their political and ideological ends (see Din Hassan, B., E., (2000), "The Credibility Crisis of International Human Rights in the Arab World", *Human Rights Dialogue*, Vol. 2, No. 1.). An appropriately construed culture points, therefore, to the genuine expressiveness of the sentiments of their bearers and to a cultural understanding that will flow out from the real, local, personal, and particular circumstances with which cultures deal (Rawls 1993: 56, Carrithers 1992: 110, 113, Freeman 1998c: 16).

legitimately identified with the authentic culture of societies, only with their authoritarian rulers who engage in policies that undermine the cultural values of their people (Shestack 1998: 231-2, Freeman 1998c: 7-8)[11]. Hidden behind the cliché argument of state sovereignty, cultural uniqueness, and that of non-(external) interference, intellectual, economic, and political elites often questionably retain the right to be the sole interpreters of the culture of the people over whom they rule, and use rights-language in a way that suits their particular interests, rather than conforms to standards of respect for human dignity[12].

It is obvious that no cultural emancipation of rights can stem from authoritarian contexts that silence voices and suppress the free will of people. The operation of *cultural dialogue* can only be observed in societies where basic democratic values, free citizenship and public participation in decision-making, flourish. In opposite cases, the instruments of the International Community must take "steps... with a view to achieving progressively the full realization of rights" (part 2, article 2 of the International Covenant on Economic, Social, and Cultural Rights). This may well imply that sovereignty and non-interference claims made by authoritarian rulers fail to be legally and morally valid as long as political and social freedom and the genuine expressiveness of culture are not achieved (Rawls 1993: 56), and they must be ignored, for the alleviation of suffering people is of higher importance and must be firstly pursued.

4.1   Conducting Internal Cultural Dialogue: The Case of Religious Freedom in Modern Greece

An example of internal cultural dialogue that can trigger an inside emancipation of Human Rights can be drawn from the context of

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[11] There are plenty examples where a practice that one authoritarian government names *cultural* does not turn out to be so when democratic leadership is restored.

[12] Gyandoh believes that in these cases national sovereignty simply provides a hypothetical screen, behind which nation states hide while perpetrating shameful acts of repression against individuals (Gyandoh 1990: 173). For that reason, instead of a world of sovereign states, Gyandoh preaches a rather radical form of institutional cosmopolitanism where humanity will be organised in a confederation of states with diminished authority against law-enforcing supranational instruments.

Greek reality. Ever since the free Greek state was formed in the modern world upon liberation from a four-century Turkish occupation in 1832, historically there has been a close association of the Orthodox Church with the State, resulting in the formation of a strong religious national identity and in the Constitutionally prescribed dominant position of the Orthodox religion against all other religions in Greek society[13]. This has been amplified by the collectivist construction of Greek society which draws upon norms opposite to liberal individualism; Orthodoxy is seen as a unifying symbol safeguarding the coherence of the whole. One must not only be Greek in national origin, but also a declared Orthodox Christian to be considered as a *real* Greek. The fusion of politics with religion has traditionally imposed a heavy burden on those embracing a different religious faith by either discriminating against them (usually in finding a job in high posts of the public sector, or by obstructing them from carrying out religious ceremonies, or even by denying them legal standing[14]), or by excluding them from membership to the social community as aliens to the traditional culture[15].

Phenomena of religious intolerance have launched a vivid internal cultural discourse activity the past few years as to how the right to religious freedom can be fully realized, especially in light of the fact, not only that such right is Constitutionally protected and requires respect, but also because such protection flows out as an

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[13] This association is openly characterised as *clientalist*, in that it is based on a set of mutually exchanged privileges. It is possible to suggest that political and ecclesiastical elites do not desire an institutional separation for fear of losing advantage of those privileges.

[14] Such is the case of Canea Catholic Church versus the Greek state (a case ruled at the European Court of Human Rights in Strasbourg at 16 December 1997), where the Court felt that the applicant had been prevented from taking legal proceedings in order to protect its property. The Court's ruling was based on the fact that the Orthodox Church is properly being accorded legal standing in protecting its property, and so refusal to acknowledge the legal personality of other Churches constitutes an infringement of the freedom of religion.

[15] Typical of the infringement of the right to religious freedom has also been the case "Manousakis and Others versus Greece" (European Court of Human Rights, Decision No. 59/1995/565/651). The case was about how a group of Jehovah's Witnesses were, according to an old law of 1938, denied official permission by the Ministry of Education and Religious Affairs to operate a place of worship in the early 1980's and freely practice their religion.

obligation to international Human Rights agreements to which Greece has been a passionate signatory. The conversation has been focusing on the State-Church separation as a model of institutional co-existence that will permit individuals to orient their personal preferences more freely.

4.1.1 The State, the Church, and the Argument of "Cultural Alienation"

Usually Greek traditionalists hold that a distinction of the State's and Church's functioning roles entails an alienation of the national culture (Papadopoulos 1996, Ramiotis 1997). The "cultural alienation" argument pumps up power from a distorted impression that modern Greece is identified with a single culture. While it is true that elements of traditional civilizations are unique expressions of country profiles, it would be arrogant to infer that, contrary to a widely noticed multiculturalism of modern states, there is necessarily one culture that connects people to the same practices, sentiments, or feelings. To do so would be like empowering the false notion of culture as a mighty, static, personified *entity* that injects people with its patterns upon birth, instead of being itself a social product shaped by human activity and subject to constant changes through interaction with other cultures (Carrithers 1992, Freeman 1998c, Preis 1996).

The "cultural alienation" argument raises questions as to how much Greek culture is committed to democracy. Although the largest proportion of the population is identified with Orthodoxy, there is still a number of people who are not Orthodox. At this particular point, democracy should not be seen as imposing the will of the majority, but as respecting and tolerating diverse life-styles, namely as leaving the possibility to individuals to follow their favoured religion without being discriminated against, excluded from national membership, or being socially stigmatized. The principle of majority rule, while sensible in matters that affect the public life of people, is of limited scope in matters associated with the private life of individuals.

4.1.2 The Role of the Church: Political or Social?

In a modern era of great injustices, human exploitation, and psychological violence, the Church is assumed to perform a typically

social role by spiritually alleviating people. The close association between the Greek state and the Church has, however, transfused elements of political power to the hands of those in the ecclesiastical hierarchy[16].

Political interventions of the Church are, nevertheless, quite debatable. No member of the ecclesiastical hierarchy is publicly elected and, as such, is not justified in politically representing people or replacing central political power. Moreover, in light of a traditional right-wing orientation of the Greek Church, its active participation in political affairs leads to ideological conflicts. Those who are not Orthodox and do not clap hands at Church's political slogans are possibly seen as enemies obstructing the accomplishment of national goals. This is not far from a quasi theocratic society that stigmatizes anti-conformists as *heretics* who challenge social stability and coherence. As long as Orthodoxy gains validation from its close association with the State, rather than from the unbiased feelings of the people, then not all religions are to be equally respected and the choice among them becomes more a cultural order that has to be followed rather, than the outcome of personal self-determination. From this perspective, a democratic culture is not to cripple the will of individuals, but to provide fertile ground for their personal preferences.

4.1.3 Modernization Requires Separation

The Greek state is currently on a modernization course. Generally Speaking, modernization prescribes the obvious differentiation of economic, political, and socio-religious institutions, along with a clear description of what their roles and limits should be. When such differentiation is obstructed by extinguishing the autonomous operation of an institution due to the domination of another, then

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[16] An example of ecclesiastical intervention in political affairs in the early 1990's has been the mobilization and passionate cultivation of nationalist slogans around the claim of the Scopjan community (currently Fyrom) to be named after a geographical region of North Greece (Macedonia). The ecclesiastical interference in a matter normally within the agenda of the Ministry of Foreign Affairs forced the Greek state to follow a blurred foreign policy, more like a strange mixture of historical arguments about the Hellenicity of the name "Macedonia" and nationalist slogans about how the Greek nation will not stand losing its cultural heritage.

modernization takes an authoritarian form. It is either a type of modernization as the one attempted in the former USSR, where the religious sector was subjected to the will of the State, or a reverse situation where religion dominates and penetrates all other institutions[17]. The abolition of a well-established balance among institutions leads to the abolition of essential freedoms, in our case the freedom of religion. In this respect, a State-Church separation is closely associated with the search for pragmatic religious tolerance.

5. Conclusion

This article has elaborated on three statements. First, that liberal theories struggling to ground human rights in universal premises and cross-cultural consent cannot meet their ambitious goal, as they confer ghost-rights outside the web of socio-political circumstances and fail also to take into consideration societies that are constructed around a collectivist, rather than individualistic, scheme (*Statement A*). Second, Western ignorance of cultural differences in social constructions has naturally given rise to powerful relativist positions, specifying that people's commitment to Human Rights must be grounded in their own cultures and interpreted in their own particular circumstances through internal and external public discourse and consent (*Statement B*). Nevertheless, bad versions of cultural relativism, undermining instead of upholding a cultural understanding of rights, certainly do exist in the form of authoritarian governing elites that manipulate cultural values and (mis)use the principle of state sovereignty for the sake of dubious interests (*Statement C*).

Building a formula for Human Rights that wishes to satisfy both the need for universally valid humanitarian standards and the urge to avoid forceful penetration of cultural traditions requires that we withdraw from exaggerated positions that press us to assert that

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[17] This corresponds to Franck's model showing how personal autonomy in religious matters may be affected by the position the Church holds within the socio-political structure of a given community. According to that model, the more the Church is dominant or dependent on the State, the more personal self-determination is restrained. And the more there is a clear-cut distinction of their roles, the more the individual is left free to orient his personal preferences (Franck 1997: 622).

Human Rights are either universal by being culturally ignorant, or dubiously relative by being manipulative weapons in the hands of dictators. In other words, statements "A" and "C" are both unacceptable versions of a Human Rights discourse that have to be overridden. Full attention must, on the other hand, be paid to the third option that encourages people's participation in the expression and re-negotiation of culture, and potentially views Human Rights as human dignity guarantors with a cultural furnishing.

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