

Report from the Institute for

ISSN
1067-2478

Volume 16

Number 2

PHILOSOPHY & PUBLIC POLICY

Spring

1996

School of Public Affairs • University of Maryland
College Park, Maryland 20742 • 301-405-4753

Antidiscrimination Law and Social Equality

Many and perhaps most Americans readily endorse the following propositions. (1) Part of what defines a free society is that it is none of the government's business what citizens believe and that the shaping of citizens' beliefs is not a legitimate task of a liberal state. (2) Racism, sexism, and similar ideologies are so evil and destructive of the proper workings of a free society that the state should do whatever it can to eradicate them.

The two propositions are, of course, contradictory, and ever since the Civil War antidiscrimination law has attempted to devise some accommodation between them. The approach first taken was to weaken the second principle in order to accommodate the first. This move is perhaps clearest in *Plessy v. Ferguson*, the 1896 decision in which the Fourteenth Amendment was held to permit a law that required racial segregation. The Supreme Court declared that "[t]he object of the amendment was undoubtedly to enforce the absolute equality of the two races before the law, but in the nature of things it could not have been intended to abolish distinctions based upon color, or to enforce social, as distinguished from political equality." This distinction between social and political equality, and exclusion of the former from antidiscrimination concerns, was taken for granted by the sole dissenter as well: "Every true man has pride of race," wrote Justice John M. Harlan, "and under appropriate circumstances when the rights of others, his equals before the law, are not to be affected, it is his privilege to express

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such pride and to take such action upon it as to him seems proper."

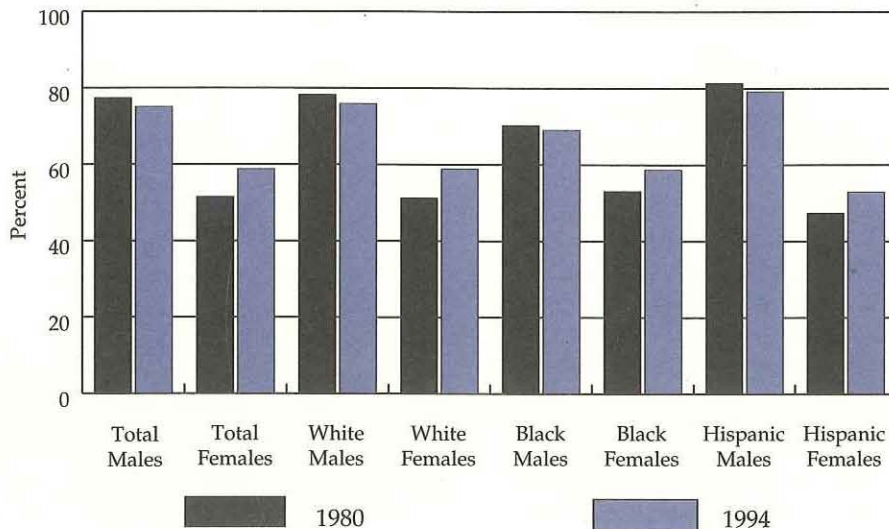
In recent years, the distinction between social and political equality that all the justices apparently took for granted in *Plessy* has been widely questioned, and many judicial and academic discussions of antidiscrimination envisage instead an increasingly ambitious project of cultural transformation. The growing tendency is to weaken the first of the two contradictory propositions in order to accommodate the second. This movement arguably began with *Brown v. Board of Education*, the case that effectively overruled *Plessy* by declaring that government-imposed segregation was unconstitutional. As Alexander Bickel observed, *Brown* relied on the argument "that the detrimental consequences of school segregation were heightened — merely heightened — when segregation had the sanction of law." The movement for social equality was accelerated by the Civil Rights Act of 1964, which involved massive government intrusion into private economic choices. It also could be seen in the critique of societal racism that the civil rights movement of the 1960s made a part of ordinary political discourse.

Expanding Demands

Today this project of cultural transformation is reflected in a broad range of demands that are made in the name of antidiscrimination. Traditional controversies over de facto school and housing segregation, school busing, and affirmative action have not abated, and they have been joined by new debates over discriminatory acts previously regarded as outside the reach of law, such as those by private clubs. It is thought that the same considerations that made segregated schools wrong also make it wrong to tell certain jokes even if (perhaps especially if) no one in the company in which they are told is likely to be offended. There is now enormous sensitivity to the often subtle racial messages conveyed by everything from movies to school curricula. Some now call for the legal suppression of racist speech.

The recent extension of antidiscrimination concerns from race to sex reaches even deeper into the workings of civil society. The recently developed law of sexual harassment, for example, is forcing a significant shift in the mores of the workplace. There is also pressure to extend the antidiscrimination project to other groups,

Percent of the Population in the Civilian Labor Force (CLF)
by Population Group, U.S. Summary, 1980 and 1994



Sources: U.S. Department of Labor, Bureau of Labor Statistics, Bulletin 2307
and unpublished data from the Current Population Survey (CPS).
Reprinted from Indicators of Equal Employment Opportunity – Status and Trends,
U.S. Equal Employment Opportunity Commission, 1995.

most controversially to lesbians and gay men, who are asking not only for protection against discrimination but also for legal recognition of their right to marry and raise children. These demands are far more modest than those being made on behalf of blacks and women, since they involve only the equality before the law that was denied to blacks in *Plessy*. Nonetheless, they elicit vociferous resistance, for they would tend to change social mores, increasing the likelihood that eventually homosexuality would be regarded as in no way inferior to heterosexuality. It is the *social* equality of gays that opponents of gay rights are primarily concerned to resist.

The Antidiscrimination Project

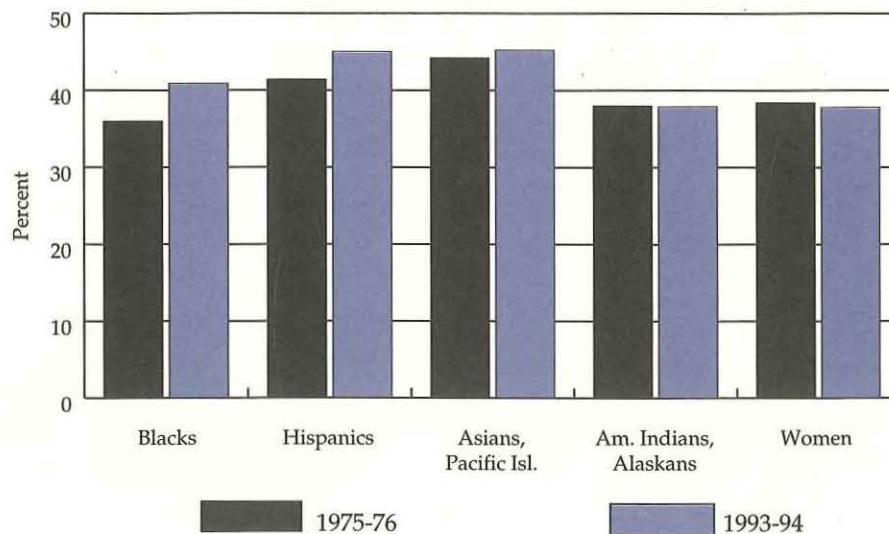
These movements for social equality increasingly involve friction not only with conservative concerns for the preservation of traditionally valued institutions but also with such core liberal goals as freedom of speech, freedom of association, and freedom of religion. The question arises whether this broadening of antidiscrimination's ambitions is justified — more specifically, whether it rests on a legitimate inference

from past cases whose proper resolution is already settled.

Discourse on antidiscrimination law today, for all the division it reflects, rests on a solid consensus. Those as far apart as Jesse Jackson and William Bradford Reynolds agree that slavery was wrong; that theories of racial inferiority were wrong; that *Plessy v. Ferguson* was wrong; that *Brown v. Board of Education* was correct; that the civil rights acts of the 1960s, which outlawed private discrimination in employment and housing, were good laws; that sex discrimination is wrong for the same reasons that race discrimination is wrong. The disagreements have to do most fundamentally with what principles underlie these agreed-upon cases. What is the evil that antidiscrimination law seeks to remedy? Is it simply a failure of impartiality on the part of government? Or is it a broader societal problem? If the latter, precisely what is the problem and why is it something that society is obligated to address?

Put baldly, the original formulation exemplified by both opinions in *Plessy* held that while the white majority had a duty to govern without racial partiality, it had no duty to stop being racist. Today many people

Minority and Women Full-Time Tenured Faculty in
Higher Education, U.S. Summary,
1975-76 and 1993-94 Academic Years



Sources: Equal Employment Opportunity Commission, *Higher Education Staff Information Reports* and U.S. Department of Education, *Integrated Postsecondary Education Data System – Fall Staff Survey*.
Reprinted from *Indicators of Equal Employment Opportunity – Status and Trends*, U.S. Equal Employment Opportunity Commission, 1995.

feel that there is such a duty, and that it extends beyond racism to forbid prejudice against women and gays. In this modern view, government efforts at institutional restructuring and ordinary citizens' condemnation of racism and other invidious beliefs are best understood as part of a single project. This project seeks to reconstruct social reality: to eliminate or marginalize the shared meanings, practices, and institutions that unjustifiably single out certain groups of citizens for stigma and disadvantage.

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What I am calling the antidiscrimination project represents a claim of enormous moral power: the demand that society recognize the human worth of all its members, that no person arbitrarily be despised or devalued. Because there is now intense controversy over attempts to reshape culture in the name of antidiscrimination, it has become important to clarify what the project is and to what extent it is justified. I begin by looking at the rationale for antidiscrimination in the paradigmatic case of race.

The Evil to be Remedied

All theories of antidiscrimination ultimately rest on the same ethical claim: the denial of the belief that some persons, because of their race, deserve less concern and respect. But there are different accounts of the specific evil that the antidiscrimination project is meant to address. Some theorists emphasize the defectiveness of the decision-making *process* when it is tainted by this false belief. Others focus on the *stigma* that the false belief imposes on black people. Still others cite *group disadvantages* that are worse than the general run of material inequality because they are the product of the false belief and help to perpetuate it.

Each of these theories focuses on one of the harms through which a stigmatizing reality perpetuates itself. But the wrong of racial oppression is reducible neither to a tainted decision-making procedure, nor to a set of stigmatic meanings, nor to a maldistribution of material goods. Rather, it is all of these. Each is necessary to the social construction of ascribed stigma, and the disruption of any one of them would help to derange the process.

It does not follow, however — and this is the weakness of each theory standing alone — that attacking any one of the parts is sufficient to destroy the whole. The decision-making process cannot be repaired with-

out sealing off the source of the contamination, which turns out to be the racism entrenched within the larger culture. Racial stigma cannot be ended without changing the social facts in which that stigma is inscribed and which in turn daily reinscribe it. Material inequalities cannot be addressed without changing the process by which they are generated and legitimated. Each of the problems described by the theories points beyond itself to a larger system of injury: the embedding, in habitual social practice, of the idea that certain classes of people are intrinsically inferior and unworthy because of their race.

Taken together, the theories suggest three reasons why the antidiscrimination project is worth undertaking. First, justice and democracy require the government to exercise a level of impartiality among citizens that can only be attained if racism and similarly invidious beliefs cease to pervade the culture from which governmental decision makers are drawn. Second, every human being has a need to be recognized as a valued, respected member of society; justification is required whenever such recognition is withheld, and no such justification is possible for racial prejudice. Third, the extreme material disadvantages that some citizens suffer, and that no one should have to endure, are reinforced and perpetuated by these prejudices.

Assaults on Tradition

The antidiscrimination project already engages many Americans who are persuaded that there are unconscious racist connotations to many meanings and practices they once took for granted, and who are working toward change. The state, too, is often engaged in such a transformative project. It is careful *not to encourage* racism, as when it (and here "it" sometimes means the judiciary) resists political demands for laws that disadvantage blacks, and it *discourages* racism, without directly relying on its coercive power, when it refuses to enforce racially restrictive covenants, or when it registers interracial marriages.

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In other cases, the state does use coercion to transform citizens' racial consciousness. Schools are desegregated against parents' wishes, and part of the justification offered for this is that desegregation will produce less racism among children. Similar justifications have been offered for the compulsory desegregation of the workplace, or of housing.

Predictably, this transformative project calls forth resistance. As soon as we begin to create a politics of social reconstruction, we find ourselves in collision with other moral considerations, equally powerful, that demand that the project be a limited one: social order, efficiency, communal solidarity, individual liberty. The defender of communal identity, for example, may argue that stigma based on ascribed characteristics is sometimes deeply rooted in traditions that give coherence to the daily life of existing communities. Any assault on those traditions risks being an assault on those communities.

Yet the antidiscrimination project derives its moral force from its understanding of the importance of community. Its goal is not to burn down the ancient halls, but to bring more people inside. To be sure, such efforts are best launched from *within* communities, by members who seek to reinterpret their tradition so as to include those who have, in the past, been wrongly excluded. It is better if a community voluntarily desegregates its schools, because that is what its own ideals require, than if a federal judge orders it to do so. Sometimes, however, communities cannot be reformed from within. When they cannot, coercive intervention from outside may be justified. Eisenhower was right to send the troops to Little Rock.

Nonetheless, the project of eradicating racism and its practices and institutions is so large that, perhaps paradoxically, it entails a limited role for the law. The extent of the problem is such that it cannot be remedied by the state alone without totalitarian control of civil society, and probably not even then. The law's proper role, therefore, is one of abetting, rather than leading, a movement for social equality.

Beyond the Paradigm Case

Because the three kinds of harms described by theories of antidiscrimination are present, and mutually reinforcing, in the lives of black people, a project of cultural reconstruction directed against racist meanings and practices is justified. These same theories provide a framework for examining the condition of other groups, such as women and gays, and for determining whether they also should be included in the antidiscrimination project.

In the case of women, there is little doubt that all three of the relevant harms are present. The applicability of the group-disadvantaging theory is the easiest to show: although discrimination against women has diminished in recent years, their economic status remains inferior to that of men, and prosperous women tend to owe their status to their economic dependence on men. The identification of social practices that express and perpetuate stigma is more difficult, since social meanings are highly contestable. But

even if traditional sex roles (unlike racist practices) are not generally agreed to entail the degradation of a group, evidence of the implicit devaluation of women in our culture is overwhelming. For example, stereotypes of women and blacks of both sexes are similar: as Sandra Lee Bartky notes, both "have been regarded as childlike, happiest when they are occupying their 'place'; more intuitive than rational, more spontaneous than deliberate, closer to nature, and less capable of substantial cultural accomplishment." Our language and institutions alike regard women as deviations from the prototypical norm of humanity. This stigmatization of women leads to their exclusion from full participation in the political sphere, and it is the source of unconscious prejudices injected into ostensibly neutral decision-making processes.

Antidiscrimination Law and Social Equality

Andrew Koppelman

This important book addresses the controversy over attempts to reshape society in the name of antidiscrimination. Andrew Koppelman discusses how to reconcile Americans' commitment to eliminating discrimination with their commitment to such values as individual liberty, merit-based access to education and employment, and communal solidarity. His book clarifies the moral principles that should guide a society in which some groups — such as blacks, women, and homosexuals — are unfairly stigmatized. Koppelman concludes his study by examining the issues raised by legal penalties for hate speech and pornography.

"This is the best guide to the philosophical and constitutional questions raised by the culture wars. Koppelman's clarity and insight set a new standard for the debate."

— Bruce Ackerman, Yale University

"This excellent study of inequality combines boldness and creativity with much careful thinking and detailed scholarship. . . . Koppelman's valuable discussion of how we should work towards equality should challenge most people and enlighten all."

— Susan Moller Okin, Stanford University

256 pages, \$32.50

Yale University Press
P. O. Box 209040
New Haven, CT 06520-9040
Tel.: 1-800-YUP-READ
FAX: 203-432-0948
Credit cards accepted

While it is a fairly straightforward task to show that discrimination based on sex falls within the ambit of the antidiscrimination project, the case of lesbians and gay men is more complicated. Unlike blacks or women, gays do not disproportionately suffer poverty, though they do experience material disadvantages such as discrimination and exclusion from the economic benefits that are accorded to married heterosexuals. The oppression of gays differs from that of blacks or women in that the characteristic form of gay oppression has been the closet. Thus, the *main* effect of extending discrimination laws to protect gays would not be to give them jobs and housing from which they have been excluded, but to allow them to stop hiding their sexuality, as they often must in order to keep their jobs and housing. As I have noted, however, the withholding of social recognition from any group requires a justification, and the availability of the closet for lesbians and gay men does not diminish this demand. The closet is equally available for religious dissenters, but it is clear that the government may not take actions that, even indirectly, stigmatize certain religions.

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Lesbians and gay men also experience the other harms described by theories of antidiscrimination. Prejudice against gays is often reflected quite overtly in political decisions affecting them, as when proposals to monitor hate crimes against gays, or to reduce the spread of AIDS through education about safe sex, are unable to win legislative approval. Although it is possible to remain celibate and hide one's homosexuality, there remain ways in which this stigma, like racial and sexual ones, is inescapable. The stigmatization of homosexuality typically has destructive effects on even the closeted gay's self-respect that are probably more severe than the analogous damage done by racism and sexism. Both blacks and women know their status from the earliest stages of their lives, and their parents typically begin teaching them to cope with that status in childhood. For gays it is different: one typically does not discover one's sexual orientation until adolescence, by which time one is likely to have internalized the prevailing stigmatization of homosexuality. As with impermissible stigma generally, government has, at a minimum, an obligation not to place its own imprimatur on this one.

Appropriate Limits

The civil liberties worries raised by the antidiscrimination project in general are now being emphasized by those who oppose extension of the project to lesbians and gay men. They argue that enforcement of antidiscrimination laws in this area deprives individuals of the liberty to choose with whom they will associate, and raises other liberal concerns as well. As we have seen, these conflicts among liberal commitments are not peculiar to gay rights, but are endemic to the entire antidiscrimination project. Such conflicts can be adjudicated persuasively not by the invocation of any abstract principle, but only by weighing the harm done by the cultural practice in question, on the one hand, against the importance of the liberty, on the other. In some cases, for example, religious freedom will constitute a limitation on what the state can do in furtherance of the project. In other cases, the project must press fairly hard against certain religious beliefs.

In the present political climate, it has become fashionable to denounce the transformative ambitions of the antidiscrimination project as the "cult of political correctness." However, even acknowledging that it would be terrible if government were to pursue the antidiscrimination project single-mindedly, we must also acknowledge how terrible it would be if government did not pursue it at all. No formula can dictate how to resolve conflicts among values when they arise. The formulation of the antidiscrimination project that I have set forth is useful because it permits the people doing the balancing to understand as fully as possible the values they must weigh against one another. Unless decision makers understand what the antidiscrimination project is and why it is important, they are unlikely to strike the correct balance between it and other values.

The Transformation of Daily Life

Some reforms necessary to the antidiscrimination project must be undertaken by large institutions, and private citizens should organize and do what they can to bring pressure on these institutions to act. But this does not exhaust our responsibilities. Each of us has the ability, and therefore some obligation, to help reshape the culture in which we live, because we, in our daily lives, *constitute* that culture. A key step in this process of change is the public identification and condemnation of routine but stigmatizing behaviors.

It should not be surprising if this activity makes many people feel self-conscious and uncomfortable. Doubtless many who engage in it are humorless, heavy-handed, dogmatic, and intolerant. Some activists have embraced foolish ideologies of racial determinism and education-as-therapy that are as dan-

gerous as the tendencies they seek to combat. The monitoring of culture is, however, absolutely indispensable if the goals of the antidiscrimination project are ever to be attained. Opponents of such monitoring charge that its purpose, even when it does not attempt to invoke the coercive power of the state, is to create a new orthodoxy. But orthodoxy is what the antidiscrimination project must create — not in the sense that some central scrutinizer should be empowered to punish deviations from it, but in the sense that on certain issues there ought to be a high degree of uniformity of opinion among the citizens. The popular press no longer debates about whether blacks are genetically closer to apes than to whites, or whether there is an international Jewish conspiracy to dominate the world. The absence of diversity of opinion on these matters is a great social good.

Ultimately, the antidiscrimination project is not just a matter for lawyers, judges, politicians, bureaucrats, academics, and other specialists. Without the active

and committed participation of ordinary people, the project must become tyrannical or fail, or (most likely) both. It is therefore important that everyone understand the harms constituted and caused by the perpetuation of unjustified stigmas and know why they need to be eliminated. The antidiscrimination project can hope to succeed only to the extent that it is an antidiscrimination movement.

— Andrew Koppelman

Andrew Koppelman is assistant professor of government at Princeton University. Adapted from *Antidiscrimination Law and Social Equality*, by Andrew Koppelman. To be published in May 1996, by Yale University Press. Copyright 1996 by Yale University. Reproduced by permission.

Value Pluralism and Political Liberalism

A free society will defend the liberty of individuals to lead many different ways of life. It will also protect a zone within which individuals will freely associate to pursue shared purposes and express distinctive identities, creating a dense network of human connections called civil society. But the boundaries of this protected zone are contested. The laws and regulations of the political community can conflict with the practices of voluntary associations.

Consider the case of *Wisconsin v. Yoder*, decided by the Supreme Court a quarter century ago. This case presented a clash between a Wisconsin state law, which required school attendance until age sixteen, and the Old Order Amish, who claimed that high school attendance would undermine their faith-based community life. The majority of the Court agreed with the Amish and denied that the state of Wisconsin had made a compelling case for intervening against their practices.

I believe that this case was correctly decided, not only from a constitutional standpoint, but also in accordance with the soundest understanding of citi-

zenship and state power in a liberal democracy. We are familiar with the moral advantages of central state power; we must also attend to its moral costs. If, as I shall argue, our moral world contains plural and conflicting values, then the enforcement of overarching public principles runs the risk of interfering with morally legitimate individual and associational practices. A liberal polity guided by a commitment to value pluralism will be parsimonious in specifying binding public principles and cautious about employing such principles to intervene in the internal affairs of civil associations. It will rather pursue a policy of maximum feasible accommodation. This imperative is clearest with respect to faith-based associations, which I will take as my model case.

The Master-Ideas of Liberal Thought

The current debate over the relation between value pluralism and political liberalism began when the British philosopher John Gray — an ardent foe of the “new liberalism” represented by John Rawls and com-

pany — extended his critique to a paradigmatic liberal, Isaiah Berlin. Berlin is famous for two master-ideas. First, he depicted a moral universe in which important values are plural, conflicting, incommensurable in theory, and uncombinable in practice — a world in which there is no single, univocal summum bonum that can be defined philosophically, let alone imposed politically. And second, he defended negative liberty, understood as the capacity to choose among competing conceptions of good or valuable lives, as the core value of liberal political thought.

*Habit, tradition, or the acceptance
of authority can be valid forms
of human flourishing.*

Gray's basic point is that these two master-ideas do not fit together entirely comfortably. The more seriously we take value pluralism, the less inclined we will be to give pride of place to freedom or autonomy ("negative liberty") as a good that trumps all others. We will recognize that lives defined by habit, tradition, or the acceptance of authority can be valid forms of human flourishing. We will therefore conclude that liberalism — understood as the philosophy of societies in which liberty or autonomy takes pride of place — enjoys only local authority. If value pluralism is correct, liberalism cannot sustain its universalist claims and emerges at best as one valid form of political association among many others.

My argument is that the fit between value pluralism and political liberalism is tighter than Gray supposes but that nonetheless his objection has important implications for our understanding of the role of deep pluralism within liberal societies. To show this, I'll first attempt to clarify the philosophical claims of value pluralism, and then draw out its political consequences.

Clarifying Value Pluralism

Value pluralism is not an argument for radical skepticism, or for relativism. The moral philosophy of pluralism stands *between* relativism and absolutism. This can be demonstrated fairly quickly:

It is not relativist. From a value-pluralist perspective, some things (the great evils of human existence) are objectively bad, to be avoided in both our individual and collective lives. Conversely, some things are objectively good (recall Stuart Hampshire on the "minimum common basis for a tolerable human life" or H.L.A. Hart on the "minimum content of natural law").

Nor is value pluralism absolutist. There are multiple goods that cannot be reduced to a common measure, cannot be ranked in a clear order of priority, and do not form a harmonious whole. There is no single conception of the good valid for all individuals: what's good for A may not be equally good for B. Nor is there one preferred structure for weighing goods. In our moral as well as material lives, there are more desirable goods than any one individual or group can possibly encompass; to give one kind of good pride of place is necessarily to subordinate, or exclude, others. Some individuals and groups may be morally broader than others, but none is morally universal.

What is the relation between value pluralism, thus understood, and the political philosophy of liberalism?

Autonomy and Diversity

If the moral philosophy of pluralism is roughly correct, then there is a range of indeterminacy within which various choices are rationally defensible. Pluralism is one premise in an argument for a protected zone of moral liberty. The argument runs as follows. Since there is no one uniquely rational ordering or combination of incommensurable values, no one could ever provide a generally valid reason, binding on all individuals, for a particular ranking or combination. And, under what might be called *the principle of rational autonomy*, a generally valid reason of this sort, while not a sufficient condition for restricting the liberty of individuals to lead a range of diverse lives, is certainly a necessary condition.

Note that this case for a zone of liberty is a claim about limits on coercive interference in individual or group ways of life. It is not an argument that each way of life must itself *embody* a preference for liberty. This distinction — liberty within ways of life versus liberty between ways of life — is part of a broader contrast.

*Some individuals and groups may be
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There are two quite different standpoints for understanding modern life, with different historical roots. The first of these, which gives pride of place to *autonomy*, is linked to what may be called the Enlightenment project — the experience of liberation, through reason, from externally imposed authority. Within this project, the examined life is understood as superior to reliance on tradition or faith, and preference is given to self-direction over any external determination of the will.

The alternative standpoint, which gives pride of place to *diversity*, finds its roots in what I shall call the Reformation project — that is, to the effort to deal with the political consequences of religious differences within Christendom. Within this project, the central task is that of accepting and managing diversity through mutual toleration within a framework of civic unity.

In my judgment, social theorists — especially liberals — go astray when they give pride of place to an ideal of personal autonomy, understood as the capacity for critical reflection and for choice guided by such reflection. The inevitable consequence is that the state takes sides in the ongoing tension between reason and faith, reflection and tradition, needlessly marginalizing and antagonizing groups that cannot conscientiously embrace the Enlightenment project.

Rightly understood, liberalism is about the protection of diversity, not the promotion of autonomy. In practice, liberal societies are unusually hospitable to critical reflection of all kinds. But that doesn't mean that the cultivation of critical reflection is a higher-order political goal: liberal societies can and must make room for individuals and groups whose lives are guided by tradition, authority, and faith.

It may be suggested that while autonomy poses clear challenges to faith, the moral philosophy of value pluralism is not straightforwardly hospitable to faith either. This is true. Some faiths purport to establish clear hierarchies of values, with universally binding higher-order purposes. Some faiths argue for sociopolitical domination, against the idea of a free civil space. Clearly value pluralism cuts against these claims.



Drawing by P. Steiner; © 1996
The New Yorker Magazine, Inc.

Still, there are zones of overlap between value pluralism and religious belief. In practice, even well-articulated faiths are characterized by internal value pluralism. And once the multiplicity of faiths is an irreversible fact, other considerations — many themselves faith-based — come into play to restrict state coercion on behalf of any single faith. This is a kind of restraint on certain religious practices, and it may well stack the deck in favor of faiths that emphasize inward conscience rather than external observance. Nonetheless, value pluralism establishes a meaningful social space for religious belief and practice.

Political Choices

As this discussion suggests, there is a distinction between pluralism at the level of individual lives and at the level of political institutions. Two differences are key. First, even if there are no binding rational principles guiding individuals' weighing of competing goods, the same may not be the case for political choices. For example, suppose you take as a basic principle of political morality that each person or group is to be treated in accordance with the strength of its valid claims. In the context of value pluralism, this warrants a strategy of compromise and balance to accommodate multiple valid claims. So understood, the politics of compromise is not an unprincipled, split-the-difference tactical pragmatism; nor is it the pursuit of conflict reduction for its own sake, a bare *modus vivendi*. Rather, it is *the right thing to do* in circumstances of value pluralism. (This is also an argument in favor of the messiness of politics and against a pernicious legalism that absolutizes competing claims and creates winner-take-all outcomes.)

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My experience dealing with policy disputes while in government reinforces my confidence in this assertion. In case after case, I encountered many conflicting arguments, each of which seemed reasonable up to a point. Each appealed to an important aspect of our individual or collective good, or to deep-seated moral beliefs. Typically, there was no way of reducing these heterogeneous values to a single common measure. Nor was there an obvious way of giving one aspect of our moral experience absolute priority over others. The most difficult choices in politics, I came to believe, are not between good and evil but between good and good.

For just this reason, value pluralism does not always yield a tranquil or straightforward decision-making process. As Philip Tetlock has argued, conflicts among valued goods generate acute discomfort and typically lead to modes of evasion — particularly when some or all of the values are (in Durkheim's sense) sacred rather than secular, or when decision makers are enmeshed in processes of accountability that make it costly to acknowledge that trade-offs must be made.

*The claim that one good should enjoy
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Still, even if we can't reduce qualitatively different claims to a common measure, there may be ways of deliberating about trade-offs among them that allow us to distinguish between more and less reasonable outcomes. For example, the claim that one good should enjoy an absolute or lexical priority over others is typically hard to sustain in a deliberative political context. In situations in which an increment of one good can be obtained only at the cost of rapidly increasing losses of other goods, most people will agree that at some point enough is enough. They also realize that circumstances alter cases. Gray sometimes uses existentialist language to characterize the politics of value pluralism. But his focus on "radical choice," unguided by reason, seems empirically dubious. There are considerations short of mathematical or logical rigor that nonetheless incline people to agree on a decision.

Narrowness and Capaciousness

We can make a second distinction between individual and social pluralism. While any particular life necessarily represents a narrowing of value — one among many possible rankings and combinations of values and goods — the same is not the case (at least not in the same way and to the same extent) for societies. Some societies may embody a collective narrowing — an individual choice writ large. Others may represent capaciousness — that is, they may encompass a range of ways of life that can neither be commensurated nor combined at the level of individuals.

Does value pluralism entail a preference for social capaciousness over social narrowing? Gray's position is that the preference for capaciousness is a matter of history rather than logical entailment; it reflects the central role of autonomy in our culture, and the fact of

(increasing) interpenetration of cultures, which in many circumstances can be halted and reversed only through tactics ranging from the coercive to the barbaric. But capaciousness, Gray argues, is not required in circumstances in which homogeneity may be preserved (through tradition, precedent, or authority) unless deliberately perturbed by outside influences.

A narrow society is one in which only a small fraction of inhabitants can live their lives in a manner consistent with their flourishing and satisfaction.

My view of the relation between value pluralism and social capaciousness is quite different. It rests on a modest proposition concerning what might be called philosophical anthropology. While it is true, as Gray suggests, that we are beings whose good is given only in part by our (generic) nature, it is also the case that the diversity of human types is part of what is given. A narrow society is one in which only a small fraction of inhabitants can live their lives in a manner consistent with their flourishing and satisfaction. The rest will be pinched and stunted to some considerable degree. All else being equal, this is an undesirable situation, and one that is best avoided. To the maximum extent possible in human affairs, liberal societies do avoid this kind of pinching. This is an important element of their vindication as a superior mode of political organization.

Gray has rightly argued that liberal polities are not neutral in their sociological effects; certain forms of life are placed on the defensive, or marginalized. Still, there is more scope for diversity in liberal societies than anywhere else. And those societies have it in their power to adopt policies that maximize the possibility of legitimate diversity.

Liberal Politics and Civic Diversity

Within liberal political orders (as in all others), there must be some encompassing political norms. The question is how "thick" the political is to be. The answer will help determine the scope of legitimate state intervention in the lives of individuals, and in the internal processes of organizing that make up civil society.

The constitutional politics of value pluralism will seek to restrict enforceable general norms to the essentials. By this standard, the grounds for national political norms and state intervention include basic order and physical protection; the sorts of goods that Hampshire, Hart, and others have identified as neces-

sary for tolerable individual and collective life; the components of shared national citizenship; and conceptions of social justice, or of worthwhile human lives, that should guide civil associations as well as public institutions. It is difficult, after all, to see how societies can endure without some measure of order and material decency. And since Aristotle's classic discussion of the matter, it has been evident that political communities are organized around conceptions of citizenship that they are required to defend.

But how much further should the state go in enforcing specific conceptions of justice, authority, or the good life? What kinds of differences should the state permit? What kinds of differences may the state encourage or support? This is, of course, a normative issue: What are the principled limits to state power? But it is also an empirical question: Must civil associations mirror the constitutional order if they are to sustain that order?

In a series of recent articles, Nancy Rosenblum has answered that question in the negative. Rosenblum asks us to look at different functions of civil associations. They can express liberty as well as personal or social identity; provide arenas for the accommodation

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of deep differences; temper individual self-interest; help integrate otherwise disconnected individuals into society; nurture trust; serve as seedbeds of citizenship; and resist the totalizing tendencies of both closed communities and state power.

It is not obvious as an empirical matter that civil society organizations within liberal democracies must be organized along liberal democratic lines in order to perform some or all of these functions. Consider recent findings reported by Verba, Schlozman, and Brady in *Voice and Equality*: religious organizations — including fundamentalist churches — serve as important seedbeds of political skills, particularly for those without large amounts of other politically relevant assets such as education and money. There is room for deep disagreement about the policies that many religious groups are advocating in the political arena. But there seems little doubt that these groups have fostered political education and engagement to an extent few other kinds of associations can match, at a time when most social forces are pushing toward political and civic disengagement.

As a general matter, then, the liberal democratic polity should not casually interfere with organizations that don't conduct their internal affairs in conformity with broader political norms. At one level, this point is obvious: I take it that we would agree, for example, that antidiscrimination laws should not be invoked to end the Catholic Church's exclusion of women from the priesthood.

But let's move to a less clear-cut example. Consider the issues raised in the case of *Ohio Civil Rights Commission v. Dayton Christian Schools, Inc.* A private fundamentalist school decided not to renew the contract of a pregnant married teacher because of its religiously based belief that mothers with young children should not work outside their homes. After receiving a complaint from the teacher, the Civil Rights Commission investigated, found probable cause to conclude that the school had discriminated against an employee, and proposed a consent order including full reinstatement with back pay.

*The imposition of state-endorsed beliefs
would threaten core functions
of diverse civil associations.*

As Frederick Mark Gedicks observes, this case involves a clash between a general public norm (nondiscrimination) and the constitutive beliefs of a civil association. The teacher unquestionably experienced serious injury through loss of employment. On the other hand, forcing the school to rehire her would

clearly impair the ability of the religious community of which it formed a key part to exercise its distinctive religious views — not just to profess them, but also to express them in its practices. The imposition of state-endorsed beliefs on such communities would threaten core functions of diverse civil associations — the expression of a range of conceptions of the good life and the mitigation of state power. In this case and others like it, a liberal politics guided by value pluralism would give priority to the claims of civil associations.

*There is a basic distinction between
the minimal content of the human good
and diverse conceptions of flourishing
above that baseline.*

Current federal legislation and constitutional doctrine reflect this priority to a considerable degree. Thus, although Title VII of the Civil Rights Act prohibits employment discrimination on the basis of religion, section 702 of the statute exempts religious organizations. In the case of *Corporation of the Presiding Bishop of the Church of Latter-Day Saints v. Amos*, decided in 1987, the Supreme Court not only upheld this accommodation in principle but also extended its reach to a wide range of secular activities conducted under the aegis of religious organizations.

This does not mean that all religiously motivated practices are deserving of accommodation. Some clearly aren't. No civil association can be permitted to engage in human sacrifice: there can be no free exercise for Aztecs. Nor can a civil association endanger the basic interests of children by withholding medical treatment in life-threatening situations. But there is a basic distinction between the minimal content of the human good, which the state must defend, and diverse conceptions of flourishing above that baseline, which the state must accommodate to the maximum extent possible. There is room for reasonable disagreement as to where that line should be drawn. But the moral philosophy of pluralism should make us very cautious about expanding the scope of state power in ways that coerce uniformity.

There are two complications for the position I have described. First, the expansion of the modern state means that most civil associations are now entangled with it in one way or another. If participation in public programs means that civil associations must govern their internal affairs by general public principles, then the zone of diversity is dangerously narrowed. There should therefore be some relaxation of the prevailing legal doctrine that the state cannot do indirectly what it is forbidden to do directly.

Second, there is a distinction between permission and encouragement. There is no requirement that the state confer benefits on civil associations that violate important public principles. In my judgment, the *Bob Jones* case (denying tax-exempt status to a segregated school) was correctly decided.

A Right of Exit

I want to conclude with a brief discussion of the conception of liberty flowing from the pluralist view. Within broad limits, civil associations may order their internal affairs as they see fit. Their norms and decision-making structures may significantly abridge individual freedom and autonomy without legitimating external state interference. But these associations may not coerce individuals to remain as members against their will. Thus there is a form of liberty whose promotion is a higher-order political goal: individuals' right of exit from groups and associations that make up civil society. This liberty will involve not only insulation from certain kinds of state interference, but also a range of affirmative state protections.

To see why this is so, we need only reflect on the necessary conditions for a meaningful right of exit. These include *knowledge* conditions, offering chances for awareness of alternatives to the life one is in fact living; *psychological* conditions, including freedom from the kinds of brainwashing practiced by cults; *fitness* conditions, or the ability of individuals to participate effectively in some ways of life other than the one they wish to leave; and *social diversity*, affording an array of meaningful options.

This last points to a background feature of the judgment I rendered in the case of Dayton Christian Schools — the existence of employment alternatives for the affected teacher. If that religious community had been coextensive with the wider society — if there were no practical exit from its arena of control — my conclusion would have to be significantly revised. The pluralist concept of liberty is not just a philosophical abstraction; it is anchored in a concrete vision of a pluralist society in which the innate human capacity for different modes of individual and group flourishing has to some significant degree been realized.

— William A. Galston

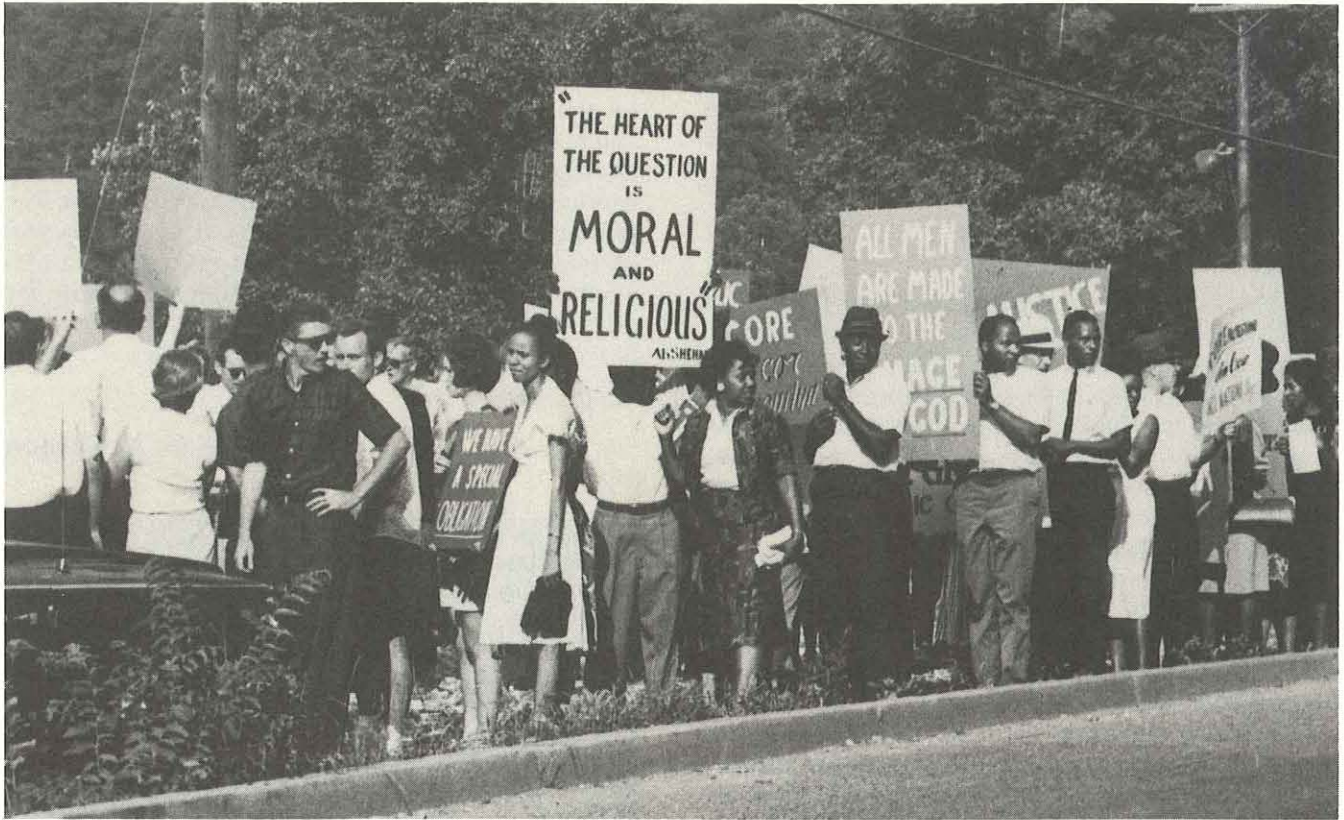
An earlier version of this essay was presented at the conference "Liberalism and Its Critics," sponsored by the Department of Philosophy of The George Washington University, March 1996. Sources: John Gray, *Post-Liberalism: Studies in Political Thought* (Routledge, 1993), and Isaiah Berlin (Princeton University Press, 1996); Stuart Hampshire, *Morality and Conflict* (Harvard University Press, 1983); H.L.A. Hart, *The Concept of Law* (Clarendon Press, 1961); Philip Tetlock, Randall Peterson, and Jennifer Lerner, "Revising the Value Pluralism Model: Incorporating Social Content and Context Postulates" (paper presented at the Eighth Ontario Symposium on Personality and Social Psychology: Values, London, Ontario, August, 1993); Nancy L. Rosenblum, "Civil Societies: Liberalism and the Moral Uses of Pluralism," *Social Research*, vol. 61, no. 3 (Fall 1994); Sidney Verba, Kay Lehman Schlozman, and Henry E. Brady, *Voice and Equality: Civic Volunteerism in American Politics* (Harvard University Press, 1995); Frederick Mark Gedicks, "Toward a Constitutional Jurisprudence of Religious Group Rights," *Wisconsin Law Review*, vol. 99 (1989).

In Defense of Enlightenment Liberalism

Professor Galston, in his account of value pluralism, develops and defends a form of liberalism rooted in what he calls the "Reformation project." The central value of the project is diversity and its guiding principle is that laws and political institutions should accommodate as far as feasible the existing diversity of values in society. Galston contrasts this approach with that of Enlightenment liberalism, which takes as its central value autonomy and has as its guiding principle

the idea that laws and political institutions should foster maximum equal autonomy for all individuals.

Galston's objections to Enlightenment liberalism stem from his belief that it unjustifiably takes sides in various cultural and ethical disagreements found in liberal societies. For example, Enlightenment liberalism would put the power of the state behind the advocates of reason in their disagreement with the defenders of faith or tradition. It would be antagonistic to certain



Civil rights demonstrators, August 1963. Photo archives of the Baltimore News-Post. Special Collections, University of Maryland College Park Libraries. Reprinted with permission of the Hearst Corporation.

communities of faith — such as the Amish — and to civil institutions organized around traditional gender roles — such as the Dayton Christian Schools.

Galston is troubled by such antagonism: he believes that it impedes persons in their efforts to live their lives “in a manner consistent with their flourishing” and argues that no sufficiently good reason exists for such interference. In his view, the best form of liberalism maximally accommodates civil institutions organized around illiberal principles, so long as those institutions do not fall below some minimal moral threshold.

In response to Professor Galston, I will defend a form of Enlightenment liberalism and offer criticisms of certain aspects of his version of liberalism. My plan is as follows. First, I will sketch an account of the human good that grounds the centrality of autonomy and makes clear the role of value pluralism within Enlightenment liberalism. Second, I will formulate and criticize an assumption that is shared by Galston with some — but not all — forms of Enlightenment liberalism. Third, I will argue that Enlightenment liberals can and should acknowledge that compromise with illiberal elements in society is sometimes the most morally

defensible course of action. Fourth, I will point out some problems in the way Galston analyzes certain forms of injustice, such as gender and racial discrimination, and suggest how these problems might be overcome.

Autonomy and the Human Good

As Galston rightly says, autonomy is a central value of Enlightenment liberalism. But is granting such a status to autonomy simply some arbitrary Enlightenment stipulation, or are there good reasons for it?

I maintain that there are good reasons for it and that those reasons stem from the connection of autonomy to the individual's good — to his or her flourishing, in Galston's Aristotelian phrase. Two theses make the connection: (1) To be autonomous is to live a life one has reasonably judged to reflect one's good. (2) What is good for a human being is what she or he would freely choose in the light of informed and reasoned reflection.

The “objective goods” to which Galston alludes are so because virtually everyone would choose them under conditions of informed and reasoned reflection.

Of course, reflection is never fully informed and rarely entirely reasoned. But even in our relatively ignorant and imperfectly rational condition, we can be fairly confident that our current endorsement of any number of goods — from physical health to social recognition — would survive even the most informed and rational reflection.

We can also see from this account of the good that knowledge, rationality, and freedom of choice — the values at the heart of the ideal of autonomy — are goods of fundamental importance: they are essential to the conditions that determine what counts as an individual's flourishing.

Knowledge, rationality, and freedom of choice — the values at the heart of the ideal of autonomy — are goods of fundamental importance.

Moreover, given Galston's premise of the diversity of human types, this account of the good leads quite readily to value pluralism. In the context of my account, the premise amounts to the idea that different persons would choose very different types of life, with different mixes and priorities of goods, were they free to choose under conditions of informed and reasoned reflection.

Galston is quite right, then, to object to a "narrow society" in which many members are unnecessarily "pinched and stunted" because they are prevented from living lives in which they can flourish. Enlightenment liberals need not dissent from Galston's judgment on that score, nor need they endorse "homogenizing public principles" that demand all civil associations exemplify some single model of the good life. Enlightenment liberals will insist, though, that an individual's flourishing is a function of his or her autonomous choices, and they will see it as a central responsibility of the liberal state to promote the conditions under which each adult has the equal and fair opportunity to develop and exercise autonomous choice.

Reason and Faith

Many Enlightenment thinkers assumed that once individuals were in a position to exercise their autonomy, they would repudiate in a wholesale way social tradition and religious faith. Ironically, Galston seems to make that assumption as well. He argues that when Enlightenment liberals give "pride of place" to autonomy with its dimension of critical reflection, "[t]he inevitable consequence is that the state takes sides in the ongoing tension between reason and faith, reflec-

tion and tradition." But this opposition of reason and faith, reflection and tradition is oversimplified, and some important Enlightenment thinkers — notably Kant — rejected it. Kant's entire epistemology was devoted to using reason to exhibit the limits of reason and thereby make room for faith.

My own view on the conflict of reason and faith is somewhat different from Kant's, though it shares his idea that there is no necessary antagonism. Central to my view is the idea that, for some people, religious faith would survive critical reflection, but for others, it would not. These different outcomes for different persons are a consequence of the diversity of human types and the epistemic limitations under which we all operate. Unlike Peirce and Habermas, I don't believe that our disagreements about truth and reality would invariably give way to universal consensus if only we inquired or engaged in uncoerced conversation long enough. What we end up believing depends too much on what we started out believing, and we start out too far apart to have much confidence in general convergence.

In any event, it is a mistake to think that a state that promoted critical reflection and autonomy would be one which was ipso facto hostile to faith as such. Granted that such a state would be antagonistic to those forms of faith that could not survive free, critical reflection, but those varieties of faith have no claim against society to have it accommodate them to the maximum feasible extent. This does not mean that the state should outlaw all such faiths or otherwise coerce their adherents into relinquishing them. Nor does it mean that the state should try to coerce people into critical reflection or prohibit them from choosing lives unreflectively. Galston is certainly correct that persons who have chosen their faiths without critical reflection can and do find meaning and value in their lives, and it would be folly for the state to attempt generally to override their choices in the name of autonomy. The result of such coercive efforts would be neither autonomy nor flourishing but rather undue misery.

It is a mistake to think that a state that promoted critical reflection and autonomy would be one which was hostile to faith as such.

But it is one thing for the state to try to override the unreflective choices that people have made. It is quite another for it to ensure that its members have genuine access to the resources and opportunities needed to develop and exercise their capacities for critical reflection and choice, including a suitable education, the fair

and equal opportunity to earn a livelihood, and the basic legal right to a broad zone of individual liberty. If some adults choose to avoid exercising their autonomy under such conditions, then the state should not "force them to be free." On that point Galston and I are in agreement. The question is whether it is legitimate for the state to adopt policies reasonably calculated to secure for all persons the conditions necessary for the development and exercise of their capacity for autonomy. Galston's liberalism seems to entail that such policies mean that the state has taken sides unjustifiably in disputes over the value of autonomy. Yet, so long as the state avoids forcing adults to be free, it seems to me that such policies are not only legitimate but a fundamental responsibility of the liberal state.

*The state has the responsibility
to provide an education that
fosters critical reflection.*

It should be noted that Galston does insist that the state secure for individuals a meaningful right to exit from their civil associations and that the conditions he enumerates for such a right overlap to a substantial degree with those of autonomy. Knowledge of alternative modes of life, freedom from brainwashing, and similar conditions not only serve the individual's right to opt out of her civil associations; they serve her autonomy as well. But Enlightenment liberals would find wanting Galston's efforts to justify his insistence that the state secure these conditions and would judge as unduly narrow the set of conditions implied by his justificatory approach.

Galston's justification would point to the connection between the exit right and diversity. The right serves to promote maximum diversity by releasing individuals from the clutches of civil associations whose norms they no longer are willing to affirm. Individuals are thus free to form new associations organized around different norms, thereby increasing social diversity.

This line of justification implies that the conditions for an exit right should be tailored to maximize diversity. Freedom from brainwashing is needed for society to enjoy maximum diversity, and so it is included as a condition. But assuming (as Galston does) that an education fostering critical reflection is not needed to maximize diversity, then it would be omitted from the conditions for a meaningful right of exit and the state would have no responsibility to provide it.

In contrast, Enlightenment liberalism would count such an education as one of the conditions for autonomous choice and assert that autonomy is not to be sacrificed for diversity's sake. The state has the responsibility to provide an education that fosters criti-

cal reflection and, so far as diversity is concerned, the chips should be allowed to fall where they may. Contrary to Galston, a diversity that cannot survive critical scrutiny is one that does not merit protection from the autonomous choices of individuals.

Principled Compromise

Galston insists that compromise can be principled and right, not simply the political coward's way out of a difficult situation. I agree completely. What I would like to show is that there is no inconsistency between such a view of compromise and Enlightenment liberalism.

Let us begin by distinguishing between first-order principles of justice that tell us what is ideally just and second-order principles that tell us when and how to depart from the first-order principles in the face of the fact that there are people who conscientiously disagree with the first-order principles. Such second-order principles are at the heart of principled political compromise, and in anything like the conditions of modern life, no reasonable approach to politics and law can do without them.

The endorsement of second-order principles of compromise is as compatible with Enlightenment liberalism as it is with Galston's. Endorsing autonomy as a privileged value at the level of first-order principles is not incompatible with second-order principles mandating the accommodation of persons who reject the privileged status of autonomy. And sensible Enlightenment liberals will accept the need to accommodate their first-order principles to the fact that there are other members of society who conscientiously reject those principles and have built important parts of their lives — perhaps even their entire lives — around illiberal conceptions of the good and the right.

*A diversity that cannot survive
critical scrutiny is one that does not
merit protection from the
autonomous choices of individuals.*

For example, Enlightenment liberals could consistently argue that the outcome in *Yoder* is a principled and defensible compromise with the illiberalism of the Amish community. Of course, Enlightenment liberals could also argue the opposite, if they endorsed less accommodating second-order principles of compromise. I do not think that Enlightenment liberalism per se dictates a specific outcome in this case. The point I wish to stress here is that, whether they endorse or reject accommodation in the *Yoder* case, Enlightenment

liberals can and should make room for some principled compromise in some cases involving those who reject first-order liberal principles.

An insistence on principled compromise can and should be combined with a view that obligates the state to take sides against certain illiberal practices and institutions.

This insistence on principled compromise is not to be equated with Galston's insistence on the maximum accommodation of illiberal institutions and practices within civil society that are above a certain minimal threshold. For Enlightenment liberalism, an insistence on principled compromise can and should be combined with a view that obligates the state to take sides against certain illiberal practices and institutions, even when those practices and institutions do not fall below Galston's minimal moral threshold. In contrast, maximum accommodation requires state neutrality with respect to all practices and institutions of civil society above the threshold. In order to appreciate this difference between Enlightenment and Galstonian liberalism, let us turn to Galston's approach to civil institutions that practice forms of discrimination regarded by us liberals as unjust.

The Third Tier

Galston favors a two-tiered approach for determining the policies that the state may legitimately adopt toward existing civil institutions and practices. Any practice that falls below a threshold of minimal moral acceptability is subject to prohibition, on his account, but anything above that level must be maximally accommodated by a state that avoids taking sides against it. In effect, Galston is claiming that a policy of zero tolerance is right for what falls below the threshold and maximum tolerance is required for what stands above. Human ritual sacrifice falls below and so is rightly outlawed. But, for Galston, the discriminatory employment practices of the Dayton Christian Schools are above and so should be tolerated.

I believe that this two-tiered model is inadequate for dealing with certain serious and systemic injustices in current society that do not fall below Galston's minimum moral threshold but which the state should oppose. Many forms of gender injustice fit this category, including gender discrimination in employment. Such discrimination is not at all in the same moral category as human sacrifice, but it does impose substantial and unfair disadvantages on a considerable portion of the population. On my version of

Enlightenment liberalism, the state is not required to accommodate it maximally: it should take sides against such discriminatory practices, and in taking sides the state need not refrain from outlawing discrimination by civil institutions. After all, discrimination by such institutions can be a significant part of a broader web of discriminatory practices that diminish the opportunities and life-prospects of certain groups in substantial and unfair ways.

For example, it is reasonable to think that gender discrimination in employment is sufficiently widespread that, in the aggregate, it has seriously diminished the employment opportunities of women across society. Under such conditions, it seems to me that the state is perfectly justified in outlawing the discriminatory employment practices of the Dayton Christian Schools. One can, of course, dispute whether the tendency to discriminate in employment on the basis of gender is really all that widespread, but Galston's two-tiered model seems to bar the state from applying its antidiscrimination laws to civil institutions, so long as gender discrimination is above the minimal moral threshold. And it seems to me that gender discrimination in employment, no matter how widespread it is, is not at all in the same moral category as human sacrifice.

I agree with Galston that we liberals should accommodate practices and institutions we regard as unjust, in light of the fact that others conscientiously regard those practices as right. But liberals should not necessarily accommodate such practices to the maximum feasible extent. This is where the two-tiered model becomes inadequate and we need at least one more tier.

The additional tier would contain unjust practices that should be accommodated to some degree but not maximally. The state would rightly take sides against these practices at the same time that it extends some accommodation to those who endorse the practices. There is no simple or mechanical way to determine when a practice fits into this third tier, and a practice that falls into the tier at one point in history may not at another.

Discrimination by civil institutions can be a significant part of a broader web of discriminatory practices.

That said, it is clear to me that practices discriminating against women on the basis of their gender, or against anyone on the basis of race or sexual orientation, do fall into the third tier at present. It is legitimate for the state to outlaw such discrimination in both

public and private employment, but it is also right for the state to accommodate to a degree civil institutions that assign women a subordinate status or otherwise unfairly discriminate on the basis of gender, race, or sexual orientation. For example, churches that exclude the ordination of women are not legally prohibited, nor should they be. Even if such exclusions would not exist in a world of perfect gender justice, any effort to prohibit them would be indefensible. But the indefensibility of such a policy should not lead us to conclude that the state should avoid taking sides in the dispute between traditionalists and proponents of gender equality. The state has legitimately taken sides with the proponents.

When, if, and how existing injustices are to be accommodated is a political problem of the highest importance. Professor Galston has spoken eloquently and insightfully of the need for principled accommo-

dation with those whose views about justice we liberals regard as seriously mistaken. I have spoken, less eloquently but — I hope — no less cogently, of the liberal state's obligation to take sides against injustice even as it must make principled accommodations with those who conscientiously dissent from a liberal conception of justice.

— Andrew Altman

Andrew Altman, associate professor of philosophy at The George Washington University, is the author of *Arguing about Law: An Introduction to Legal Philosophy* (Wadsworth, 1996). An earlier version of this essay was presented at the conference "Liberalism and Its Critics," sponsored by the Department of Philosophy of The George Washington University, March 1996.

"Asian Values" and the Universality of Human Rights

Orientalist scholarship in the nineteenth century perceived Asians as the mysterious and backward people of the Far East. Ironically, as this century draws to a close, leaders of prosperous and entrepreneurial East and Southeast Asian countries eagerly stress Asia's incommensurable differences from the West and demand special treatment of their human rights record by the international community. They reject outright the globalization of human rights and claim that Asia has a unique set of values, which, as Singapore's ambassador to the United Nations has urged, provide the basis for Asia's different understanding of human rights and justify the "exceptional" handling of rights by Asian governments.

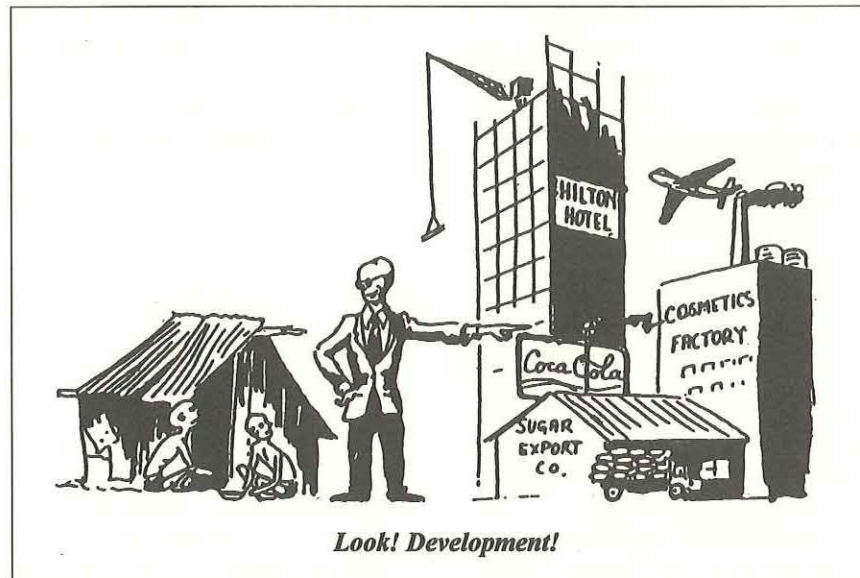
Is this assertion of "Asian values" simply a cloak for arrogant regimes whose newly gained confidence from rapidly growing economic power makes them all the more resistant to outside criticism? Does it have any intellectual substance? What challenges has the "Asian values" debate posed to a human rights movement committed to globalism?

Though scholars have explored the understanding of human rights in various Asian contexts, the concept of "Asian values" gains political prominence only when it is articulated in government rhetoric and offi-

cial statements. In asserting these values, leaders from the region find that they have a convenient tool to silence internal criticism and to fan anti-Western nationalist sentiments. At the same time, the concept is welcomed by cultural relativists, cultural supremacists, and isolationists alike, as fresh evidence for their various positions against a political liberalism that defends universal human rights and democracy. Thus, the "Asian values" debate provides an occasion to reinvigorate deliberation about the foundations of human rights, the sources of political legitimacy, and the relation between modernity and cultural identity.

What challenges has the "Asian values" debate posed to a human rights movement committed to globalism?

This essay makes a preliminary attempt to identify the myths, misconceptions, and fallacies that have gone into creating an "Asian view" of human rights. By sorting out the various threads in the notions of "cultural specificity" and "universality," it shows that



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the claim to "Asian values" hardly constitutes a serious threat to the universal validity of human rights.

Defining the "Asian View"

To speak of an "Asian view" of human rights that has supposedly emanated from Asian perspectives or values is itself problematic: it is impossible to defend the "Asianness" of this view and its legitimacy in representing Asian culture(s). "Asia" in our ordinary language designates large geographic areas which house diverse political entities (states) and their people, with drastically different cultures and religions, and unevenly developed (or undeveloped) economies and political systems. Those who assert commonly shared "Asian values" cannot reconcile their claims with the immense diversity of Asia — a heterogeneity that extends to its people, their social-political practices and ethnic-cultural identities. Nonetheless, official statements by governments in the region typically make the following claims about the so-called "Asian view" of human rights:

Claim I: Rights are "culturally specific." Human rights emerge in the context of particular social, economic, cultural and political conditions. The circumstances that prompted the institutionalization of human rights

in the West do not exist in Asia. China's 1991 White Paper stated that "[o]wing to tremendous differences in historical background, social system, cultural tradition and economic development, countries differ in their understanding and practice of human rights." In the Bangkok Governmental Declaration, endorsed at the 1993 Asian regional preparatory meeting for the Vienna World Conference on Human Rights, governments agreed that human rights "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 peculiarities and various historical, cultural, and religious backgrounds."

Claim II: The community takes precedence over individuals. The importance of the community in Asian culture is incompatible with the primacy of the individual, upon which the Western notion of human rights rests. The relationship between individuals and communities constitutes the key difference between Asian and Western cultural "values." An official statement of the Singapore government, *Shared Values* (1991), stated that "[a]n emphasis on the community has been a key survival value for Singapore." Human rights and the rule of law, according to the "Asian view," are individualistic by nature and hence destructive of Asia's social mechanism. Increasing rates of violent crime,

family breakdown, homelessness, and drug abuse are cited as evidence that Western individualism (particularly the American variety) has failed.

Claim III: Social and economic rights take precedence over civil and political rights. Asian societies rank social and economic rights and "the right to economic development" over individuals' political and civil rights. The Chinese White Paper (1991) stated that "[t]o eat their fill and dress warmly were the fundamental demands of the Chinese people who had long suffered cold and hunger." Political and civil rights, on this view, do not make sense to poor and illiterate multitudes; such rights are not meaningful under destitute and unstable conditions. The right of workers to form independent unions, for example, is not as urgent as stability and efficient production. Implicit here is the promise that once people's basic needs are met — once they are adequately fed, clothed, and educated — and the social order is stable, the luxury of civil and political rights will be extended to them. In the meantime, economic development will be achieved more efficiently if the leaders are authorized to restrict individuals' political and civil rights for the sake of political stability.

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Claim IV: Rights are a matter of national sovereignty. The right of a nation to self-determination includes a government's domestic jurisdiction over human rights. Human rights are internal affairs, not to be interfered with by foreign states or multinational agencies. In its 1991 White Paper, China stated that "the issue of human rights falls by and large within the sovereignty of each state." In 1995, the Chinese government confirmed its opposition to "some countries' hegemonic acts of using a double standard for the human rights of other countries . . . and imposing their own pattern on others, or interfering in the internal affairs of other countries by using 'human rights' as a pretext." The West's attempt to apply universal standards of human rights to developing countries is disguised cultural imperialism and an attempt to obstruct their development.

Elsewhere and Here

In this essay I address the first three claims that make up the "Asian view," particularly the argument that rights are "culturally specific." This argument implies that social norms originating in other cultures should not be adopted in Asian culture. But, in prac-

tice, advocates of the "Asian view" often do not consistently adhere to this rule. Leaders from the region pick and choose freely from other cultures, adopting whatever is in their political interest. They seem to have no qualms about embracing such things as capitalist markets and consumerist culture. What troubles them about the concept of human rights, then, turns out to have little to do with its Western cultural origin.

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turns out to have little to do
with its Western cultural origin.*

In any case, there are no grounds for believing that norms originating *elsewhere* should be inherently unsuitable for solving problems *here*. Such a belief commits the "genetic fallacy" in that it assumes that a norm is suitable only to the culture of its origin. But the origin of an idea in one culture does not entail its unsuitability to another culture. If, for example, there are good reasons for protecting the free expression of Asian people, free expression should be respected, no matter whether the idea of free expression originated in the West or Asia, or how long it has been a viable idea. And in fact, Asian countries may have now entered into historical circumstances where the affirmation and protection of human rights is not only possible but desirable.

In some contemporary Asian societies, we find economic, social, cultural, and political conditions that foster demands for human rights as the norm-setting criteria for the treatment of individual persons and the communities they form. National aggregate growth and distribution, often under the control of authoritarian governments, have not benefited individuals from vulnerable social groups — including workers, women, children, and indigenous or minority populations. Social and economic disparities are rapidly expanding. Newly introduced market forces, in the absence of rights protection and the rule of law, have further exploited and disadvantaged these groups and created anxiety even among more privileged sectors — professionals and business owners, as well as foreign corporations — in places where corruption, disrespect for property rights, and arbitrary rule are the norm. Political dissidents, intellectuals and opposition groups who dare to challenge the system face persecution. Meanwhile, with the expansion of communications technology and improvements in literacy, information about repression and injustice has become more accessible both within and beyond previously isolated communities; it is increasingly known that the notion of

universal rights has been embraced by people in many Latin American, African, and some East and Southeast Asian countries (Japan, South Korea, Taiwan, and the Philippines). Finally, the international human rights movement has developed robust non-Western notions of human rights, including economic, social, and cultural rights, providing individuals in Asia with powerful tools to fight against poverty, corruption, military repression, discrimination, cultural and community destruction, as well as social, ethnic, and religious violence. Together, these new circumstances make human rights relevant and implementable in Asian societies.

Culture, Community, and the State

The second claim, that Asians value community over individuality, obscures more than it reveals about community, its relations to the state and individuals, and the conditions congenial to its flourishing. The so-called Asian value of "community harmony" is used as an illustration of "cultural" differences between Asian and Western societies, in order to show that the idea of individuals' inalienable rights does not suit Asian societies. This "Asian communitarianism" is a direct challenge to what is perceived as the essence of human rights, i.e., its individual-centered approach, and it suggests that Asia's community-centered approach is superior.

However, the "Asian view" creates confusions by collapsing "community" into the state and the state into the (current) regime. When equations are drawn between community, the state and the regime, any criticisms of the regime become crimes against the nation-state, the community, and the people. The "Asian view" relies on such a conceptual maneuver to dismiss individual rights that conflict with the regime's interest, allowing the condemnation of individual rights as anti-communal, destructive of social harmony, and seditious against the sovereign state.

*What begins as an endorsement of
the value of community and social harmony
ends in an assertion of the supreme status
of the regime and its leaders.*

At the same time, this view denies the existence of conflicting interests between the state (understood as a political entity) and communities (understood as voluntary, civil associations) in Asian societies. What begins as an endorsement of the value of community and social harmony ends in an assertion of the supreme status of the regime and its leaders. Such a regime is capable of dissolving any non-governmental

organizations it dislikes in the name of "community interest," often citing traditional Confucian values of social harmony to defend restrictions on the right to free association and expression, and thus wields ever more pervasive control over unorganized individual workers and dissenters. A Confucian communitarian, however, would find that the bleak, homogeneous society that these governments try to shape through draconian practices — criminal prosecutions for "counterrevolutionary activities," administrative detention, censorship, and military curfew — has little in common with her ideal of social harmony.

*Free association, free expression,
and tolerance are vital to the
well-being of communities.*

Contrary to the "Asian view," individual freedom is not intrinsically opposed to and destructive of community. Free association, free expression, and tolerance are vital to the well-being of communities. Through open public deliberations, marginalized and vulnerable social groups can voice their concerns and expose the discrimination and unfair treatment they encounter. In a liberal democratic society, which is mocked and denounced by some Asian leaders for its individualist excess, a degree of separation between the state and civil society provides a public space for the flourishing of communities.

A False Dilemma

The third claim of the "Asian view," that economic development rights have a priority over political and civil rights, supposes that the starving and illiterate masses have to choose between starvation and oppression. It then concludes that "a full belly" would no doubt be the natural choice. Setting aside the paternalism of this assumption, the question arises of whether the apparent trade-off — freedom in exchange for food — actually brings an end to deprivation, and whether people must in fact choose between these two miserable states of affairs.

When it is authoritarian leaders who pose this dilemma, one should be particularly suspicious. The oppressors, after all, are well-positioned to amass wealth for themselves, and their declared project of enabling people to "get rich" may increase the disparity between the haves and the have-nots. Moreover, the most immediate victims of oppression — those subjected to imprisonment or torture — are often those who have spoken out against the errors or the incompetence of authorities who have failed to alleviate

deprivation, or who in fact have made it worse. The sad truth is that an authoritarian regime can practice political repression and starve the poor at the same time. Conversely, an end to oppression often means the alleviation of poverty — as when, to borrow Amartya Sen's example, accountable governments manage to avert famine by heeding the warnings of a free press.

One assumption behind this false dilemma is that "the right to development" is a state's sovereign right and that it is one and the same as the "social-economic rights" assigned to individuals under international covenants. But the right of individuals and communities to participate in and enjoy the fruit of economic development should not be identified with the right of nation-states to pursue national pro-development policies, even if such policies set the stage for individual citizens to exercise their economic rights. Even when "the right to development" is understood as a sovereign state right, as is sometimes implied in the international politics of development, it belongs to a separate and distinct realm from that of "social-economic rights."

The distinction between economic rights and the state's right to development goes beyond the issue of who holds these particular rights. National development is an altogether different matter from securing the economic rights of vulnerable members of society. National economic growth does not guarantee that basic subsistence for the poor will be secured. While the right to development (narrowly understood) enables the nation-state as a unit to grow economically, social-economic rights are concerned with empowering the poor and vulnerable, preventing their marginalization and exploitation, and securing their basic subsistence. What the right of development, when asserted by an authoritarian state, tends to disregard, but what social-economic rights aspire to protect, is fair economic equality or social equity. Unfortunately, Asia's development programs have not particularly enabled the poor and vulnerable to control their basic livelihood, especially where development is narrowly understood as the creation of markets and measured by national aggregate growth rates.

*National economic growth does not
guarantee that basic subsistence
for the poor will be secured.*

A more plausible argument for ranking social and economic rights above political and civil rights is that poor and illiterate people cannot really exercise their civil-political rights. Yet the poor and illiterate may

benefit from civil and political freedom by speaking, without fear, of their discontent. Meanwhile, as we have seen, political repression does not guarantee better living conditions and education for the poor and illiterate. The leaders who are in a position to encroach upon citizens' rights to express political opinions will also be beyond reproach and accountability for failures to protect citizens' social-economic rights.

*The poor and illiterate may benefit
from civil and political freedom
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Political-civil rights and social-economic-cultural rights are in many ways indivisible. Each is indispensable for the effective exercise of the other. If citizens' civil-political rights are unprotected, their opportunities to "get rich" can be taken away just as arbitrarily as they are bestowed; if citizens have no real opportunity to exercise their social-economic rights, their rights to political participation and free expression will be severely undermined. For centuries, poverty has stripped away the human dignity of Asia's poor masses, making them vulnerable to violations of their cultural and civil-political rights. Today, a free press and the rule of law are likely to enhance Asians' economic opportunity. Political-civil rights are not a mere luxury of rich nations, as some Asian leaders have told their people, but a safety net for marginalized and vulnerable people in dramatically changing Asian societies.

Universality Unbroken

The threat posed by "Asian values" to the universality of human rights seems ominous. If Asian cultural relativism prevails, there can be no universal standards to adjudicate between competing conceptions of human rights. But one may pause and ask whether the "Asian values" debate has created any really troubling threat to universal human rights — that is, serious enough to justify the alarm that it has touched off.

The answer, I argue, depends on how one understands the concepts of universality and cultural specificity. In essence, there are three ways in which a value can be universal or culturally specific. First, these terms may refer to the *origin* of a value. In this sense, they represent a claim about whether a value has developed only within specific cultures, or whether it has arisen within the basic ideas of every culture.

No one on either side of the "Asian values" debate thinks that human rights are universal with respect to their origin. It is accepted that the idea of human rights originated in Western traditions. The universalist does

not disagree with the cultural relativist on this point – though they would disagree about its significance – and it is not in this sense that human rights are understood as having universality.

Second, a value may be culturally specific or universal with respect to its prospects for *effective (immediate) implementation*. That is, a value may find favorable conditions for its implementation only within certain cultures, or it may find such conditions everywhere in the world.

Now, I don't think that the universalist would insist that human rights can be immediately or effectively implemented in all societies, given their vastly different conditions. No one imagines that human rights will be fully protected in societies that are ravaged by violent conflict or warfare; where political power is so unevenly distributed that the ruling forces can crush any opposition; where social mobility is impossible, and people segregated by class, caste system, or cultural taboos are isolated and uninformed; where most people are on the verge of starvation and where survival is the pressing concern. The list could go on. However, to acknowledge that the prospects for effective implementation of human rights differ according to circumstances is not to legitimize violations under these unfavorable conditions, nor is it to deny the universal applicability or validity of human rights (as defined below) to all human beings no matter what circumstances they face.

Third, a value may be understood as culturally specific by people who think it is *valid* only within certain cultures. According to this understanding, a value can be explained or defended only by appealing to assumptions already accepted by a given culture; in cultures that do not share those assumptions, the validity of such a value will become questionable. Since there are few universally shared cultural assumptions that can be invoked in defense of the concept of human rights, the universal validity of human rights is problematic.

An idea that has survived the test of rigorous scrutiny will be valid not just within the boundaries of particular cultures, but reasonable in a non-relativistic fashion.

The proponents of this view suppose that the validity of human rights can only be assessed in an intracultural conversation where certain beliefs or assumptions are commonly shared and not open to scrutiny. However, an intercultural conversation about the validity of human rights is now taking place among people with different cultural assumptions; it is a conversation that proceeds by opening those assumptions

to reflection and reexamination. Its participants begin with some minimal shared beliefs: for example, that genocide, slavery, and racism are wrong. They accept some basic rules of argumentation to reveal hidden presuppositions, disclose inconsistencies between ideas, clarify conceptual ambiguity and confusions, and expose conclusions based on insufficient evidence and oversimplified generalizations. In such a conversation based on public reasoning, people may come to agree on a greater range of issues than seemed possible when they began. They may revise or reinterpret their old beliefs. The plausibility of such a conversation suggests a way of establishing universal validity: that is, by referring to public reason in defense of a particular conception or value.

If the concept of human rights can survive the scrutiny of public reason in such a cross-cultural conversation, its universal validity will be confirmed. An idea that has survived the test of rigorous scrutiny will be reasonable or valid not just within the boundaries of particular cultures, but reasonable in a non-relativistic fashion. The deliberation and public reasoning will continue, and it may always be possible for the concept of human rights to become doubtful and subject to revision. But the best available public reasons so far seem to support its universal validity. Such public reasons include the arguments against genocide, slavery, and racial discrimination. Others have emerged from the kind of reasoning that reveals fallacies, confusions, and mistakes involved in the defense of Asian cultural exceptionalism.

— Xiaorong Li

Sources: *The Straits Times*, Singapore (November 21, 1992); John Gray, "After the New Liberalism," *Social Research*, vol. 61, no. 3 (Fall 1994); Yash Ghai, "Human Rights and Governance: The Asian Debate," Occasional Paper Series No. 1, The Asian Foundation's Center for Asian Pacific Affairs (November 1994); Richard Rorty, "Human Rights, Rationality, and Sentimentality," in *On Human Rights — The Oxford Amnesty Lectures, 1993* (Basic Books, 1993); Bangkok NGO Declaration on Human Rights (March 27, 1993); *Human Rights in China*, Information Office, the State Council of the People's Republic of China (1991), and *The Progress of Human Rights in China* (December 1995); Michael Davis, ed., *Human Rights and Chinese Values* (Oxford University Press, 1995); Amartya Sen, "Our Culture, Their Culture," *The New Republic* (April 1, 1996).



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