

For example, Rosa Luxemburg, a leading Marxist thinker and political leader in the early twentieth century, invoked a similar line of criticism of what she called the “metaphysical cliché of the type of ‘rights of man’ and ‘rights of the citizen.’”<sup>62</sup> However, a scrutiny of Rosa Luxemburg’s real concerns brings out the remarkable fact that she persistently invoked universalist principles herself, as is quite standard in the Marxist tradition (consider: “from each according to his ability, to each according to his needs”). Rather, Luxemburg was keen on emphasizing that the *substantiation* of these principles must depend on specific circumstances that obtain. Shorn of the rhetoric, there is, in fact, no particular difficulty in using basic universalist principles in general, while taking note of Luxemburg’s pointer to the relevance of local circumstances and regional conditions in appropriately contingent, or parametric, specification of the exact demands of human rights.

However, a belief in uncrossable barriers between the values of different cultures has surfaced and resurfaced repeatedly over the centuries, and they are forcefully articulated today. The claim of magnificent uniqueness, and often of superiority, has sometimes come from critics of “Western values,” varying from champions of regional ethics (well illustrated by the fuss in the 1990s about the peerless excellence of “Asian values”), or religious or cultural separatists (with or without being accompanied by fundamentalism of one kind or another). Sometimes, however, the claim of uniqueness has come from Western particularists. A good example is Samuel Huntington’s insistence that the “West was West long before it was modern,” and his claim that “a sense of individualism and a tradition of individual rights and liberties” are “unique among civilized societies.”<sup>63</sup> Similarly, no less a historian of ideas than Gertrude Himmelfarb has argued that ideas of “justice,” “right,” “reason” and “love of humanity” are “predominantly, perhaps even uniquely, Western values.”<sup>64</sup>

62. Rosa Luxemburg, “The National Question and Autonomy,” *The Human Rights Reader*, p. 291.

63. Samuel P. Huntington, *The Clash of Civilizations and the Remaking of World Order* (New York: Simon and Schuster, 1996).

64. Gertrude Himmelfarb, “The Illusions of Cosmopolitanism,” in *For Love of Country: Debating the Limits of Patriotism / Martha Nussbaum with Respondents*, ed. Joshua Cohen (Boston: Beacon Press, 1996), pp. 74–75.

I have discussed these diagnoses elsewhere.<sup>65</sup> Contrary to cultural stereotypes, the histories of different countries in the world have shown considerable variations over time as well as between different traditions within the same country. The championing of open public discussion, tolerating and encouraging different points of view, has a long history in many countries in the world. Indeed, some of the earliest open general meetings aimed specifically at settling disputes between different points of view took place in India in the so-called Buddhist councils, the first of which was held shortly after Gautama Buddha's death twenty-five hundred years ago. The grandest of these councils, the third, occurred under the patronage of Emperor Ashoka in the third century BCE. Ashoka also tried to codify and propagate what must have been among the earliest formulations of rules for public discussion, a kind of ancient version of the nineteenth-century *Robert's Rules of Order*. He demanded, for example, "restraint in regard to speech, so that there should be no extolment of one's own sect or disparagement of other sects on inappropriate occasions, and it should be moderate even in appropriate occasions." Even when engaged in arguing, "other sects should be duly honoured in every way on all occasions."

To consider another historical example, in early seventh-century Japan, the Buddhist Prince Shotoku, who was regent to his mother, Empress Suiko, produced the so-called constitution of seventeen articles, in 604 AD. The constitution insisted, much in the spirit of the *Magna Carta* to be signed six centuries later in 1215 AD: "Decisions on important matters should not be made by one person alone. They should be discussed with many."

When, in the twelfth century, the Jewish philosopher Maimonides had to flee an intolerant Europe to try to safeguard his human right to stick to his own religious beliefs and practice, he sought shelter in Emperor Saladin's Egypt (via Fez and Palestine), and found an honored position in the court of this Muslim emperor. Several hundred years later, when, in Agra, the Moghul emperor of India, Akbar, was arguing, and legislating, on the government's duty to uphold the right to religious

65. See my *Development as Freedom*, ch. 10. Also "Human Rights and Asian Values," *The New Republic*, July 14 and 21, 1997, pp. 33–40; "The Reach of Reason: East and West," *The New York Review of Books*, July 20, 2000, pp. 33–38; "Democracy and Its Global Roots," *The New Republic*, October, 2003, pp. 28–35.

freedom of all citizens, the European Inquisitions were still going on, and Giardino Bruno was burnt at the stake in Rome, in 1600.

In his autobiography, *Long Walk to Freedom*, Nelson Mandela describes how he learned about democracy and individual rights, as a young boy, by seeing the proceedings of the local meetings held in the regent's house in Mqhekezweni:

Everyone who wanted to speak did so. It was democracy in its purest form. There may have been a hierarchy of importance among the speakers, but everyone was heard, chief and subject, warrior and medicine man, shopkeeper and farmer, landowner and laborer.<sup>66</sup>

Not only are the differences on the subject of freedoms and rights that actually exist between different societies often much exaggerated, but also there is, typically, little note taken of substantial variations *within* each local culture—over time and even at a point of time (in particular, right now). What are taken to be “foreign” criticisms often correspond to internal criticisms from non-mainstream groups. If, say, Iranian dissidents are imprisoned by an authoritarian regime precisely because of their heterodoxy, any suggestion that they should be seen as “ambassadors of Western values” rather than as “Iranian dissidents” would only add serious insult to manifest injury.

This issue is particularly important in determining what may be taken to be culturally “partisan” in a world of many cultural differences. Charles Beitz rejects, rightly, the plausibility of seeing the use of human rights as emanating from a “supposedly symmetrical relationship to the conception of political justice or legitimacy to be found in the world’s cultures,” and he goes on to seek their justification in terms of “the role they play in international relations.”<sup>67</sup> But how should this “role” be judged in terms of its acceptability, and in what sense should such an evaluation be culturally “partisan”? If the reasoning presented here is right, then we must distinguish between (1) the values that are dominantly favored in a society (no matter how repressive it is), and (2) the values that could be expected to gain wider adherence and support when open discussion is allowed, when information about other

66. Nelson Mandela, *Long Walk to Freedom* (Boston: Little, Brown & Co, 1994), p. 21.

67. Beitz, “Human Rights as a Common Concern,” pp. 279–80.

societies becomes more freely available, and when disagreements with the established views can be expressed and defended without suppression and fear.

Being “non-partisan” requires respecting the participation of people from any corner of the earth, which is not the same thing as accepting the prevailing priorities in existing societies when information is extremely restricted and discussions and disagreements are not permitted. Widespread *acceptability*, which must be distinguished from pre-existing ubiquitous *acceptance*, is an important issue in any social evaluation, even in dealing with the role that human rights play in international relations.

There does, of course, exist considerable variation in the balance of manifest opinions and observed preconceptions in different countries and different societies. These opinions and beliefs often reflect, as Adam Smith noted in a powerfully illuminating analysis, strong influence of existing *practices* in different parts of the world, along with a lack of broader intellectual engagement. The need for open scrutiny, with unrestrained access to information (including that about practices elsewhere in the world and the experiences there), is particularly great because of these connections. Which is precisely why Adam Smith’s insistence on the necessity of viewing actions and practices from a “certain distance” is so important for substantive ethics in general and the understanding of human rights in particular.

In a chapter entitled “On the Influence of Custom and Fashion upon the Sentiments of Moral Approbation and Disapprobation,” Smith illustrated his contention:

. . . the murder of new-born infants was a practice allowed of in almost all the states of Greece, even among the polite and civilized Athenians; and whenever the circumstances of the parent rendered it inconvenient to bring up the child, to abandon it to hunger, or to wild beasts, was regarded without blame or censure. . . . Uninterrupted custom had by this time so thoroughly authorized the practice, that not only the loose maxims of the world tolerated this barbarous prerogative, but even the doctrine of philosophers, which ought to have been more just and accurate, was led away by the established custom, and upon this, as upon many other occasions, instead of censuring, supported the horrible abuse, by far-fetched considerations of public utility. Aristotle talks of it as of what the magistrates ought upon many

occasions to encourage. Plato is of the same opinion, and, with all that love of mankind which seems to animate all his writings, no where marks this practice with disapprobation.<sup>68</sup>

What are taken to be perfectly “normal” and “sensible” in an insulated society may not be able to survive a broad-based and less limited examination once the parochial gut reactions are replaced by critical scrutiny, including an awareness of variations of practices and norms across the world.<sup>69</sup>

Scrutiny from a distance may have something to offer in the assessment of practices as different from each other as the stoning of adulterous women in Taliban’s Afghanistan and the abounding use of capital punishment (sometimes with mass jubilation) in parts of the United States. This is the kind of issue that made Smith insist that “the eyes of the rest of mankind” must be invoked to understand whether “a punishment appears equitable.”<sup>70</sup> Ultimately, the discipline of critical moral scrutiny requires, among other things, “endeavouring to view [our sentiments and beliefs] with the eyes of other people, or as other people are likely to view them.”<sup>71</sup>

The need for interactions across the borders can be as important in rich societies as they are in poorer ones.<sup>72</sup> The point to note here is not so much whether we are *permitted* to make cross-boundary scrutiny, but that the discipline of critical assessment of moral sentiments, no matter how locally established they are, *demand*s that such scrutiny be undertaken.

## X. A CONCLUDING REMARK

I have tried to present, in this article, the elements of a theory of human rights, which sees them as pronouncements in social ethics, sustainable

68. Adam Smith, *The Theory of Moral Sentiments* (rev. ed., 1790, V.2.15; republished, Oxford: Clarendon Press, 1976), p. 210.

69. I have discussed this issue in “Open and Closed Impartiality,” *Journal of Philosophy* 99 (2002): 445–69.

70. Adam Smith, *Lectures on Jurisprudence*, ed. R. L. Meek, D. D. Raphael and P. G. Stein (Oxford: Clarendon Press, 1978; reprinted, Indianapolis: Liberty Press, 1982), p. 104.

71. Smith, *The Theory of Moral Sentiments*, III, 1, 2, p. 110.

72. The treatment of prisoners held by the United States in the so-called war against terrorism raises important issues of human rights, and the analysis of the prevailing practice can be helped by more wide-ranging public discussion and a fuller understanding of the nature of global concerns on this issue.

by open public reasoning. They may or may not be reflected in a legal framework through, say, specific “human rights legislation,” but there are also other ways of implementing human rights (including public recognition, agitation and monitoring).

Since the main themes developed in this article were specifically noted in Section II, I shall not try to provide a further summary in this concluding section. I should, however, emphasize that the understanding and viability of human rights are, in this perspective, intimately linked with the reach of public discussion, between persons and across borders. The viability and universality of human rights are dependent on their ability to survive open critical scrutiny in public reasoning. The methodology of public scrutiny draws on Rawlsian understanding of “objectivity” in ethics, but the impartiality that is needed cannot be confined within the borders of a nation.

The fact that authoritarian orders are typically quite afraid of uncensored news media and of uncurbed public discussion, which make them resort often enough to suppression (including censorship, intimidation, incarceration, and even execution), provides some indirect evidence that the influence of public reasoning can indeed be quite large. That influence also lies behind the effectiveness of the interactive ways and means, including social recognition, informational monitoring and public agitation, which human rights activists tend to use. There is certainly a need for a fuller understanding of the associative nature of the acceptability of values, and this requires us to go well beyond lazy reliance on the given mores of the dominant social groups in the respective societies.

To conclude, despite their practical preoccupations, human rights activists have reason enough to pay attention to the skepticism that the idea of human rights generates among many legal and political theorists. These doubts have to be—and can be—addressed. But it is also important to note that the conceptual understanding of human rights, in turn, can benefit substantially from considering the reasoning that moves the activists and the range and effectiveness of practical actions they undertake, including recognition, monitoring and agitation, in addition to legislation. Not only is conceptual clarity important for practice, the richness of practice, I have argued, is also critically relevant for understanding the concept and reach of human rights. There is, I must conclude, no great deficit in the balance of trade between theory and practice.