

**Fundamental Human Rights and Cosmopolitan Justice**

by

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## **ABSTRACT**

One of the most contentious debates within political theory today surrounds the universality of Human Rights. To explore this debate, we first carefully define the amorphous terminology employed in such discussions and advance a theoretically grounded framework for fundamental Human Rights and cosmopolitan justice. With this in mind we trace the evolution of the concepts of cosmopolitan justice and Human Rights to the present debates. Engaging with criticisms of cultural and Western imperialism in turn, we advance a case with counterbalancing examples to provide evidence for the cosmopolitan nature and applicability of fundamental Human Rights. This paper adds to ongoing theoretical and practical debate by disentangling questions of fundamental Human Rights from questions of praxis derived from contingent socialization, essentialized identity and ideal Human Rights.

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## **Part I – Introduction**

Human Rights are a subject of great contemporary interest and debate in political, academic and quotidian spheres. Despite this lively and diverse exchange regarding Human Rights, from a Western perspective they can seem such an inherent and fixed part of our political structure, morality and discourse as to encourage and allow us to forget what a largely recent and radical idea they represent – and, arguably, these are points worth considering.

Human Rights have undergone a remarkable and rapid transformation from utopian ideal to status quo. The first major modern promulgations relating to Human Rights emerged from the revolutionary fervour of the American Revolution in the Declaration of Independence in 1776 and the French Revolution in the forms of the Declarations of the Rights of Man and Citizen of 1789 and 1793. In the 20<sup>th</sup> century, arguably the most famous and referenced Human Rights manifesto, the Universal Declaration of Human Rights was adopted by the newly formed United Nations on December 10<sup>th</sup>, 1948. In the space of less than 200 years, Human Rights went from a revolutionary challenge to the prevailing order to the collectively agreed –if not applied – standard of governance around the world.

Perhaps even more striking than the relative recentness of Human Rights is the radical concept of cosmopolitan justice which underwrites them. Cosmopolitan justice is an interpretation of justice which holds that there is a universal justice, valid in all cultures.

The simplicity of this phrase can prove deceptive; what flows from such a conception of cosmopolitan justice is that all people have certain rights and that to deny them such rights is both unnatural and unjust. Cosmopolitan justice thus understood is arguably the most fundamental and primordial form of justice. This is important in that, if we consider justice to be the ultimate evaluative standard against which actions are measured, it follows that cosmopolitan justice constitutes the evaluative standard against which all actions, and all legal and societal conceptions of justice, can be measured. Such a conception of justice radically empowers individuals and shears through the cultural, social and political contexts of their lives, implying a direct and fundamental statement of priority for innately sourced Human Rights over the prescriptions of religion and the state.

Understandably, such a radical conception of justice, claiming universal and inalienable applicability has not failed to attract a broad range of criticism and misuse. Cosmopolitan justice and Human Rights have often been used as an aegis for imperialism and Western chauvinism – inasmuch, they are concepts often associated with both Western and cultural imperialism. In this light, considerable dissonance exists between those who perceive Human Rights and cosmopolitan justice to be universal and just and those who perceive them as, to one degree or another, part of a imperialist or chauvinist structure.

Inasmuch, we will more specifically explore what evidence exists to support the claim that fundamental, universal Human Rights are a manifestation of the universality of

cosmopolitan justice and not just the product of cultural or Western imperialism. Given the contentiousness and complexity of the subjects being broached, this work can neither claim to be definitive nor exhaustive but will do its utmost to be comprehensive.

Approaching the subject from the position of a thought experiment, we can examine this question with the hope of contributing to the broader debate surrounding both Human Rights and cosmopolitan justice and the relationship between them. Using the approach of a thought experiment, we are able to explore ways that the argument for Human Rights as cosmopolitan justice could be made and contribute to the wider debate – it must be clearly stated that we are not claiming that anything advanced herein is irrefutable or final.

Given the scale and sophistication of the subject matter at hand, it is best that we first lay out a very clear course by which to address the complex and subtle arguments surrounding Human Rights and cosmopolitan justice in both theoretical and practical application. First, as a preliminary, we will clarify the terminology we will be using and discuss both why this question is worth asking and why a political theory approach is an appropriate method by which to explore it. Secondly, this work will outline how fundamental Human Rights are a manifestation of cosmopolitan justice. We will then provide a brief historical overview of the history of Human Rights and cosmopolitan justice and upon their inter-relation and evolution. Third, having established what cosmopolitan justice is we will address the main accusations of imperialism advanced against cosmopolitan justice and the idea of human rights as a manifestation of

cosmopolitan justice (i.e., cosmopolitan justice is a form of Western and/or cultural imperialism). Fourth, we will examine a case in which we can see the tension between cosmopolitan and local forms of justice. Lastly, we will summarize our argument and draw our final conclusions.

### **Defining Terms**

In order to ensure we do not get tangled in the complexity and conflicting meanings of the contentious terms we will be dealing with, it is important first that we provide precise definitions for the concepts under scrutiny. Terms and ideas like human rights and empire are particularly tricky; the debates surrounding and employing them and the historical contexts within which they exist are so diverse that the terms have developed a vast panoply of different and valid meanings and become something of a language unto themselves. Inasmuch, it is important to be very clear about what this paper means when using these terms so that arguments are mutually comprehensible.

### **Empire & Imperialism**

First then, let us begin with arguably the most contentious of terms at use, that of empire and/or imperialism. For the purposes of this work, the term imperialism is understood, in its most basic and generic form, to mean “an unequal human and territorial relationship, usually in the form of an empire, based on ideas of superiority and practices of dominance, and involving the extension of authority and control of one state or people over another.” (Gregory et al., p.373). We adopt this definition both for its concision and

because it best captures the hierarchical nature of imperialism implicit in the discussion of Western and cultural imperialisms which we shall undertake.

While this work uses what could be deemed a conventional understanding of imperialism, it is important to note that, according to many prominent definitions of empire and imperialism, a universal concept like cosmopolitan justice is inescapably imperialist. Marxist turned neo-conservative scholar Lewis Samuel Feuer advanced a well known binary definition of imperialism. Feuer argued that imperialism itself is a natural political phenomena, but that it can be divided into regressive imperialism, defined by brute force conquest and expansion (i.e., the Spanish Empire) and progressive imperialism, which is predicated on a cosmopolitan view of humanity (i.e., humanity is one contiguous moral community and universal morality is possible) and an attempt by the central metropole to spread its superior civilization to, in its view, backwards people (for this form of imperialism, he gives the Roman Empire as a example) (Feuer, 1989, p.4). Working with this definition, cases could be made by those in favour of Human Rights as cosmopolitan justice that this is a form of progressive imperialism (and, vice versa, it could be labeled regressive imperialism by those opposed). No matter the normative interpretation, Human Rights claiming cosmopolitan justice would be an example of imperialism.

Similarly, Neo-marxist scholars Negri and Hardt, in perhaps the most important recent work on the subject, *Empire*, also advance a dichotomous definition of empire/imperialism of their own. Imperialism is understood to be essentially akin to the

regressive imperialism advanced by Feuer, specifically referring in the case of Negri and Hardt to the literal imperialist policies of European nation-states. Empire, they argue, is, on the other hand, any system which claims universal applicability and accepts no boundaries. From this point of view, the argument that Human Rights are a manifestation of cosmopolitan justice is an example of an imperial system in that it holds universal applicability predicated on one's very humanity (Hardt & Negri, 2001, p.11).

In a similar vein, Hannah Arendt (in her indispensable work, *The Origins of Totalitarianism*) made the argument that any system which claimed universal applicability was totalitarian (Arendt, 1986). Additionally, in the most literal dictionary defined sense, totalitarianism can be understood as “exercising control over the freedom, will or thought of others” (Random House, 2013) and both cosmopolitan justice and Human Rights can be understood to limit the absolute freedom and will of others (i.e., in preventing them from discriminating against others and acting on this desire). Inasmuch, one can argue that according to both Arendt's and a dictionary definition of totalitarianism, Human Rights and cosmopolitan justice could be understood to be, to some degree, totalitarian.

Returning to the definition of imperialism itself, we can also look to the widely referenced binary definition of imperialism advanced by Raymond Aron, a 20<sup>th</sup> century French thinker and politician. Mr. Aron distinguished between imperialism (i.e., domination by force, central metropole, etc.) and imperial (a pre-eminent metropole administering a mutually beneficial order with other states, peoples, etc.) (Aron, 1974,

p.256-258). Aron articulated his definitions in a discussion of American power, discussing how the United States behaved in an imperial way with Europe and other close allies (i.e., a largely symbiotic relationship in which American power and primacy benefited all those in the system) as opposed to its imperialist (which is to say exploitative and pernicious) behavior with other countries (Aron, 1974, p.256-258). This differentiation – between a mutually beneficial order and a pernicious and dominating closely resembles the binary definition of Feuer.

In short, we could explore the conflicting meanings of empire and imperialism (and related terms like totalitarianism) indeterminately but, for the sake of this work, let this brief synopsis remind us both of the simple definition we are using for empire/imperialism and of the fact that according to many prominent understandings of imperialism, any system claiming universal application would be considered imperial (or even possibly totalitarian). With these definition in mind, we can see that for some – indeed for many – Human Rights and cosmopolitanism are intimately tied up with imperialism and empire, be it of a normatively desirable variant or not.

### **Human Rights**

Let us next to our attention to defining a no less contentious term: Human Rights. To begin, it is worth noting that there are few terms with a more flattering or positive association than Human Rights. Arguably, it is precisely because of this powerfully positive connotation that Human Rights have become difficult to define. As various groups have tried to frame their demands within the normatively and politically

persuasive language of Human Rights, we have witnessed something of a dilution of what constitutes a Human Rights (Cranston 1973, p.65-71; Nickel, 2013).

To make the definitions as clear and concise as possible, it is necessary to boil Human Rights down to its core, defining elements. Moreover, for the purposes of our work it is not necessary to distinguish between legal, social, individual, group, etc., forms of Human Rights.

Rather, we adopt the idea that Human Rights are held solely in the virtue of being a human being (not by divine providence) and are not contingent upon belonging to any particular society at any time. This being said, we acknowledge, as Burke noted in his comments on the Declarations of the Rights of Man which we shall see subsequently, that such rights are only meaningfully employed, enjoyed and protected within specific social and legal frameworks (Burke, 2006, p.144). Working from this premise, we will also adopt the idea of Cranston (1973, p.65-71) that Human Rights is a term we should reserve only for the most important protections and freedoms. Cranston influentially, if not uncontroversially, argued that fundamental human rights are the successors of what he labels the historic natural rights to life, liberty and property(1973, p.65-71). He argued that a violation of these fundamental rights represented an egregious violation of justice. Inasmuch we will be using a modest understanding of Human Rights (life, liberty, etc.) concerning the “lower limits on tolerable human conduct” (Shue, 1996, p.18). We can arguably label these rights (life, liberty, freedom from cruel and unjust treatment, etc.) fundamental vs. ideal Human Rights, being concerned with preventing the worst rather

than securing the best. As a test of which rights fit into this fundamental and minimal category we can ask: does the violation of this right present a grave affront to justice as advanced by Cranston? (Cranston, 1973, p.65-71) Inasmuch we can say that protection from torture, the equality of all persons before the law, freedom from religious persecution, etc., satisfy this criteria while rights such as the right to form unions, or the right to free post-secondary education – while still important – do not satisfy this requirement.

Therefore, the definition of Human Rights for our purposes are those fundamental rights held everywhere, by everyone (regardless of whether or not their environment recognizes them) by virtue of their humanity alone, which serve to protect them from grave affronts to justice. Inasmuch we are not advancing a set list of Human Rights which qualify as fundamental; rather, we are suggesting the idea of fundamental Human Rights as being those which protect against egregious violations of justice as a framework within which to consider the claim of a right to be a fundamental Human Right. We are not claiming that other rights are not legitimate Human Rights in their own virtue, but to reiterate again we are focused here on the most intuitively universal protections (life, liberty, freedom from cruel and unjust treatment) in the most literal sense.

It is important to again clarify that we are focusing on Arendt's concept of the right to have rights (i.e., on the absolute claim to fundamental rights by human beings regardless of context) (Arendt, 1986, p.436).. We are not exploring whether or not every Human Right heretofore enumerated in various conventions represents a manifestation of

cosmopolitan justice as this is quite beyond the remit of this paper. Such a discussion would belong in the realm of international relations and would be a matter of discussing how competing interests manifested themselves structurally across more than a century of political and social debates. Moreover we are not addressing the various claims of competing forms of modern codified Human Rights (cultural, economic, social rights, etc.,) against one another.

We are rather concerned with the primordial underpinnings of fundamental Human Rights – as Arendt put it, that fundamentally human beings have a right to rights and that this is a manifestation of and is legitimated by cosmopolitan justice. In the history of Human Rights we shall subsequently trace, we mention the legal conventions and the rise of the international Human Rights regime only inasmuch as it helps us to understand the development of the idea that Human Rights are a part of cosmopolitan justice with universal validity. These points being made, let us now turn to the definition of cosmopolitan justice.

### **Defining Cosmopolitan Justice**

Justice can be described as both a virtue and the ultimate evaluative standard for any other action. To define cosmopolitan justice, therefore, we must be careful to establish how we posit the existence of an evaluative and morally binding standard with global applicability. To do so, we will advance a syncretic definition drawn principally from

Kant, Arendt and Rawls but informed by other ideas and thinkers (most notably Pogge and Nussbaum).

### **Rawls and The Original Position**

Let us begin by saying that we accept the basic validity of the Rawlsian conception of justice [i.e., “justice as fairness” (Rawls, 1999)]. Moreover, we agree with the logic of the Rawlsian original position, in that in his proposed thought experiment of the original position, persons would agree to the two principles of justice he advances.

For the purposes of this work, it is the first of these conceptions which matter to us, namely that all rational people would agree to a set of equal rights and liberties required to underwrite the fundamental interests of free and equal citizens. This principle of justice, applicable to everyone, everywhere at all times and arguably intuitively, rationally knowable is the basic principle of a cosmopolitan conception of justice and, in the framework we advance, Human Rights represent the manifestation of this concept through the set of equal rights and liberties required to underwrite the fundamental interests of all peoples. We are aware that Rawls does not agree with the applicability of his conception of justice internationally (Rawls, 1993) - on this point, we respectfully disagree with Rawls. This disagreement is no mere matter of caprice – notable contemporary scholars of Human Rights Beitz (1979 & 2009) and Pogge (1988, 1992 & 2008) specifically reject the idea that the Rawlsian original position is only applicable

within a given nation state and posit their ideas of cosmopolitan justice on a global application of the two principles of justice.

### **Pogge and Kant**

Thomas Pogge has advanced a popular definition of cosmopolitan justice (based ultimately on shared and inherent claims to Human Rights). His understanding of cosmopolitan justice is tripartite in that it is predicated on individualism, generality and universal applicability. (Pogge, 1992, p.48-75)

The normative authority and framework for Pogge's understanding of cosmopolitan justice as Human Rights flows from Kantian argumentation. This fits perfectly with Pogge's endorsement of the Rawlsian original position as Rawls himself wrote: "[The Original Position] may be viewed ... as a procedural interpretation of Kant's conception of autonomy and the categorical imperative within the framework of an empirical theory." (Rawls, 1999, p.226). Inasmuch, the Kantian normative assumptions at work here are that a) every individual is an end in itself, b) all persons are entitled to rights irrespective of the contingent circumstances of their birth and c) all persons are morally obliged to respect these rights (Kleingeld, p.76-84)

To see Kant feature so prominently in such an account of cosmopolitan justice may be surprising to those accustomed to the customary minimalist interpretations of Kant's

work. However, many scholars (like Rawls as mentioned above) have read Kant with a more radical and maximalist interpretation. After all, it was Kant's *Perpetual Peace* (which we shall explore further along in this work) which was the first work to call for a cosmopolitan order based upon Human Rights which Kant argued were both innate and necessary to advance within the legal framework of any legitimate republic (Hoffe, 2006).

Indeed, in Kant's *Metaphysics of Morals*, he argues that the fundamental human right endowed to everyone by virtue of their humanity alone is: "freedom (independence from the coercive choice of another), in so far as it can coexist with the freedom of every other in accordance with a universal law" (Kant, 1996, 6: 237). This inherent Human Rights to freedom includes "innate equality, that is the independence from being bound by others to more than one can in turn bind them" (Kant, 1996, 6: 237). As maximalist interpretations (such as that advanced by contemporary Kantian scholar Hoffe) would have it, since every person possesses an inviolate freedom, it follows that: "every subject with legal ability must be granted a second-order right, the right to be reckoned with in this legal capacity" (Hoffe, 2006, p.121). Put differently, all persons possess the right to have rights –or inversely – all legal orders are required to recognize this inherent freedom (and the rights that necessarily flow from it) to be considered just (Bohman 2007).

### **Arendt and the Right to Rights**

It is with the introduction of the inalienable and fundamental right to have rights to which we alluded in the previous section that we draw the thought of Hannah Arendt into our definition of cosmopolitan justice. In her work, *The Origins of Totalitarianism* (of which we will see more subsequently), Arendt comes to same conclusion as Kant in his *Metaphysics of Morals*, namely that all persons have a fundamental right to rights. Writing when she did, after the horrors of the Second World War, Arendt offered powerful normative endorsement to this right to rights, arguing that the only true crime against humanity is the denial of the theoretical and practical right to rights (Arendt, 1986, p.436).

This right to right – posited by both Kant and Arendt – arguably gives rise to a correlative basic duty of self-respect or, in the words of Kant, “to demand respect” and not to allow oneself to be debased or treated as a mere means, in keeping with the categorical imperative (Bohman, 2007).

### **Taqlīd**

It is useful at this point to introduce an idea from the apogee of classical Arab thought which allows us to clearly distinguish between the normative exigencies of cosmopolitan morality and Human Rights and the cultural praxis of a given community. This new, or rather very old, term is *taqlīd* which can be defined as: “the beliefs and values stemming from the contingent circumstances of our socialization rather than from rational deliberation.” (Fraenkel, 2012) The plural world of classical Islam provides an example

of great pertinence to our present debates surrounding ideas of cosmopolitan justice and Human Rights as testified by this anecdote from historian al-Hymaydi:

*“At the [...] meeting there were present not only people of various [Islamic] sects but also unbelievers, Magians, materialists, atheists, Jews and Christians, in short unbelievers of all kinds. Each group had its own leader, whose task it was to defend its views [...]. One of the unbelievers rose and said to the assembly: we are meeting here for a debate; its conditions are known to all. You, Muslims, are not allowed to argue from your books and prophetic traditions since we deny both. Everybody, therefore, has to limit himself to rational arguments [hujaj al-‘aql]. The whole assembly applauded these words.” (Fraenkel, 2012)*

The spirit of, and the ideas underwriting, this medieval debate are ones which we can usefully employ to more constructively test our understanding of what constitutes a question of cosmopolitan justice and what constitutes a question of *taqlid*.

*Taqlid* ties in with the arguments we have already seen from Rawls and Kant. For his part, Rawls’ use of the veil of ignorance is meant to capture an important facet of freedom necessary to justice, namely our freedom to endorse ideas and normative arguments not determined by the random circumstances/contingencies of our lives (Rawls, 1999, p.225). The veil of ignorance does so by encouraging us to consider the justice of the distribution of goods of a society, not knowing where we would find ourselves in its hierarchy. Kantian assumptions of cosmopolitan rights maintain that all persons are entitled to rights irrespective of the contingent circumstances of their birth. *Taqlid* is a term we introduce not out of mere exoticism, but rather as testament and reminder that the aim of attempting to think beyond the contingencies of one’s birth is

not an ideal unique to the West or to the Enlightenment and thus has a greater claim to cosmopolitan credentials.

Inasmuch, it is a legitimate expression of cosmopolitan justice to take exception to the unjust treatment of women in many traditional (and indeed, modern) societies today. Let us be clear that this form of discrimination cannot be justified on the contingent *taqlid* of a culture alone but represents an egregious violation of justice and of their inherent right to rights and is therefore a question of Human Rights and cosmopolitan justice. Human Rights and moral cosmopolitanism have very little to say about the *taqlid* related practices of a given culture except where traditional practices violate their precepts. In this light, we can conceive of Human Rights and cosmopolitan justice as creating a sandbox of sorts within which each culture can order itself however it likes, as long as it respects the inalienable and fundamental rights which the inhabitants of all cultural or political orders enjoy in virtue of their pre-political humanity (Nussbaum, 2011, p.30-35).

Cosmopolitan justice and Human Rights have no right (for example) to follow our previous example, to say what women should wear, but they certainly have a right to be employed in ensuring a respect for women's inalienable and fundamental freedoms and dignity. It is not the place of anyone but observant Muslim women to choose to wear or not wear the veil (again, a question of *taqlid*) ; it is a fundamental Human Rights to say they should have the right to decide whether or not to wear it of their own free will, free of coercion or threat. Human Rights and cosmopolitan justice do not seek to change all

parts of culture, but rather limit the degree to which individuals may be subject to the arbitrary accidents of their birth (*taqlid*).

### **Nussbaum and Human Capabilities**

This idea finds link-minded, and quite elegantly articulated, support in the work of the eminent contemporary American philosopher Martha Nussbaum. Nussbaum posits a series of human capabilities to compliment and actualize Human Rights. While a full discussion of her framework is outside the scope of this work, her writing about the role of Human Rights (and capabilities) is very *apropos*:

*“[A]ll human rights, are best seen as occasions for choice, areas of freedom: thus a person can have all ten capabilities on my list without using all of them, and this is true of rights as well. A person may have the right to religious freedom, for example, in a secure form, and care nothing about religion (see also Sen, 2004, p. 335). The central reason why capabilities and not the associated functions are held to be central goals of government is that it would be wrong for government to push people into functioning in these areas, since citizens reasonably differ over which functions they will choose and which they will not. In this way the capabilities, like human rights approaches, avoids being ‘imperialistic,’ or imposing a single lifestyle on all. Instead, it asks governments to create and protect contexts of choice.”* (Nussbaum, 2011, p.35)

Nussbaum not only clearly articulates the idea of Human Rights and cosmopolitan justice as providing a sandbox for governments (and also, more broadly, cultures and societies) but turns the idea of cultural relativism on its head. In short, by asking (or rather, normatively insisting) that contexts of choice be provided to all people (acknowledging their rights to rights), it places the onus of justification on those who remove or restrict

rights, not in those who grant and protect them. In short, instead of Human Rights being seen as contrived and unnatural it is rather up to those who would wish to deny fundamental rights to explain why, in rational terms, without reference to the contingent *taqlid* of their socialization, how such actions would be justified. Moreover, Nussbaum's view that Human Rights represent occasions for choice fits perfectly with Kant's view of freedom as our fundamental right, of Kant and Arendt's view of the inalienability of our right to rights and Rawls' first principle of justice, namely that all rational people would agree to a set of equal rights and liberties required to underwrite the fundamental interests of free and equal citizens.

To follow with our example of the rights of women, Human Rights and cosmopolitan justice should create a sandbox which limits the degree to which any culture or society can arbitrarily coerce any person, including women, who are born into it. These new limits mean that for example, women everywhere can no longer be considered the *de facto* or *de juris* inferiors of men under the preposterous reasoning that being born female disqualifies them from full citizenship or moral consideration (according to the conception of cosmopolitan justice advanced herein by Rawls, Kant, Arendt, Pogge and Nussbaum). It is not surprising that the elites of societies and states which base themselves on essentialized and reductionist identities (especially of a religious or national/ethnic persuasion) which are not subject to open and honest debate are powerfully opposed to having their authority limited by a sandbox defined by fundamental Human Rights.

## What we Mean by Cosmopolitan Justice

Having covered a considerable amount of material relating to the definition of cosmopolitan justice, it is important to advance a synthesized and concise definition for subsequent use in the remainder of this work. At the same point, it is necessary to explain how fundamental Human Rights represent a manifestation of cosmopolitan justice.

First, we hold that the Kantian assertion of freedom as the fundamental Human Right is the basis of cosmopolitan justice. This fundamental freedom leads to the right to rights posited by both Kant and Arendt and the responsibility to demand respect and not be treated as mere means. Human Rights represent, as Nussbaum argues, the contexts of free choice we enjoy in virtue of our pre-political humanity and our inherent right to be treated as ends.

Secondly, we hold that, following the thought experiment of the Rawlsian original position provides a intuitive basis for cosmopolitan justice in accord with the previous points. Not only do all people have rights by virtue of their humanity alone but all rational people would agree to a set of equal rights and liberties required to underwrite the fundamental interests of free and equal citizens (i.e., Human Rights). Moreover, the innovation of the veil of ignorance ensures that – to the degree possible- the *taqlid* of contingent socialization and other arbitrary circumstances of birth would not discolor this

conclusion; inasmuch, Human Rights can be said to be just in a cosmopolitan sense both in application and derivation.

Thirdly, we reiterate Pogge's three part qualification of cosmopolitan justice – it applies to individuals, regardless of the circumstances of their birth in all places and it is the responsibility of all people to respect these rights. We maintain that cosmopolitan justice thus understood represents principles of justice which are applicable regardless of time or place (Mandle, 2006; Pogge, 2005).

It is also worth mentioning that the use of the term cosmopolitan justice in this paper bears no relation to the, even more controversial, idea of cosmopolitanism in its literal sense (i.e., advocating for a world state or the idea of cosmopolitan justice as the ultimate justness of a world state and/or relatedly the injustice of existing borders).

What we have outlined is, of course, a conception of cosmopolitan justice emerging from a western and liberal perspective but, as we will argue, we do not believe this compromises its claims to cosmopolitanism. Our understanding of cosmopolitan justice in this work is distinct from (but not mutually exclusive with) the principle of liberal universalism as it deals exclusively with fundamental Human Rights as defined herein.

It is useful, in evaluating this claim, to briefly compare this Rawlsian version of cosmopolitan justice with those advanced by a pertinent alternative claim to cosmopolitan justice advanced in recent times: communism.

With communism, we can actually argue that it was simply an alternative path towards Human Rights. Putting aside communism's obvious failings in its real world dictatorial application, at an ideational level it was necessarily about the equality of all people and the need to promote and install a fair and just distribution of society's goods (justice as fairness revisited). Moreover, in its real world application communism was often accompanied by the large scale granting of Human Rights (in theory if not in practice), not the least of which was the empowerment of women as witnessed in both the Soviet Union and Maoist China. Inasmuch, communism does not represent a radical alternative to cosmopolitan justice and is arguably better understood as an alternative roadmap to its own form of distributive justice.

## **PART II: Literature Review**

Let us turn now to the contemporary debate surrounding Human Rights and cosmopolitan justice in academic literature and consider the place of this work within that larger discussion.

Given that we will subsequently present an overview of the historical evolution and interrelation of the ideas of cosmopolitan justice and Human Rights in the Western canon, we will focus here on the more contemporary aspects of the debate.

Needless to say, it would be beyond the scope of this work to provide an overview of all literature touching on cosmopolitanism and Human Rights. Rather, we will limit our

subject matter specifically to those works which address the debate between the universality and relativity of Human Rights.

### **Relativism vs. Universalism**

The current literature on Human Rights and cosmopolitan justice can largely be classified as focusing on and tending to one or another end of a relativist - universalist continuum.

Within the relativist portion of this continuum, those on the more extreme end would argue that normative assumptions are irreconcilably linked to culture (i.e., there can be no cosmopolitan justice) and cannot be held to any outside standard (i.e., a fundamental Human Right). The more extreme end of cultural relativism is well described in this excerpt from Pathak:

*“... [T]o a cultural relativist, a document such as the (Universal) Declaration (of Human Rights) seems a futile proclamation derived from moral principles valid in one culture and not entirely acceptable in others, and any attempt to establish a congruency in different national systems appear bound to fail, because any such attempt would be incapable of eroding the irreducible core of cultural singularity in various social components of the world. There is a need to remember that each culture insists on its own moral superiority, there being few which tolerate a cultural egalitarianism.” (Pathak, 1989, p.8)*

Turning from such relative extremism, the ontological position of a more moderate cultural relativism would hold that the protection of fundamental Human Rights (the right to rights) are just in a cosmopolitan sense as a check on the most extreme examples of injustice (Plantilla & Raj, 1997). Moving beyond this toward the centre of the continuum,

a weaker cultural relativism would permit the idea that Human Rights are largely a manifestation of cosmopolitan justice but can be subject to secondary cultural modifications (Donnelly, 1993, p.109-110).

Considerable thought on the relativist side of the spectrum is more concerned with the possibly totalizing, hierarchical and tyrannical implications of labeling anything, even Human Rights, as being a product of cosmopolitan justice. Some scholars source this in the historical precedent of the abuse of the concept of Human Rights:

*“The diversity of cultures and the failure of the Universal Declaration to be a truly universal document suggests the difficulty of one culture dictating morality to another. This can be insidious even if in the name of such a noble ideal as human rights. Noble ideals can be twisted to serve ignoble purposes. Throughout Western history, a number of injustices have been couched in human rights jargon [such as in the colonial enterprise]. Within Western nations, human rights have been around for some time but were once only extended to whites, or males, or adults, or property owners, or heterosexuals, or Christians [or Anglicans, or Puritans, or Catholics, as the case may be]. Deductive reasoning suggests that groups denied equal human rights must not be fully human.”* (Holeman 1987: 209-211 )

One of the most important differences between the cultural relativist and universalist ends of the spectrum for the purposes of this work is the difference in perception of universalism, with a special focus on Kantian universalism. It is no accident that the totality of scholars used to construct our framework of Human Rights as cosmopolitan justice are Kantian (including Kant himself) – but for some this very concept smacks necessarily of cultural imperialism:

*"In the first place, it asserts that rules about morality vary from place to place. Secondly, it asserts that the way to understand this variety is to place it in its cultural context. And, in the third place, it asserts that moral claims derive from, and are enmeshed in, a cultural context which is itself the source of their validity. There is no universal morality, because the history of the world is the story of the plurality of cultures, and the attempt to assert universality, or even Kant's procedural principle of 'universability', as a criterion of all morality, is a more or less well-disguised version of the imperial routine of trying to make the values of a particular culture general." [Vincent 1986: 37]*

Indeed, going beyond Kant, some scholars take a more communitarian bent and disagree with the very ontology of Liberalism and its essential view of humanity (upon which Human Rights are arguably predicated):

*"...[An] abstract, ahistorical notion of being human translate into universal and potentially imperialistic notions of human rights. If human rights are not linked to membership in the institutions of society, neither are they linked to the cultures which create the institutions. Liberalism defines humans in transhistorical, transcultural terms. Thus it conceives human rights in transhistorical, transcultural terms. From the perspective of non-Western philosophies of life, as Marxism and Hinduism, such a view fails to address the needs of persons as they exist in their historical-cultural milieu. It abstracts individuals from society and grants rights to the abstraction, not to any empirically extant being. From the standpoint of Western liberalism, viewing humans and human rights in abstract terms has the advantage of offering a transcendent reference point from which to judge injustice that is being condoned at the cultural level. It is thus suggested that a dialectical relation between abstract and historical conceptions of humanity, which in turn makes possible a rapprochement between universal and cultural conceptions of human rights is best." (Holeman, 1987, p.217).*

As we progress from the relativist to universalist end of the spectrum, we can see an immediate ontological shift. First, in reference to the irrevocably Western nature of Human Rights; it is useful to contrast the relativist positions of Pathak and Holeman on the Universal Declaration of Human Rights with those of scholars with a universalist perspective:

*“The Universal Declaration does not affirm the institutions Westerners often equate with human rights, such as parliaments or supreme courts, but rather allows for various cultural forms by simply setting forth those political, social, and economic rights that contribute to the dignity of the individual person.”* (Traer 1991:158)

Moreover, some authors go further, making an argument similar to that advanced in this work, that Human Rights and cosmopolitan justice have transformed the West and cannot be understood to be inherently Western:

*“The universal human rights of the second period (after 1948 Universal Declaration of Human Rights) are as new for the West as they are for China. Less than 50 years have passed since both cultural spheres were confronted with such a universal conception for the first time.”* (Senger 1993: 292).

### **Why Explore Human Rights as Cosmopolitan Justice?**

It is clear, even from this relatively limited sample, that the debate surrounding Human Rights and cosmopolitan justice is incredibly rich. Touching on maximalist vs. minimalist interpretations of the applicability of Rawls, the cosmopolitan vs. communitarian debate, relativism vs. universalism and the debate between post-modernism and modernism, Human Rights as cosmopolitan justice is a subject at the nexus of much of contemporary scholarship.

The focus and approach of this work in relation to the considerable scholarship on the subject must be clarified. This piece first seeks to render explicit and reclaim the fundamentally Kantian nature of this debate; too often the debate on the applicability of Rawls devolves into a historically anemic question of interpretation if Rawls is not placed

properly within a larger Kantian perspective. In doing so we hope to provide greater context and historical relevance to the current debate and provide a clearer understanding of its origins.

Secondly, working with the ideas of preeminent contemporary scholars Pogge and Beitz, this work also builds on and contributes to the arguments in favour of the universal applicability of Rawls, implicitly endorsing the Kantian idea of the world representing a contiguous moral community.

Third, by addressing the historically specific challenges to the conception of Human Rights as cosmopolitan justice represented by Asian values and equating the relationship between Human Rights, cosmopolitan justice and liberal democracy with cultural imperialism, we seek to address relevant real-world issues.

Asian values, first given the sheer portion of humanity residing in Asia and the rising influence of Asian powers, are a question of the utmost contemporary importance.

Secondly, Asian values are worthy of consideration as Human Rights can understandably be perceived as Western and have been used abusively in the past and this is important aspect of the debate surrounding Human Rights. Thirdly, it is important to engage with the claims of Asian values especially where they call into account fundamental rights (like those of women) and where governments advancing them seek to relativize the protection of fundamental rights.

The claims laid against Human Rights as cosmopolitan justice that Human Rights represent cultural imperialism as they read like a blueprint for liberal democracy is equally in need of urgent attention. For arguably the first time in history, the majority of people on Earth are united in the belief that some form of representative democracy is the best system of governance. This is an unprecedented moment in world history and obviously an enormous challenge to entrenched illiberal and antidemocratic governments and systems. By exploring the considerable argumentation against such an interpretation and its attempt to invalidate Human Rights and their claim to cosmopolitan justice, we are able to provide a considered response to such a position.

Lastly, this work seeks to make the important distinction between ideal and fundamental Human Rights a key part of the discussions surrounding the cosmopolitan justness of Human Rights. By re-focusing on the theoretical basis, with special emphasis on Arendt's irrevocable and fundamental right to rights, we can clarify discussions as to whether or not rights have a claim to cosmopolitan justness. This is especially important in ensuring that fundamental rights are not called into question along with ideal rights as this would be akin to throwing the baby out with the bathwater. As noted by Bielefeldt:

*“The universality of human rights does not mean the global imposition of a particular set of Western values, but instead, aims at the universal recognition of pluralism and difference - different religions, cultures, political convictions, ways of life - insofar as such difference expresses unfathomable potential of human existence and the dignity of the persons. To be sure, pluralism and difference apply also to the concept of human rights which itself remains open - and must be open - to different and conflicting interpretations in our pluralistic and multicultural political world. Without the*

*recognition of such difference within the human rights debate, the discourse would amount to cultural imperialism. Nevertheless, it seems clear that the very idea of human rights precludes some political practices, such as oppression of dissidents, discrimination against minorities, slavery and apartheid.” (Bielefeldt 1995: 594)*

### **Why is This Work Relevant?**

The central purpose of this paper is to explore the question of whether Human Rights are a manifestation of cosmopolitan justice (and the moral cosmopolitanism which underwrites it). This arguably represents, a worthy and timely intellectual exercise. This paper, however, is written in the opinion that cosmopolitan justice and Human Rights are also a question of a much more visceral and practical importance and that to discuss them is inherently more than mere curiosity or debate. In this light, the question at hand can be said to relevant for both practical and academic reasons and the framework of political theory especially well suited to its analysis.

First, from a practical perspective, this paper seeks to explore evidence that Human Rights are a manifestation of cosmopolitan justice. We are constantly reminded through reports of discrimination, war and repressive governments of the importance and practical utility of fundamental Human Rights and of the normative and practical utility of a cosmopolitan standard of justice to which we can appeal. From this point of view, the question of whether Human Rights represent a manifestation of cosmopolitan justice in real-world application is of vital importance. This work has been undertaken with the understanding that it is crucial that the legitimacy of Human Rights be buttressed so that,

not only can the global framework of Human Rights continue to expand in scope, application and legitimacy but so that it has strong foundations with which to meet any challenges. The most serious challenge, ontologically, seems to be whether or not Human Rights are truly the reflection of cosmopolitan justice, hence why the question needs to be examined.

Moreover, such real-world questions are now of increasing and urgent concern given the rising power of non-Western and illiberal states and the consequently more plural and complex conversation surrounding existing international Human Rights regimes and the concept of cosmopolitan justice which underwrites them; there are many examples of such challenges to choose from. First, and perhaps most pressingly, is the rise of China and its seemingly inevitable accession to super-power status along with, and conceivably even surpassing, the United States. While avoiding xenophobic scaremongering, it is reasonable to be concerned that – for the first time in two centuries – the world’s most powerful state will be totalitarian, undemocratic, illiberal and openly hostile to the liberal international order and the principles of cosmopolitan justice and Human Rights which are central to it. If Human Rights do not have a convincing claim to cosmopolitanism – and are instead seen as mere Western rhetoric – how can they survive such challenges?

Similarly and more broadly, the world continues to struggle with fanatical forms of religion and nationalism which oppose themselves to inalienable Human Rights as cosmopolitan justice because these two principles undermine the totalistic authority of

essentialized religious and national identities. In particular, the current and widespread convulsions of the Islamic world (including but not limited to terrorism against the West, the recent *In Amenas* incident, the ongoing civil war in Mali, unrest in Egypt, civil war in Syria, Taliban violence in Pakistan and Afghanistan and Uighur uprisings in China) represent a contentious area for Human Rights, especially where liberal movements (in the anti-fundamentalist not strictly ideological sense) must confront extremism. In the case of both nationalism and religious zealotry it is necessary, if Human Rights are to hold any sway at all, that they must be rooted in what can be said to be a cosmopolitan conception of justice.

As these examples, among so many others, bear witness, establishing whether Human Rights are a manifestation of cosmopolitan justice is an especially important practical concern at this time.

Having established the importance and relevance of the question, we must now ask if the framework of political theory is well suited to explore it? Admittedly, this seems like something of a rhetorical question. Obviously the discussion of philosophical principles (cosmopolitan morality and justice) and their real-world manifestation (Human Rights) and the consideration of the political and theoretical/ontological critiques offered are political theory in the purest form. But, to frame it in classic political theory terms (and why ever shouldn't we?), while we have demonstrated that it is *feasible* to address the subject matter from a political theory framework we must also offer evidence that is

*desirable*; inasmuch as such evidence is available it is to be found in the words of Isaiah Berlin:

*“[T]here has, perhaps, been no time in modern history when so large a number of human beings, in both the East and the West, have had their notions, and indeed their lives, so deeply altered, and in some cases violently upset, by fanatically held social and political doctrines. (This is) dangerous, because when ideas are neglected by those who ought to attend to them - that is to say, those who have been trained to think critically about ideas - they sometimes acquire an unchecked momentum and an irresistible power over multitudes of men that may grow too violent to be affected by rational criticism.”* (Berlin, 1952, p.1)

In a practical sense then, we live in a world where ideas have great, and possibly undue, tangible influence over the lives of great numbers of people who may have only the vaguest familiarity with them. There is a requirement, given the central place of Human Rights in the prevailing international order, to attend to these ideas precisely as Berlin maintains.

Moreover, by exploring this question of Human Rights and cosmopolitan justice this work seeks to complement the theoretical debate within philosophy surrounding both the source and motivation for Human Rights. A significant body of philosophical academic work exists which seeks to establish the genesis and justification for Human Rights – while this is undoubtedly useful, it is also useful to approach from the lens of political theory. Hannah Arendt explained the difference between philosophy and political theory (Zur Person, 1958) in terms of the implicit impartiality of natural philosophy versus the necessarily partial nature of political discussions (indeed, this partiality is arguably what

makes it political as such). In this light, exploring Human Rights as a manifestation of cosmopolitan justice is done in the hope of strengthening the case for Human Rights from a politically engaged point of view.

Inasmuch, this work will contribute to the literature of both Human Rights and cosmopolitan justice (and the considerable literature which broaches the two). By providing a comprehensive consideration of the claims to cosmopolitan justice of fundamental Human Rights, this work can provide interlocutors on related subjects a fruitful and concise overview.

### **PART III: A Brief History of the Idea of Cosmopolitan Justice and Human Rights**

#### **Ancient Origins**

More than intellectual curiosity demands that we review, however superficially, the historical evolution of the ideas of, and ideas related to, cosmopolitan justice and Human Rights. The idea of a community transcending the parochial as well as basic and universal rights can both claim origins in classical civilization. As we trace their evolution we can see how their evolutions are distinct yet profoundly inter-related and mutually reinforcing.

In the traditional Western canonical narrative, the earliest recorded expression of the idea of cosmopolitanism can be traced back to the founder of the school of Cynic philosophy, Diogenes of Sinope. In the 4<sup>th</sup> Century BCE Diogenes is credited with coining the term cosmopolitan when he declared "I am a citizen of the world", the original Greek term being *cosmopolites* (Epictetus, 2008, s24.66). It is worth noting that this first expression of cosmopolitanism dates to the period in which the Greek city-state poleis were subsumed within the Pan-Hellenic empire of Alexander the Great and the idea of the cosmopolitan became both theoretically and practically relevant. The conception of cosmopolitanism advanced by the Cynics was not being attached to any particular place, as we shall see subsequently, a more refined and familiar understanding of cosmopolitanism would be advanced by the Stoics.

Human Rights can claim an equally ancient – if contentious - lineage, being traced back to a first codification and expression by Cyrus the Great in his famed 6<sup>th</sup> Century BCE Babylonian Cylinder, which has been described as the world's first Human Rights charter. Such opinions are counterweighed by opposed academic opinion, including by the British Museum which holds the cylinder, which maintain that this is a misinterpretation (The British Museum, 2013). For the remainder of its historical development Human Rights (i.e., rights which inalienably belong to all people) is linked, as we shall see, to the story of cosmopolitanism and cosmopolitan justice.

Returning to the main historical reconstruction of the development of moral cosmopolitanism, we can see that it became an important part, as mentioned, of Stoic thought. Epictetus noted as much in his *Discourses* dating from 108 CE, in which he stated: “*Each human being is primarily a citizen of his own commonwealth; but he is also a member of the great city of gods and men, where of the city political is only a copy.*” (Epictetus, 2008, s5.26). We see that that Stoic cosmopolitanism, which informs our conception of moral cosmopolitanism, cosmopolitan justice and Human Rights today, is about belonging to a moral community encompassing all of humanity. Inasmuch it is distinct and in some ways opposed to the Cynic version.

This Western channel by which these two conceptions of cosmopolitanism found their way from classical Greek thought to the modern period is the intellectual tradition we have come to know as medieval scholasticism. Thomism (the body of thought inspired by Saint Thomas Aquinas) in particular asserted inherent equality of all before God and by virtue of natural law, providing the groundwork for a cosmopolitan conception of justice in which all were inherently equal. After all, if all beings are equal before God, it stands to reason that there is one manner of organizing such beings most justly and one evaluative standard of justice by which to assess it (McInerney & O’Callaghan 2010, s11.1).

It is however important to keep in mind that during this time, while ideas of universal morality such as this were articulated, they were not necessarily conceived of in terms of

a global application. It is important to remember that this was a relatively insular age for Europe – certainly not the dark ages of Enlightenment caricature – but much less globalized than during the seafaring Imperial ages to follow. Debates about morality were mostly concerned with the domestic sphere and we will see how these differing historical contexts help to shape the debate around these ideas.

To permit a brief diversion, it is worth noting that during this period in 1297 an important document in the history of Human Rights – the Magna Carta – was promulgated. Originally only a guarantee of privileges for the aristocracy from the King, the document went on to be very influential and represents, in the words of famed theorist and jurist Hersch Lauterpacht “that the very notion of rights of the individual against the power of the state struck deep roots in European consciousness” (Lauterpacht, 2009, p.93).

Returning to our principal narrative, it should come as little surprise that in the early modern period, cosmopolitan justice, as we understand it, was discussed very little and, where it was, was conflated with the emerging European understanding of natural and international law. The universalism, both of validity and application, of natural and international law intertwined them with what we would now describe as cosmopolitan justice. There are some exceptions, notably the venerable Humanist philosopher Erasmus of Rotterdam who drew directly on ancient cosmopolitan concepts to make a case for a global peace. In his *Querela Pacis*, Erasmus maintains that basic human sociability is the basis for this world peace and claims that individuals who subscribe to this idea form a

community of compatriots (i.e., a supra-national community not defined in religious terms like Christendom or the *Umma* which were the principle models of supra-national communities at the time) (Erasmus, 1986). Nevertheless, the majority of cosmopolitan thought in this time remains focused on international relations and not on devising a set of universally applicable norms.

### **Cosmopolitanism, Exploration and Enlightenment**

It was during the late Age of Discovery (15<sup>th</sup> to 17<sup>th</sup> century) and early Age of Enlightenment (17<sup>th</sup> and 18<sup>th</sup> centuries) that cosmopolitan justice and Human Rights began to emerge as more cogent concepts. The reasons for this emergence are open to conjecture. It can be argued that The Age of Exploration rapidly expanded the European worldview; the discovery of entirely new continents and encounters with varied peoples and cultures provided a frame of reference which previous generations could scarcely have imagined. Moreover, The Enlightenment, for its part, built on the Renaissance's appropriation of Classical philosophy and provided unprecedented exposure to the ideas of the Classics, including the not small place accorded in the Classics to cosmopolitan ideals in both Cynic and Stoic philosophy. One could also argue that the emergence across Europe of an international intellectual exchange provided the basis for a viewpoint which prided itself on rejecting parochialism and embracing membership in a trans-national community (Brown & Kleingeld, 2013).

As the 18<sup>th</sup> century began, cosmopolitanism was a term of various meanings and was not necessarily a label indicative of a particular philosophical conviction, but rather a description of a more general intellectual perspective. Some of the greatest (or, at the very least, most famous) thinkers of the age including Voltaire, Montesquieu, Hume and Diderot self-identified as cosmopolitans in this sense (Brown & Kleingeld, 2013, s.1.2). Yet, as the century progressed, this looser concept of cosmopolitanism interacted with natural law and the emerging philosophy of liberalism; from this interaction emerged the radical ideas which are the subject of this work – the idea of cosmopolitan justice and its manifestation in the idea of universal Human Rights.

As the century progressed, the Cynic tradition of cosmopolitanism as rootlessness, gained a few famous and infamous followers. Despite being a distinct from, and in many ways opposed to, the emerging more Stoic cosmopolitan vein of thought, those who identified as cosmopolitans in a Cynic sense inspired much opposition to cosmopolitanism as a whole (Brown & Kleingeld, 2013, s1.2).; Rousseau claimed, for example, that cosmopolitans: “[B]oast that they love everyone, to have the right to love no one” (1997, p.158). More important, however, in the late 18<sup>th</sup> century was the growing synthesis of natural law, existing Stoic cosmopolitan thought and nascent liberalism into a new moral cosmopolitanism which informed cosmopolitan justice and underwrote the radical concept of Human Rights. This line of thought, much more in the Stoic vein, was almost the opposite of Cynic cosmopolitanism.

One of the most important leaps towards this revived Stoic vein was made by Thomas Hobbes. In his famed work *Leviathan*, published in 1651, Hobbes described a state of nature which did not meaningfully involve a deity. Hobbes pioneered, at least in the modern sense, the idea of a quasi-secular natural right predicated only on nature, and therefore inherent to each person (Zagorin, 2009, p.2-10, p.100). Hobbes was careful to distinguish between natural rights (an absence of obligations) and natural law (obligations). He posited that the fundamental right of man was:

*"to use his own power, as he will himself, for the preservation of his own Nature; that is to say, of his own Life; and consequently, of doing any thing, which in his own judgement, and Reason, he shall conceive to be the aptest means thereunto."* (Hobbes, 1993, s.1).

While hardly in line with the more utopian underpinnings of moral cosmopolitanism and Human Rights, the fundamental principle that a human being has rights derived from their humanity, and not from divine or legal sources, is the foundational concept of Human Rights and moral cosmopolitanism as we have defined them. Needless to say Hobbes' removal of the divine and the political context from the equation was not a clean break. The later liberal thinker Locke would draw heavily on this Christian concept of equality and on the idea of natural law for his political theory (Waldron, 2002).

Nevertheless, this renewed stoic vein of cosmopolitan thought, instead of negating belonging to a human community (as did cynic cosmopolitanism), expanded the moral reference community to the entirety of humanity. By the late 18<sup>th</sup> century a cosmopolitan

idea of justice much more familiar to the modern variant was articulated by the venerable liberal philosopher, Immanuel Kant.

Kant famously, and radically, argued that all rational beings are part of a single moral community. Many of his works touch on the subject, so for the sake of brevity we can take the iconic work *Perpetual Peace* by Kant to explore his articulation of the idea.

Written in 1795, the work is celebrated not only for its articulation of what is now known as the Democratic Peace Theory, but also for discussing what Kant called “the cosmopolitan ethic” (Kant, 1983, p.119). Kant makes the claim that “Because a (narrower or wider) community widely prevails among the Earth’s peoples, a transgression of rights in one place in the world is felt everywhere.” (Kant 1983, p.119). Kant says flatly that the world is one moral community and that if we really believe this, we have a duty to uphold these same liberal rights for everyone, everywhere. For another relevant example from the Kantian canon, we can turn to the Fifth Thesis of Kant’s *Idea for a Universal History With a Cosmopolitan Intent*: “The great problem for the human species, whose solution nature compels it to seek, is to achieve a universal civil society administered in accord with the right” (Kant 1983, p.33). Again here, Kant argues that there is a standard of evaluative and normative cosmopolitan justice for everyone and that nature compels us to further its realization. It is important for us to take the time to appreciate the radicalism of these statements within the context of their own time. The epochal changes of the Enlightenment challenged millennia of political and religious authority and, as seen here in Kant’s works, posited an entirely opposite form of authority; instead of the top down

provision of rights at the king or clergy's discretion, all people are rather empowered by virtue of simply being human beings.

### **Declarations and Detractors**

As evidenced by the works above, the late 18<sup>th</sup> century was the point where theoretical cosmopolitan justice and Human Rights arguably broke through to become of practical relevance. At the same time Kant was publishing his epochal new framework for moral cosmopolitanism, cosmopolitan justice and Human Rights were being proclaimed as revolutionary political fact. As mentioned in the introduction of this work, the American Declaration of Independence in 1776 and the Declarations of the Rights of Man and Citizen from 1789 and 1793 respectively, represent the transformational real-world application of cosmopolitan justice.

Such powerful political and ideational changes did not go unchallenged. In particular, the French revolution and its claims relating to cosmopolitan justice and Human Rights became the centre of heated debate pitting proponents of this new moral cosmopolitanism against opponents. This crisis, at the outset of the practical application of moral cosmopolitanism and Human Rights in real world political affairs is worth exploring in greater detail. Among the most famous rejections of these ideas in the French revolution was the argument put forward by Jeremy Bentham – despite his being an enthusiastic advocate of political and legal rights, and the revolution for that matter. Bentham was

affronted by the very idea of natural rights advanced by the French revolutionaries. He viewed them as utopian and supercilious, stating: “[R]eason for wishing that a certain right were established, is not that right; want is not supply; hunger is not bread” and went on to state that the very principle of “*natural rights is simple nonsense: natural and imprescriptible rights, rhetorical nonsense, nonsense upon stilts.*”(Harrison, 1995, p.87). From the current perspective it is worth noting that Bentham’s argument proves valid in hindsight; as a relentless and *avant garde* campaigner for Human Rights in his own time, he made the important observation that these rights must be legally enshrined to be useful. The subsequent gradual codification and adoption of Human Rights has proven his point, in that simply wishing for Human Rights or claiming their innate existence is indeed insufficient. Human Rights must be written into law to effect the lives of vast majority of persons.

Let us return from this diversion to the fray with perhaps the most famous attack on the French Revolution and its concept of innate Human Rights, that advanced by British philosopher Edmund Burke. In his work, *Reflections on the Revolution in France*, Burke advanced a criticism in a similar vein to Bentham, focusing on the impracticality of simply proclaiming Human Rights, noting:

*“What is the use of discussing a man's abstract right to food or to medicine? The question is upon the method of procuring and administering them. In this deliberation I shall always advise to call in the aid of the farmer and the physician, rather than the professor.”* (Burke, 2006, p.144).

Burke goes on to question the very logic of natural rights – claiming that rights flow from legal and political histories (i.e., the Magna Carta and English Bill of Rights) and are not universally applicable. Inasmuch, we can conclude that each people (i.e., the French, the Germans, the British, etc.,) are entitled to different rights according to the development of their respective political cultures and frameworks. Burke re-asserts the supremacy of political authority (ultimately, in his pro-monarchical view, flowing from God) as the source of rights.

Bentham and Burke however, were not the only commentators on the portentous events on the Continent. Others came out strongly in favour of the French Revolution and specifically in favour of its conception of moral cosmopolitanism and Human Rights. Among the many defenders of the concept, it is perhaps best for the continuity of our discussion to consider the elegant work of Thomas Paine, whose work was written as a direct riposte to Burke's strident criticism. In this work, Paine's *Reflections on the Revolution in France*, the author very clearly elucidates both the practical and theoretical strengths of this concept of rights, stating that:

*“ Natural rights are those which appertain to man in right of his existence. Of this kind are all the intellectual rights, or rights of the mind, and also all those rights of acting as an individual for his own comfort and happiness, which are not injurious to the natural rights of others. Civil rights are those which appertain to man in right of being a member of society. Every civil right has for its foundation, some natural right pre-existing in the individual, but to the enjoyment of which his individual power is not, in all cases, sufficiently competent. Of this kind are all those which relate to security and protection.”* (Paine, 1985, p.68).

Paine clearly argues against Burke, claiming that all civil rights are not based on the specific legal or political tradition of a people but rather in a natural pre-existing right in the individual. This claim again supports the radical Hobbesian, Kantian and French Revolutionary claim that such rights are derived from one's humanity and not granted by the divine, a powerful and controversial claim in a Europe still governed by monarchs claiming divine authority.

In short, moral cosmopolitanism and Human Rights as politically substantive forces burst out from the ideational into the physical world in an extraordinary way. The 19<sup>th</sup> century was replete with struggles for and against moral cosmopolitanism and Human Rights and is a story with which the majority of us are largely familiar. The 19<sup>th</sup> century debates surrounding the abolition of slavery, the spread of democracy from America and Britain around the world and the transformative debates surrounding emancipation and franchise all involved the powerful claims of these two revolutionary ideas.

### **Human Rights and Cosmopolitan Justice in the 20<sup>th</sup> Century**

In the 20<sup>th</sup> century, Human Rights and moral cosmopolitanism reached first terrible new lows, followed by remarkable new highs. The horror of the First World War gave birth to the unprecedented League of Nations, seemingly an embodiment of Kant's cosmopolitan ideals. The League (or rather its members) failed to its permanent discredit to check the violent and enthusiastic abuse of Human Rights and the rejection of moral

cosmopolitanism by much of the world, with the most notorious examples being Nazi Germany and Imperial Japan. These two states let loose a methodical assault on Human Rights by asserting totalistic ideological frameworks in which people were not only discriminated against but brutally dehumanized. The horrific and unprecedented scale of the conflict provided a powerful impetus for the creation of a new order to guarantee peace; moral cosmopolitanism and Human Rights were to find themselves central to this new order (Lauren, 1998; Morsink, 1999; Glendon, 2001). As the tide turned against the Axis powers and the Allies began to defeat and sign peace treaties with vanquished opponents (including Japan, Germany, Italy and other European adversaries), the Allies demanded the inclusion of provisions for Human Rights, a theretofore unprecedented step (Henkin, 1990, p.22-29). The Allies went on to found the United Nations in 1945 and included, in the founding charter as one of the purposes of the new organization:

*“To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.”* (U.N., 2012).

Born to extreme contention in modern form from the paradigmatic shifts of the late 18<sup>th</sup> century, Human Rights and moral cosmopolitan found themselves, less than 200 years later, enshrined as a central purpose of the most broadly subscribed and collaborative institution in history; endorsed – at least theoretically - by every major power on Earth. While not binding, the very fact that Human Rights could be articulated and promulgated

as a shared goal valid everywhere around the world, represents a remarkable achievement for what was, indeed still is, such a radical idea.

In light of this self-appointed purpose, the member states of the United Nations agreed that it was both necessary and desirable to draw up an international bill of rights, applicable irrespective of political or cultural milieu. The product of this effort was the Universal Declaration of Human Rights (Morsink, 1999; Glendon, 2001). The Declaration is not binding, but is considered recommendatory and laid the foundation for the remarkable expansion of the international Human Rights regime that has proceeded apace since its adoption (Morsink, 1999; Nickel, 2013). The Declaration was quickly followed by the 1953 European Convention for the Protection of Human Rights and Fundamental Freedoms, an international treaty which was binding upon countries that ratified it and included mechanisms for enforcement (Council of Europe, 2013; Nickel, 2013). The European model has witnessed significant emulation via the widespread proliferation of regional Human Rights mechanisms, including those of the Organization of American States (OAS), the African Union (AU) and the Association of South East Asian Nations (ASEAN). Of equal importance to both the practical adoption and philosophical development of Human Rights were the Helsinki Accords. The Accords were the culmination of 3 years of negotiations between the Western and Eastern blocs aimed at defusing tensions between these rivals in Europe (Molineu, 1978) and were the antecedent of the Organization for Security and Cooperation in Europe (OSCE). Among the promulgations at the end of these negotiations was the Helsinki Final Act, a 10 part

document of which the 7<sup>th</sup> chapter specifically dealt with respect for Human Rights (CSCE, 2013). The spirit of the accord can be gleaned from the following excerpt:

*“The participating States will respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, for all without distinction as to race, sex, language or religion.*

*They will promote and encourage the effective exercise of civil, political, economic, social, cultural and other rights and freedoms all of which derive from the inherent dignity of the human person and are essential for his free and full development.”* (CSCE, 2013)

This marked a watershed moment for Human Rights in the Eastern bloc and provided a reference point for those pushing for political change within the Soviet sphere. In particular, the establishment of the Moscow Helsinki Group (an NGO designed to monitor respect for the Human Rights enumerated in the Helsinki accord) and similar organizations across the Eastern Bloc dramatically changed the practical and ideological place of Human Rights within the lives of Eastern Bloc citizens by entrenching them as accepted norms and creating reporting mechanisms designed to hold governments to account (National Security Archive, 2006).

Indeed, what has largely followed since the post-war period has been a cycle of mutual reinforcement in which Human Rights treaties and mechanisms have built on and been inspired by their predecessors. In particular the U.N. has worked to create Human Rights treaties which impose legally binding requirements on signatories; this approach has been very successful and, as of 2013: “Every UN member state is a party to one or more

of the six major human rights treaties. 80% of states have ratified four or more”  
(Bayefsky, 2001, s.i).

### **The Contemporary Debate**

The expanding international Human Rights regime has continued to evolve, with two remarkable developments in the last 15 years.

The first is the International Criminal Court (I.C.C). The I.C.C. came into existence when more than 120 countries had ratified the Rome Statue of the International Criminal Court in 1998. Its function is to serve as a backup to national systems and address the most egregious war crimes and abuses of Human Rights. The creation of such a court is a remarkable challenge to the traditional idea of the supermacy of state sovereignty. Many countries, including the United States, China and much of the Middle East have not ratified the treaty, but it remains an important institution. The I.C.C. is predicated on moral cosmopolitanism and the upholding of Human Rights and is arguably a step toward the cosmopolitan order as envisaged by Kant, one in which people hold rights in virtue of being citizens of the world and not due to membership in particular cultural or political communities.

The second is the adoption of the Responsibility to Protect (R2P) initiative by the United Nations in 2005. R2P is a mechanism meant to protect people in any country from the

most serious violations of their Human Rights. The foundational document of the R2P initiative states that governments have a responsibility to protect their populations from genocide, war crimes, crimes against humanity, ethnic cleansing and their incitement (UN Office of the Special Adviser on the Prevention of Genocide, 2012). If a government fails to do so, the international community has a responsibility to use all means, up to and including military force, to protect the fundamental Human Rights of any country's citizens from egregious violation. This is again another remarkable prioritization of fundamental Human Rights over state sovereignty (and ideal Human Rights) based on a moral cosmopolitan standard.

Yet, despite the extraordinary expansion and deepening of Human Rights since the end of the Second World War, there is nevertheless still a great deal of debate on the subject. In particular, as mentioned in the introduction, many authoritarian, theocratic and otherwise despotic countries have questioned or sought to undermine the credibility of Human Rights as a manifestation of cosmopolitan justice. Singapore's Prime Minister Lee Kuan Yew led the call with China and Iran for more flexibility over international standards of Human Rights at the 1993 World Conference on Human Rights held in Vienna. Representatives from other countries, led by Western democracies, saw this as attempts by recalcitrant and oppressive regimes to legitimate their refusals to maintain basic international standards of Human Rights.

This view has subsequently been supported by preliminary empirical research which seems to indicate that Human Rights have strong international support and are understood to be just around the world (and, inasmuch, can be considered cosmopolitan). When asked about a wide range of Human Rights (including freedom of expression, freedom from ethnic and/or racial discrimination, the rights of women, etc..) a majority of those polled in all countries (including in China, Russia and Iran) were in support of international standards of Human Rights. Moreover, there was a surprising rate of support (62%) in China for the U.N. to actively and “intrusively” promote Human Rights within the country (Council on Foreign Relations, 2011).

Pro-Human Rights delegates offered strong resistance and the conference came together to issue the Vienna Declaration, including Article 5 which addresses the challenge to Human Rights put forward:

*“All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.”* (United Nations World Conference on Human Rights, Vienna Declaration, 1993).

We can see from this back and forth that the debate around moral cosmopolitanism and Human Rights is still active. More importantly, and perhaps ominously, we can see that much opposition to the concept of cosmopolitan justice and Human Rights comes from an ascendant East Asia and in particular, as mentioned in the introduction, China.

However, the tentative empirical evidence compiled by the Council on Foreign Relations discussed above shows that while debate continues primarily in academic and government spheres, Human Rights and moral cosmopolitanism have overwhelming public support across the world; no small feat given that the international Human Rights regime born out of the ashes of WWII is less than 70 years old.

#### **Part IV: Addressing Criticisms of Human Rights as Cosmopolitanism Justice**

Having traced the development – both ideationally and practically – of contemporary cosmopolitan justice and Human Rights we can now turn to addressing some of the arguments against Human Rights as a manifestation of cosmopolitan justice. Specifically, we will address the two most important criticisms of the cosmopolitan claims of Human Rights in recent years, those of western and cultural imperialism, both emerging from post-colonial theory. The main arguments leveled by such thinkers against cosmopolitan justice can be categorized as accusations of imperialism. For the purposes of clarity and comprehensibility each argument will be considered in turn, we will consider the arguments that claim that cosmopolitan justice and/or Human Rights represent cultural imperialism and/or western imperialism. We will begin each section by considering the specific claims of the argument and then, in turn, respond to the criticism advanced.

While there are many schools of thought which, to one degree or another, would debate the pedigree of cosmopolitan justice claimed by Human Rights, it is not possible to address them all within this work. Communitarian thought, for example, would maintain

that cosmopolitan morality is very weak, if at all possible, given the powerful role of culture in delimiting our moral universes (Hutchings, 2010, p.11). Inasmuch, a degree of parsimony and a focus on contemporary real world challenges to Human Rights (as outlined previously) has led us to specifically focus on the two imperial criticisms offered by post-colonial inspired scholars against the cosmopolitan claims of Human Rights (and the idea of cosmopolitan justice). Post-colonialism is arguably the most logical point of departure for criticisms as it specifically focuses on the systemic repression and acculturation of the world by European powers and peoples. Since Human Rights largely emerged from the West and lay claim to being just in a cosmopolitan sense, it shares an ideational genesis if not likeness to much colonialism. For Human Rights to be truly just in a cosmopolitan sense, they would require to not be imperially imposed. As seen in our earlier definitions, imperialism necessarily negates Human Rights on their own terms through its coercive and hierarchical structure and, indeed, ontology. Human Rights need to have powerful and legitimate normative claims which are not contingent upon western or cultural imperialism if they are to be considered just in a cosmopolitan sense. Since post-colonial thought has been based on engaging and analyzing such hegemony and the historically hypocritical claims to cosmopolitan justice of the West, it is an excellent milieu in which to test if Human Rights are a manifestation of cosmopolitan justice as we have advanced.

Before we plunge ourselves into examples and criticisms it is important to clarify that we are not choosing examples for the elucidation of our arguments with the intent of

commenting on any culture or society. We do hold that the definition of cosmopolitan justice advanced in this work is normatively desirable but the examples we will use subsequently are used as they offer clear cases where cosmopolitan justice, as we have defined it, has been a key factor and because they offer examples of cosmopolitan applicability. In order to be as clear as possible in the definition of cosmopolitan justice being used, we repeat below that given earlier, so it can be fresh in our minds.

First, we hold that the Kantian assertion of freedom as the fundamental Human Right is the basis of cosmopolitan justice. This fundamental freedom leads to the right to rights posited by both Kant and Arendt and the responsibility to demand respect and not be treated as mere means. Human Rights represent, as Nussbaum argues, the contexts of free choice we enjoy in virtue of our pre-political humanity and our inherent right to be treated as ends.

Secondly, we hold that, following the thought experiment of the Rawlsian original position provides an intuitive basis for cosmopolitan justice in accord with the previous points. Not only do all people have rights by virtue of their humanity alone but all rational people would agree to a set of equal rights and liberties required to underwrite the fundamental interests of free and equal citizens (i.e., Human Rights). Moreover, the innovation of the veil of ignorance ensures that – to the degree possible- the *taqlid* of contingent socialization and other arbitrary circumstances of birth would not discolor this

conclusion; inasmuch, Human Rights can be said to be just in a cosmopolitan sense both in application and derivation.

Thirdly, we reiterate Pogge's three part qualification of cosmopolitan justice – it applies to individuals, regardless of the circumstances of their birth in all places and it is the responsibility of all people to respect these rights. We maintain that cosmopolitan justice thus understood represents principles of justice which transcend time and place (Beitz, 1997; Mandle, 2006; Pogge, 2005).

### **Cultural Imperialism**

The first imperial criticism of cosmopolitan justice and Human Rights that we shall address is that they constitute a form of cultural imperialism (Binder, 1999; Mutua, 2005, p.52-55; Tan, 2004, p.8; Zafirovski, 2007).

The term cultural imperialism is a highly charged one, replete with pejorative meaning and can sometimes arguably verge on the polemic. It is therefore important for us to be careful in using it – a great diversity of meanings have been assigned to the term since it first rose to prominence in the 1960's (Tomlinson, 2001). So, in order to address the idea that Human Rights represent a form of cultural imperialism we must first establish precisely what we mean by that.

Cultural imperialism is a term rooted in and informed by the post-colonial school of critical theory and communications studies. Cultural imperialism has many meanings specific to situations (i.e., within the context of media, governance, norms, etc.) in which it is employed; what unites all of its uses is that they describe the propagation of cultural hegemony.

As mentioned, the term emerged in a rapidly decolonizing world in the 1960s, during which scholars from the developing world began to critically examine colonialism and its effects. In order for us to more clearly understand cultural imperialism within the context of our debate, it is useful to look at a formal definition from scholars who use the term:

*"Imperialism is the conquest and control of one country by a more powerful one. Cultural imperialism signifies the dimensions of the process that go beyond economic exploitation or military force. In the history of colonialism, (i.e., the form of imperialism in which the government of the colony is run directly by foreigners), the educational and media systems of many Third World countries have been set up as replicas of those in Britain, France, or the United States and carry their values. Western advertising has made further inroads, as have architectural and fashion styles. Subtly but powerfully, the message has often been insinuated that Western cultures are superior to the cultures of the Third World." (Downing, Mohammadi, and Sreberny-Mohammadi, 1995, p.482)*

This definition clarifies for us that Human Rights as cultural imperialism would mean that, subtly, most of the world is obliquely forced to accept Human Rights as superior and, inasmuch, they do not represent a manifestation of cosmopolitan justice but rather simply the writ of Western cultural hegemony. Before going any further, we must disentangle, for the purposes of this paper, cultural and western imperialism; we will address the two separately. The accusation of cultural imperialism against Human Rights

is specifically the debate surrounding whether Human Rights can meaningfully claim to be cosmopolitan.

The basic assumption of cosmopolitan justice as we have defined it is that people are everywhere part of a contiguous and shared moral community and that a practical and normative imperative exists to respect and extend the fundamental rights of all persons, held in virtue of their humanity alone and separate from any divine or political agency. Fundamental Human Rights arguably are or should be the reification and reflection of this morally cosmopolitan point of view. This claim to cosmopolitan justice for Human Rights would be seriously (if not totally) compromised if in fact Human Rights represented little more than hegemonic Western rhetoric maintained via cultural imperialism.

### **Moral Cosmopolitan and Liberal Democracy**

To consider this, let us engage this debate with one of more widely encountered contemporary accusations of cultural imperialism against Human Rights: if Human Rights are, in fact, a manifestation of cosmopolitan justice why then do they seem to read like a blueprint for liberal democracy? Is this not precisely an example of cultural imperialism whereby the powerful and liberal inspired international order pushes these values by stealth? (Langlois, 2003, p.990-1000; Mutua, 2004, p.52-55) Instead of being based in cosmopolitan justice, can Human Rights be understood as merely an arbitrary

framework within which anything varying from Western, liberal orthodoxy is considered inadequate, deviant and inferior?

There is much to be said for these arguments, but it perhaps worth considering that Human Rights read like a blueprint for liberal democracy in the modern world because liberal democracies have arguably been the most successful in enshrining and protecting them (Donnelly, 1999; UN – UNHCR, 2012). As noted in our definition of terms, communism at one point seemed to offer a viable alternative path toward Human Rights so, prior to popular disillusionment with communism in practice, there was a time when the very same Human Rights which are taken to read like a blueprint for liberal democracy could equally have read like a blueprint for a utopian communist state.

Human Rights and democracy also offer convincing historical and theoretical claims to cosmopolitanism which can help to explain why Human Rights read like a blueprint for liberal democracy (i.e., it is the system which has heretofore been accepted as most universally just by the majority of people on earth). Significant empirical evidence exists to suggest that democracy is “virtually the only political model with global appeal” (Inglehart, 2003, p.52) and enjoys overwhelming endorsement across the world’s continents and cultures (Dalton & Ngu-Ngoc, 2005; Gallup, 2005; Heath, 2005; Inglehart, 2003; Park & Shin, 2006; Tessler, 2002). This in itself shows that democracy is seen as part, or a product, of cosmopolitan justice.

Moreover, the fundamental principles of democracy are very much in accord with cosmopolitan justice as we have defined it. Democracy, by empowering each person, provides at least the freedom to vote (and, we can conclude, be treated with at least a modicum of respect) and voting can create a context (if not always free) of choice. Moreover, it can be argued that Human Rights in the absence of democracy exist only at the caprice of a ruling elite and not as an inviolate right (Langlois, 2003, p.1002).

Furthermore, drawing on the Rawlsian argument we have advanced, not only do all people have rights by virtue of their humanity alone but it can be argued, through the original position, that all rational people would agree to a set of equal rights and liberties required to underwrite the fundamental interests of free and equal citizens – otherwise put, fundamental Human Rights in a democratic framework. Support for this idea can be inferred from the prevailing political realities which surround us today.

It is first worth noting that basic mechanical (if not substantive) principles of democracy – voting and representation – are feigned, where not practiced, by all but the most repressive regimes (including *de facto* authoritarian states like Iran and China) and are the principles by which the United Nations and other international organizations are administered. As an example of this principle of democratic legitimacy, we need look no further than the recent vote in the General Assembly to accord non-member observer state status to Palestine (UN, 2012) – this vote occurred and was perceived as more just as the General Assembly is a more egalitarian and democratically representative forum

than the veto-bound Security Council. The 2005 Gallup Global Attitudes survey supports this argument, finding that: “8 out of 10 global citizens believe that in spite of its limitations, democracy is the best form of government” (Gallup, 2005) .

In this light, even where states only employ democracy in its barest mechanical form (one party elections in Singapore, communist party rule in China, theocratic elections in Iran, etc.) they are still willing to go to the trouble of going through the motions of democratic legitimacy (co-opting the legitimacy of its cosmopolitan justice much in the same way imperialist movements co-opted cosmopolitan justice to further their own ultimately anti-cosmopolitan ends).

Inasmuch, we are offered further proof that the basic principles of democracy can arguably be said to have normative power and tacit acceptance across much of the world (as they would, arguably, from the starting point of the original position as posited) (Gallup, 2005; Inglehart, 2003). Democracy is seen as producing more just outcomes and is seen as both a manifestation of and protection for fundamental Human Rights (Pew, 2003; UN - UNHRC, 2012). It makes sense then to reverse the idea that cultural imperialism is what makes Human Rights read like a blueprint for liberal democracy; it is rather that the protection of Human Rights and cosmopolitan justice are so far best embodied and guaranteed by liberal democracy and hence the system is seen as the most just as a result (CFR, 2012; Pew, 2003). If another system were to provide a more convincing claim to popular legitimacy and was deemed better suited to the protection of

Human Rights it is perfectly conceivable that Human Rights would become associated with reading like a blueprint for that system (as we have mentioned, communism once might have been).

For the moment, critics who maintain that Human Rights, given that they read like a blueprint for liberal democracy, are a form of cultural imperialism are arguably confusing the extraordinary attraction and persuasiveness of these systems rooted in cosmopolitan justice with the coercion implicit in imperialism. Human Rights and cosmopolitan justice are the very opposite in that they need not be imposed but have been, and continue to be, sought out by people around the world (CFR, 2012; Pew, 2003)

### **Authoritarian Critics**

At this point it is worth turning our attention to the question of what contemporary forms of government tend to most argue the case for Human Rights being a manifestation of cultural imperialism and not cosmopolitan justice? Most often, these criticisms emerge from authoritarian, theocratic or otherwise tyrannical regimes; examples of modern opposition to Human Rights have emerged from China and Iran (at the 1993 Vienna Conference) or the Islamic bloc at the U.N. (as evidenced by its opposition to the inclusion of provisions for sexual orientation in the U.N. Human Rights framework) (UN Watch, 2012). It is normal that tension exists between the overwhelming international endorsement of Human Rights as just in a cosmopolitan sense and the actions of these

countries. Authoritarian, theocratic or otherwise tyrannical regimes are predicated on stifling debate – the creation of this alternative totalistic reality is key to all totalitarian movements as noted by Hannah Arendt:

*“Before they seize power and establish a world according to their doctrines, totalitarian movements conjure up a lying world of consistency which is more adequate to the needs of the human mind than reality itself; in which, through sheer imagination, uprooted masses can feel at home and are spared the never-ending shocks which real life and real experiences deal to human beings and their expectations. The force possessed by totalitarian propaganda -- before the movements have the power to drop iron curtains to prevent anyone's disturbing, by the slightest reality, the gruesome quiet of an entirely imaginary world--lies in its ability to shut the masses off from the real world.” (Arendt, 1986)*

Essentially, Arendt captures the idea perfectly that all such repressive regimes must stifle debate on their basic principles (as witnessed by the severe punishment, often including execution, for heresy in much of the Islamic world (Saeed, 2011) and the violent repression of debate in China and other authoritarian countries) and by the assignation of essentialized identities at birth (i.e., national or religious fundamentalism, etc.). Human Rights and cosmopolitan justice are understandably discomfiting to such orders as standards which empower and value the individual and encourage questioning authority represent an existential threat. Human Rights are the product of a complex and centuries long process of intellectual and political debate and, from many historical and ideational examples we have seen, are very persuasive and empowering to and for individuals (and, as seen, enjoy widespread popular support). For totalitarian regimes of one stripe or another the powerful claim to cosmopolitan justice of fundamental Human Rights (and its rejection of cultural relativism) are anathema; to permit debate about the central ideas of

their societal orders (and their comparison to a cosmopolitan standard) would be to destabilize their absolute hold on power. As we have seen from historical example, Human Rights and cosmopolitan justice provide the means for people living under such orders to free themselves and change their societies. The words of Kant noted more than 200 years ago apply aptly:

*“Our age is the age of criticism, to which everything must submit. Religion through its holiness and legislation through its majesty commonly seek to exempt themselves from it. But in this way they excite a just suspicion against themselves, and cannot lay claim to that unfeigned respect that reason grants only to that which has been able to withstand its free and public examination”* (Kant, 1998, s.Axi).

Repressive governments (through their majesty) and the theocracies of the world (through their holiness) excite precisely this suspicion – both from without and more importantly from within. Their accusations of cultural imperialism against Human Rights as a cosmopolitan conception of justice and blueprint for liberal democracy are rooted in the fact that they cannot accept to be held to account to any exterior standard of behavior or evaluation (Human Rights and cosmopolitan justice) as they are all too well aware how poorly they would fare under an analysis of this kind.

All of these fact considered, the fact that fundamental Human Rights are accused of representing a blueprint for liberal democracy is not something that should be denied as it is arguably true, though for different reasons than its critics maintain. What needs to be questioned is the claim that this represents a form of cultural imperialism; illiberal elites would like to play to the trope of a meddling imperial West imposing its beliefs on others

but the evidence rather suggests that most of the world's people see Human Rights and democracy as the most just system available. The opposition voiced by the Chinese or Iranian regimes (or indeed by overzealous supporters of American hegemony) at being held to account according to Human Rights are arguably much more about discrediting the powerful normative claims to cosmopolitan justice made by their internal dissenters or external opponents than about any real concern of cultural imperialism.

Far from being proof of cultural imperialism, the overwhelming global perception of the justness of democracy as a form of government (Dalton & Ngu-Ngoc, 2005; Gallup, 2005; Heath, 2005; Inglehart, 2003; Park & Shin, 2006; Tessler, 2002), the global desire for fundamental Human Rights (CFR, 2012; Pew, 2003) and the association of the two as being related and mutually reinforcing (Pew, 2003; UN - UNHRC, 2012) strengthens our claims for the cosmopolitan justness of Human Rights. Human Rights and democracy are not synonymous but they are evidence suggests they are clearly related.

### **Western Imperialism**

Turning now from cultural imperialism we will analyze a similar, yet sufficiently distinct, criticism offered of cosmopolitan justice and Human Rights: that they represent a form of Western imperialism. We have purposefully addressed this criticism in isolation after having addressed claims of cultural imperialism. Western imperialism is, of course, arguably a blanket term which covers could include cultural imperialism, but for the ends of this paper we wanted to address specifically the claim that Human Rights and

cosmopolitan justice are uniquely a form of Western imperialism, distinct from being rooted in the broader effects of Western power (as seen in analyses of criticisms claiming Human Rights represent cultural imperialism).

The argument that Human Rights and cosmopolitan justice are forms of Western imperialism can be summarized as the idea that Human Rights represents a Western idea which through the military, political, economic and cultural force of that Western world has been imposed on the rest of the world. This is an important point to consider in that many non-Western countries (including in Asia) have adopted and promoted Human Rights. Looking to the preamble of the constitution of Japan, we find an endorsement of Human Rights and cosmopolitanism: “We believe that no nation is responsible to itself alone, but that laws of political morality are universal” (Kantei, 2013). For India’s part, Human Rights are enshrined as Fundamental Rights in section III of the Indian Consitution (Basu, 1993). In this light, what does it mean for Human Rights to be Western? And, if Human Rights are somehow intrinsically Western, does is really impact the claim that Human Rights are a manifestation of cosmopolitan justice?

As witnessed in our examination of cultural imperialism, it is clear that there is a legitimate historical basis for much of the world to be concerned about imperialism, especially when rooted in the West (which has heretofore been the most successful and widespread in its colonialism) and when rooted in appeals to cosmopolitan justice. What

is not quite as clear is the idea that Human Rights (especially in their contemporary form) are Western as such.

### **How Western are Human Rights?**

Indeed, saying that Human Rights are Western necessarily begs the question: what is Western? If it is merely a designation of origin – the same way that gun powder is Chinese or zero is Indian – then that is simply a statement of fact. However, we must be aware that Western in this sense rather means to imply Human Rights are not derived from a cosmopolitan conception of justice but are simply a product of parochial Western culture and therefore inappropriate to apply or introduce outside of a Western context. This idea is more contentious and, this work will advance, not supported by substantive historical fact.

First, to simply label Human Rights Western is arguably superficial. Since their introduction into Western political life through the American and French revolutions at the end of the 18<sup>th</sup> century, Human Rights posited as a manifestation of cosmopolitan justice have been a transformative force within Western society. Cosmopolitan justice and Human Rights have proven a transformational evaluative mechanism which has catalyzed an extensive reorganization where not an outright metamorphosis of much of was traditional Western culture.

In many ways, the present Western world is best understood as a liberal and not strictly Western civilization. This point is not mere semantics – the 19<sup>th</sup> century campaign against slavery, the large scale overthrow of Christian theocracy and aristocratic authority, the extension of suffrage first to men, then to women and the emancipatory campaigns against discrimination against different religions, sexualities, races and ethnicities have all been rooted in cosmopolitan justice and Human Rights. These changes have altered the social, ethical and political fabric of the Western world in unprecedented ways. Human Rights did not destroy Western culture, rather they simply transformed those parts of it which were incompatible with the protection of fundamental freedoms (principally the arbitrary authority of government, society and religion). It is important to mention, moreover, that this is an ongoing process (as mentioned previously, we are witnessing a gay civil rights movement which is transforming the Western world according to concepts of Human Rights and cosmopolitan justice). The West has certainly not reached any sort of panacea of Human Rights but is dynamically changing and continually engaging with cosmopolitan justice and Human Rights.

Moreover, the historical narrative which underwrites accusations of Western imperialism against Human Rights and cosmopolitan justice cannot be reconciled with the fundamental role played by Human Rights and cosmopolitan justice in dismantling Western imperial systems. Sustained and profound opposition to imperialism was generated from within the Western world from the very outset of colonial expansion

within a cosmopolitan framework [by Kant, 1983, p.90; Diderot (Muthu, 2003, 75-77) and Smith (Kohn, 2013) among others]. Furthermore, as we shall subsequently explore, it was arguably the empowering logic and ethos of cosmopolitan justice and Human Rights which provided colonized and subjugated peoples with the necessary framework to demonstrate and articulate the theoretical and practical tyranny of imperial rule. In short, while Human Rights and cosmopolitan justice are undoubtedly products of the West they arguable cannot be legitimately labeled Western imperialism.

In this light, what does it mean for Human Rights to be Western? And, if Human Rights are somehow intrinsically Western, does it really impact the claim that Human Rights are a manifestation of cosmopolitan justice?

### **Asian Exceptionalism or Essentialism?**

It is always useful to consider ideas through consideration of a real world example. And what better real world example to use in a discussion of Human Rights and Western imperialism than one of the most oft-quoted critics of the Occident, Lee Kuan Yew, the former Prime Minister of Singapore.

Mr. Lee is a particularly apt choice in that he famously led Singapore, in conjunction with Iran, Malaysia and China, in a campaign to challenge the universality of Human Rights and the international system in place to protect them. At the 1993 World Conference on Human Rights in Vienna (to which we made reference earlier) Singapore

advanced the argument that Human Rights as theretofore enumerated represented an unjustifiably Western social standard and did not take into account what was described as unique “East Asian values”. This argument had originally emerged in the regional conferences held in advance of the Vienna conference in the early 1990s.

In short, the argument was advanced that Human Rights as heretofore enumerated represented a Western system and worldview, incompatible with Asian society (Milner, 1999, p.56-58). Asian values, conceived of as a counter-balance to the Human Rights regime imposed on the East by the West, are essentially a rejection of personal empowerment. Asian values draw heavily from orthodox Confucianism; inasmuch, the Confucian value of filial piety meant that loyalty towards hierarchical authority was promoted, personal freedom was to be curtailed and subsumed into collective efforts and hard work and thriftiness were to be celebrated as means of social progress (Bell, 2000; Chan, 1999). Asian values, commensurately, would de-emphasize some existing Human Rights including the rights of women and democratic participation (Bell, 2000; Chan, 1999).

Proponents of Asian values advanced multiple arguments in their favour. Among these arguments are the idea that it is reasonable to attribute a certain degree of Asia’s economic success to specifically Asian values (Sopiee, 1995, p.180-185), as a counterbalance to the perceived excessive individualism and lack of social concern of Western values (Milner, 1999, p.58-62) and the idea that in developing modern political cultures, Asia must ground these conceptions in an organic and local understanding and

not wholly import Western models. All of these points are, arguably, eminently reasonable and quite correct but – in light of the subject of this paper – beg the question: what do they have to do with fundamental Human Rights and cosmopolitan justice? Aren't such values rather more a matter of *taqlid*? Certainly they are important in negotiating the appropriate balance between various forms of Human Rights (cultural, social, educational, etc.,) but do they, in any serious way, negate the right to fundamental rights of cosmopolitan justice?

In order to better answer that question, let us consider the ideas of Asian values as advanced in light of the arguments and ideas we have thus far covered. To begin with, before discussing these ideas it is important to understand the history and context from which these debates emerged. Internationally in 1993, the recent fall of the Soviet Union before the West heralded in the eyes of many the ultimate triumph of liberal democracy and, as Fukuyama so famously put it, the end of history, at least politically speaking. Domestically, Singapore and Malaysia were in the midst of unprecedented economic growth as Asian Tigers (Milner, 1999). These two countries, made up of different proportions of Muslim Malays, Hindu Indians and Buddhist and Confucian Chinese were keen to advance a new identity which provided them a binding force to quell ethnic and religious tensions and allow them to continue their politically controlled economic growth (Milner, 1999). China, rapidly transforming into the economic colossus it has become thanks to Deng Xiaoping's late 1980's reforms was still suffering from the international condemnation surrounding the Tiananmen Square massacre of 1989. Iran, for its part, was only 14 years into its new Islamic state and 5 years out of its brutal war

with Iraq, making for a very precarious position for its leadership, especially with the collapse of its Soviet allies (Rubinstein, 1981, p.605-610). In short, each had a domestic reason to shore up legitimacy for their respective forms of nationalistic and religious authoritarianism and de-legitimize the international Human Rights regime, now pushed forward unabated by the newly unchallenged West.

In this light we can see why a grouping of more or less authoritarian regimes and movements would be interested in maintaining their power. Such groups could shore up their authority by embracing essentializing national/regional and religious identities and making them sacred and innate and therefore beyond accountability to fundamental Human Rights and cosmopolitan justice. Moreover, it is worth noting that Asian values read rather conveniently like a blue print for the state-led, authoritarian capitalism of those Asian countries (Singapore, China and Malaysia) which most strongly advocated for Asian values (Kanishka, 1997). Inasmuch, it is also plain to see that Asian values serve the interests of the current dominant ruling classes in these countries, especially by foregrounding the Confucian value of respect for authority to delegitimize their opponents as “un-Asian” or disrespectful (Milner, 1999).

Additionally, we must ask (as we did about the idea of something being Western) how any of the values advanced as Asian can be seriously so deemed? Asia is the most populous and diverse continent on the planet. As noted by Amartya Sen in his piece *Democracy as a Universal Value*, it is absurd to argue that anything can be labeled Asian values, given the extraordinary diversity of the continent, to say nothing of the ongoing

and profound ideological conflicts across religious, national and ethnic lines across the continent (Milner, 1999). The term Asian in Asian values is therefore better understood to refer to conservative and sometimes chauvinistic Confucianism and not anything transcendentally or unifyingly Asian as such. Arguably then, the term Asian was simply adopted to contrast with the supposed Western nature of Human Rights to serve as a reductionist binary compatible with the thinking of those who criticize Human Rights as Western imperialism. None of this is to say that Asian values do not or cannot exist, especially not in a more narrowly defined cultural sinosphere, which excludes West, Central and South Asia, where Chinese culture has and does form a common foundation. However, if such Asian values are to be enumerated it should be a bottom-up and indeed collective enterprise, not the project of a technocratic and authoritarian elite and should be done with respect to the fundamental Human Rights of all persons, including all those residing in Asia.

Indeed, to return to our earlier point, much of what was advanced as Asian values was in no way incommensurate with Human Rights except where such values sought to legitimize egregious injustices, most visibly in the insidious and patriarchal disempowerment of women advanced as an Asian value (Chan, 1999; Claude, 2003; Bell 2000). As noted by a focus group on Human Rights in Bangkok, Asian attendees did not agree with the idea that spousal abuse, though sanctioned in traditional Asian Values, should be permitted as it violates Human Rights (Claude, 2003, p.258)The Confucian principle of filial piety, the emphasis on collective achievement and the celebration of thrift as a means of self-advancement are arguably not the kind of thing one associates

with a discussion of fundamental Human Rights; using our own test established at the beginning of this work, we can see that a failure to observe filial piety may be socially *outré* in East Asia but hardly constitutes an egregious violation of justice. Within the West, and indeed across the world, there are a great diversity of *taqlid* which manage to exist within the framework of cosmopolitan justice and fundamental Human Rights. All that changes is that cultures and governments simply have to respect the inviolate nature of fundamental Human Rights to prevent any government or culture being unjustly demanding or abusive to persons born into their respective cultures or states. Human Rights and cosmopolitan justice are understandably contentious in despotic systems as they provide the means for the assertion of personal rights against the culture, society and political order into which one is born. In this vein, it is notable that Asian values also attracted criticism from Lee Teng-Hui and Kim Dae Jung, the democratically elected Presidents of Taiwan and South Korea respectively, who both re-asserted the universality of Human Rights (Fetzer and Soper, 2007, p.144).

Inasmuch, the idea that Asian values are in conflict with the West or Human Rights is arguably inaccurate and Human Rights and cosmopolitan justice have important roles in protecting the large portion of humanity residing in Asia from abuses of their fundamental rights. As this paper was being written in the late Winter of 2013, it was possible to casually visit the website of BBC News and come across myriad examples of struggles for Human Rights across Asia including the first book about being a gay Afghan published by a man who escaped to Canada to live his sexuality in peace (BBC, 2013), the struggle of women in China against the state's instrumentalization and

reduction of their lives according to a reproductive imperative (BBC, 2013) and the ongoing struggle for Human Rights under Iran's brutal and intransigent theocracy (BBC, 2013). Indeed, most damning for the case of Asian values as being more specifically East Asian, there are articles which show that more than 100 prominent academics in China have released an open letter calling on the central government to ratify international Human Rights treaties (BBC, 2013) and, contrary to Mr. Lee's assertion that the Asian value of filial piety promotes societal harmony and cohesion, an account of a strike in Singapore disproportionately repressed via exaggerated prison terms (BBC, 2013).

All of these cases show that whatever the cultural milieu, Human Rights and cosmopolitan justice reflect basic and undeniable rights that people, from the ground up, aspire to have protected (CFR, 2012; Pew, 2003). Accusations of Western imperialism are superficially persuasive but do not withstand more rigorous consideration.

Fundamental Human Rights as a manifestation of cosmopolitan justice are perfectly compatible with the legitimate social distinctness of East Asia (or indeed, any other part of the world for that matter). That there should be some friction with our local *taqlid* when considered by the standards of Human Rights is natural (as witnessed by the ongoing gay rights movement in the West); that this happens as well in Asia does not undermine the cosmopolitan justice of Human Rights but rather shows how human communities across the world react similarly when dealing with important social change. Just as in the West, governments across the world must contend with their people's right to rights – that they will, and should, do so according to the cultural framework of their historical communities should go without saying.

## **PART V : Human Rights as Cosmopolitan Justice in Perspective**

If one were to summarize, however superficially, our analysis of the preceding criticisms of Human Rights which label the concept a product of cultural or Western imperialism, what would one say? Arguably, the answer would be that there exists considerable theoretical and historical evidence to support the claim that Human Rights are a manifestation of cosmopolitan justice. However, it would need to include the caveat that Human Rights and claims to cosmopolitan justice offer such powerful normative endorsement that they have been hijacked repeatedly and to great effect by imperialist (and other movements). Moreover, in their hijacking, appeal to cosmopolitan justice and/or Human Rights have served as the pretext for the brutal denial of real-world Human Rights. Inasmuch, the lesson of such criticisms is that we must be extremely wary of anyone claiming to be acting in the name of cosmopolitan justice and/or Human Rights.

### **Cosmopolitan Justice as Means of Liberation**

As we have seen, from the beginning of the enterprise of European colonialism, claims to cosmopolitan justice have been used as a convenient pretext for denying the Human Rights and access to cosmopolitan justice of people around the world. Nevertheless, it is important to recognize that concurrently and in opposition, considerable opinion from the same historical periods has railed against the imperialism of the European powers of the

age. One need only consider Kant's praise for Japan and China's violent refusal to interact with the "barbarous" West and general damning indictment of the vapid commercialism and injustice of empire to see an example of the most famous thinker of the age openly and emphatically opposing imperialism and promoting the 'cosmopolitan right'. (Kant 1983, p.119). An even stronger condemnation of imperialism is to be found in Diderot's scathing piece, the *Histoires des Deux Indes* – in this work again we see that socio-ethical liberals were using cosmopolitan conceptions of justice to condemn this form of imperialism (Muhtu 2003, p.75). Diderot condemned the enterprise of imperialism for its moral and intellectual costs:

*"Let us stop here and place ourselves back in the time when America and India were unknown. I address myself to the most cruel of Europeans, and I say to them: there exist many regions which will furnish you with rich metals, with appealing clothing, with delicious dishes. But read this history and see at what price this discovery is promised to you. Do you, or do you not want it to take place? Does one believe that there could be a creature so infernal as to say: I want this?"* (Diderot via Agnani, 2007, p.65)

Moreover, Diderot was unforgiving in unmasking the underlying hypocrisy, violence and barbarism of Europe's colonial enterprise:

*"What do these forts which you have armed all the beaches with attest to? Your terror and the profound hatred of those who surround you. You will no longer be fearful, when you are no longer hated. You will no longer be hated, when you are beneficent. The barbarian, just like the civilized man, wants to be happy"* (Diderot via Agnani, 2007, p.65)

In short, from even this brief excerpts, we can see that European thinkers immediately began using arguments based on cosmopolitan justice and Human Rights to oppose the imperialism of their times.

In short, cosmopolitan justice is necessarily opposed to imperialism because, as it has since the Stoics, it holds all people to be innately equal and this is precisely the opposite of the hierarchical ethos of empire. Moreover, cosmopolitan justice– which necessarily includes the idea that everyone possesses and cannot reasonably be denied certain rights – is arguably the school of thought which ultimately served to challenge and overthrow imperialism. It was this combination of cosmopolitan justice and Human Rights which arguably convinced the majority of both the colonized and colonizing that colonialism was unjustifiable (Hopkins, 2008), as noted by Hannah Arendt:

*"On the whole it [The British Empire] was a failure because of the dichotomy between the nation-state's legal principles and the methods needed to oppress other people permanently. This failure was neither necessary nor due to ignorance or incompetence. British imperialists knew very well that 'administrative massacres' could keep India [or Egypt] in bondage, but they also knew that public opinion at home would not stand for such measures. Imperialism could have been a success if the nation-state had been willing to pay the price, to commit suicide and transform itself into a tyranny. It is one of the glories of Europe, and especially of Great Britain, that she preferred to liquidate the empire." (Arendt, 1986)*

From this we can clearly see and that conceptions of Human Rights and cosmopolitan justice (“the nation state’s legal principles”) were central to dismantling the unjustifiable imperialism of the British Raj in India. This fact does not undo the horrors done in the

name of cosmopolitan justice, but bears witness to the fact that ultimately Human Rights was the key ideological tool used to bring colonialism to an end.

Moreover, if we look beyond the rationales within Western metropolises to those freeing themselves from colonialism, we strengthen our argument for claiming that Human Rights represent a manifestation of cosmopolitan justice by demonstrating how the ideas were seen and applied just as organically in non-Western societies.

Let us start then, with perhaps the most famous and influential figure in the resistance against European imperialism in Asia, Mahatma Gandhi. Gandhi was, implicitly if not explicitly, a strong advocate of moral cosmopolitanism and Human Rights. Gandhi appealed to these two ideals in his struggle for an independent India, arguing that the Indian people – who had been subjected to a racist and unjust hierarchy under the Raj – had the same inalienable claim on Human Rights and fundamental freedoms as anyone else, including their British administrators (a morally cosmopolitan position). It is also of interest to note that Gandhi applied these cosmopolitan norms to radical effect within India as well. Gandhi advocated tirelessly for equality by working for the emancipation of the untouchables (those at the bottom of the Hindu caste system), for the rights of women and for mutual respect and understanding among India's multifaceted ethnic and religious communities (Ambedkar, 1943). Cosmopolitan justice and Human Rights then, can be seen not only as enemies of imperialism but of all forms of unjustified restrictions and discrimination. Moreover, Human Rights and cosmopolitan justice were ultimately

used to dismantle, not maintain, imperialism and were invoked despite attempts by Western imperialists to the contrary. To argue that fundamental Human Rights represent a form of imperialism (i.e., maintained by force and imposed from above) does not withstand historical examples.

More recently, the iconic struggle to end Apartheid, personified by Nelson Mandela, provided us with another example of the emancipatory power of cosmopolitan justice and Human Rights. The apartheid regime arguably represents Western and cultural imperialism at its most chauvinist, arbitrary and brutal; the dispossession of the indigenous African population and the subsequent implantation of a violent and offensively absurd racial hierarchy ranks among the most egregious of all colonial regimes. In struggling against apartheid, Nelson Mandela made great use of a cosmopolitan sense of justice and the international norms of Human Rights to appeal against the inverted and perverse domestic reality of apartheid South Africa. Like Gandhi, Mandela made use of cosmopolitan justice and Human Rights not just to challenge the injustice of the colonialism he faced but also made it central to his domestic policies in an attempt to create a new and more just South Africa. We can see evidence of this commitment in the words of Mandela during his inaugural address as the first President elected from a full franchise in South Africa:

*"We enter into a covenant that we shall build a society in which all South Africans, both black and white, will be able to walk tall, without and fear in their hearts, assured of their inalienable right to human dignity – a rainbow nation at peace with itself and the world."* (Mandela, Pretoria, 9 May 1994; SAHO, 2011)

He built on this theme of inalienable rights in his remarks just weeks later at the opening of the first Parliament of post-apartheid South Africa:

*"Our single most important challenge is therefore to help establish a social order in which the freedom of the individual will truly mean the freedom of the individual. We must construct that people-centred society of freedom in such a manner that it guarantees the political liberties and the human rights of all our citizens."* (Mandela, Cape Town 25 May 1994; SAHO, 2011)

Mandela's rhetoric was not empty. As President he was crucial to the establishment of the South African Truth and Reconciliation Commission (TRC) which sought to document and investigate serious rights abuses during the apartheid regime. Moreover, Mandela was heavily involved in the drafting of the new South African constitution which included powerful provisions for Human Rights, inspired by the Canadian Charter of Rights and Freedoms (Canadian High Commission in South Africa, 2013). In short, he used Human Rights as a tool of liberation and sought to bring the new South Africa up to the highest extant standards of cosmopolitan justice.

Having considered the nature of imperialism and its connection to cosmopolitan justice and Human Rights, two points become clear. First, Human Rights and cosmopolitan justice are extremely normatively persuasive and, inasmuch, are likely to be co-opted by movements which seek to fraudulently appeal to their moral authority to mask otherwise morally objectionable actions. Secondly, any attempts to deny fundamental Human Rights in the name of establishing them (as in the case of many forms of imperialism) in

the name of a cosmopolitan/natural justice are illegitimate. Critics who are concerned that Human Rights are used only in one of these two ways, to borrow moral authority for unworthy causes or to serve as self-negating rhetorical justification against respecting Human Rights, are right to be concerned. Nevertheless, as we have seen in our examination of the dismantlement of imperialism (both from the perspective of European powers and colonies and in contemporaneous reactions to imperialism) Human Rights and a sense of cosmopolitan justice were ultimately the normative framework within which liberation was possible. Inasmuch, cosmopolitan justice and fundamental Human Rights were as central and as conceptually just to Kant as they were to Mandela and Gandhi, providing evidence to support their claims to universal validity.

Having considered and engaged with the arguments of those critics who maintain Human Rights represent a manifestation of one or more forms of imperialism it is now time for us to introduce a framework which supports the claim that Human Rights are a manifestation of cosmopolitan justice.

First, we support the position outlined by the United Nations in reference to Human Rights, namely that:

*“Universal human rights do not impose one cultural standard, rather one legal standard of minimum protection necessary for human dignity. As a legal standard adopted through the United Nations, universal human rights represent the hard-won consensus of the international community, not the cultural imperialism of any particular region or set of traditions.*”

*Like most areas of international law, universal human rights are a modern achievement, new to all cultures. Human rights are neither representative of, nor oriented towards, one culture to the exclusion of others. Universal human rights reflect the dynamic, coordinated efforts of the international community to achieve and advance a common standard and international system of law to protect human dignity.*” (Ayton-Shenker, 1995)

The authority of Human Rights are based in a cosmopolitan conception of justice and both the concept of Human Rights and the current Human Rights regime have emerged out of a uniquely international and collaborative discussion which spans more than 200 years of political theory and approximately 70 years and counting politically. Inasmuch, they represent the opposite of imperialism (i.e., a hierarchical system imposed from above and maintained by power) in their grassroots and power diffusing nature. While originally growing out of ideas articulated in the West, they are not intrinsically Western and Human Rights have transformed traditional Western culture as much as they have changed or are changing other cultures which are attempting to reconcile themselves with these basic standards of human dignity.

### **Case in Point : Mukhtar Mai**

Much of the argument for seeing Human Rights as a manifestation of cosmopolitan justice can be gleaned from the case of Mukhtar Mai. A consideration of her case in light of all that we have thus far seen, with a special focus on the fundamental right to rights and the protection against egregious violations of justice, offers a crystallization of the

fundamental and cosmopolitan nature of Human Rights both theoretically and practically.

A brief synopsis from a news report provides a rough outline of the case:

*“Nine [Now eleven] years ago, a misogynistic panchayat [traditional South Asian village council] of south Punjab ordered the gang rape of a woman [Mukhtar Mai] for no sin of hers. It was her (then 12-year-old) brother who was sodomised and then accused of illicit relations with the sister of the powerful rapists. This low-caste family [Mukhtar’s family] had to be ‘fixed’.”*(Rumi, 2011)

Before proceeding any further, it is important to again clarify that we are not selecting the case of a Muslim woman to make simplistic or sweeping claims. We do not believe this case is indicative of Pakistan or the Islamic world as a whole (indeed, it is more of a reflection on the traditional system of local justice than anything Islamic as such). The case of Ms. Mai was chosen because it is exceptional and it offers a clear example of a situation in a non-Western cultural milieu where Human Rights empowered an individual to seek justice. This example, then, is purely chosen to be illustrative and draw attention to the cosmopolitan applicability of the principles under discussion.

Returning to the matter at hand, it is the opinion of this work that to be sentenced to gang rape for any reason qualifies as an egregious violation of justice (and therefore deserving of protection as a fundamental Human Right as we have defined it). To moreover be sentenced to gang rape as a result of attempting to pursue those who sexually assaulted someone else (in this case, her younger brother) represents a compounding violation of his fundamental Human Right to human security. That the *taqlid* of her particular community held that such punishments were acceptable is irrelevant before the fact that

the punishments constitute a gross violation of fundamental Human Rights; in short, the *panchayat* was functioning utterly outside the sandbox of fundamental Human Rights.

Ms. Mai, after having suffered the horror of her punishment, was expected under the local convention to commit suicide to protect her family's honour (UN, 2006); luckily, she decided to break with social convention. Instead, Mukhtar chose to pursue the opposite course by going beyond her local tribal justice system. She pursued her case within the formal Pakistani legal system empowered by her claim to fundamental Human Rights. As Michael Ignatieff notes:

*“The conflict over the universality of human rights norms is a political struggle. It pits traditional, religious, and authoritarian sources of power against human rights advocates, many of them indigenous to the culture itself, who challenge these sources of power in the name of those who find themselves excluded and oppressed”* (Ignatieff 2001, p. 76-77)

The case of Ms. Mai illustrates this point with exceptional clarity. In refusing to commit ritual suicide and instead seeking justice through the formal legal system, Ms. Mai was making a claim to her fundamental Human Rights through the Pakistani legal system against the odious and misogynistic injustice perpetrated against her in name of traditional, religious and authoritarian sources as noted by Ignatieff. Put within the framework we have thus far advanced, Ms. Mai did not accept the form of justice (if it can so be called) borne out of the contingent *taqlid* of her culture and sought instead, through appeal to the formal court system, to argue for justice in keeping with her inalienable rights held in virtue of her pre-political humanity alone (Nussbaum, 2011). As this case illustrates, real Human Rights and cosmopolitan justice are a form of grass-

roots, transformational empowerment. This point is best articulated by those within the societies most tangibly struggling to assert Human Rights versus entrenched power, like Islamic feminist scholar Haideh Moghissi, who eloquently makes the point that:

*“What they seek is protection of their rights as individuals within their own culture. Authoritarian resistance to their demands invariably takes the form of a defense of the culture as a whole against intrusive forms of Western cultural imperialism. In reality this relativist case is actually a defense of political and patriarchal power. Human rights intervention is warranted not because traditional, patriarchal or religious authority is primitive, backward or uncivilized by our standards, but by the standards of those whom it oppresses. The warrant for intervention derives from their demands, not from ours”* (Moghissi, 1999, Part II)

Moghissi perfectly captures the source of authority for Human Rights, Ms. Mai was not suffering the imposition of an alien moral system (i.e., Human Rights as Western or cultural imperialism) but appealing to a form of primordial justice – she knew what happened to her was wrong on her own terms and within her own culture. Moreover, Moghissi reiterates the previous point made in this piece that the main contemporary political opposition to Human Rights comes from authoritarian regimes and systems. What is also of interest, given our overview of the history of the ideas of Human Rights and cosmopolitan justice is to see how the very modern ideas of Moghissi are in line with one of the first scholars to reference natural law in the West, Grotius. He wrote: “[Natural law is] the dictate of right reason involving moral necessity, independent of any institution – human or divine.” (Grotius via Miller, 2011). When Moghissi says the warrant for intervention derives from their demands, not ours, she is arguing that the right

reason and moral necessity of each individual exists and justifies the protection of their fundamental Human Rights.

Ms. Mai's horrific treatment and subsequent dignified bravery provide us a visceral example of the importance of fundamental Human Rights as cosmopolitan justice.

Debates surrounding cosmopolitan morality and Human Rights have real repercussions for billions around the world who do not have the good fortune to be born in societies which, *de facto* or *de jure*, provide them with the contexts for choice to exercise their Human Rights. In keeping with our historical overview of the progression of Human Rights, we can see Ms. Mai as simply part of a long global process in the emancipation of women, through the language of Human Rights sourced in cosmopolitan justice. Case in point, the words of suffrage campaigner Higginson from 1859 are as relevant to Ms.

Mai's case as they were to the Western women of the period:

*"I do not see how any woman can avoid a thrill of indignation when she first opens her eyes to the fact that it is really contempt, not reverence, that has so long kept her sex from an equal share of legal, political, and educational rights... [a woman needs equal rights] not because she is man's better half, but because she is his other half. She needs them, not as an angel, but as a fraction of humanity."* (Higginson, 1859, p.304, via Kimmel & Mossmiller, 1992, p.111-14)

Though women would not be granted the right to vote in the United States until the 20<sup>th</sup> century, the appeal of Higginson was, like Ms. Mai's, against the patriarchal *taqlid* of Western society at the time and his revindications predicated on an appeal to cosmopolitan justice and Human Rights. Higginson appeals *to an indignation which is*

*sourced in the violation of inalienable rights* on women's own terms, precisely the same source noted by Moghissi in her words above and the spirit at the heart of Ms. Mai's refusal to submit to the injustice of her circumstances.

### **The Imperialism of *Taqlid***

Let us then take a moment to consider the most basic, dictionary definition of the term imperialism: "The extension or attempted extension of authority, influence, power, etc, by any person, country, institution, etc" (Collins World English Dictionary, 2012). Let us further say that imperialism is more than just an extension of power, authority and influence but is characterized by the extension of arbitrary authority, meaning those born into the imperial system are inescapably subject to its commands.

Considered thusly, and in light of our theoretical and practical examination of different form of imperialism, we can say that case of Ms. Mai is arguably an example of the imperialism of *taqlid*, understood as the extension or attempted extension of authority, influence, power, etc., by any cultural or political group over those who happen to be born into it. In short, this paper advances that it is unjustifiable to condemn those accidentally born into a given cultural or political order to suffer its idiosyncracies without any limitations as provided by Human Rights. The imperialism of *taqlid* rejects the fundamental freedom to question, re-assess and re-evaluate one's conception of the good life (Barry, 1995; Kymlicka 1989, p.52; Dworkin 1989, p.489; Macedo 1990,

p.247) including questioning the key assumptions of the societal order and conception of justice into which one is born. Ms. Mai, and all others who have suffered from this form of imperialism are those who most desperately need the cosmopolitan justice made manifest in fundamental Human Rights.

When we consider the case of Ms. Mai, we can see that it is normatively and practically unacceptable to say that Mukhtar Mai should simply have accepted the judge's decision that it was appropriate for her to be gang-raped because that is considered just within the system of justice practiced by the tribes of the South Punjab into which she was born.

This is unjustifiable and serves as clear example of the imperialism of *taqlid* as being the unrestrained application of force by her society against her. Ms. Mai had to go beyond her immediate political and cultural environment (putting it, as we described earlier in a sandbox to limit its authority over her) and appealed to the formal Pakistani court system for the protection of her Human Rights which she enjoys by virtue of a cosmopolitan conception of justice which transcends cultural context. Ms. Mai's ability to confront those who so brutally assaulted her was only possible because she could appeal to a conception of justice beyond that which was simply traditional or popular in her culture (*taqlid*); she appealed to a conception of justice based on the innate and inviolate rights of all peoples, everywhere at all times, namely Human Rights as a manifestation of cosmopolitan justice. To drive the point home, this case is clearly not liberal, cultural or Western imperialism against Mukhtar Mai, rather her treatment was offensive on her own terms and was:

*“... not so much ‘non-Western’ ... as anti-liberal, in conflict with the conception of individual autonomy and the protection of the individual from arbitrary coercion and violence.... Mukhtar was punished by the ‘community’ for what someone else allegedly did; not as an autonomous person, but as an organic part of her family” (Masso 2006, p.243)*

It is useful for our purposes to finish this section by reiterating that cosmopolitan justice and their manifestation via Human Rights are distinct from ‘the West’ (Benhabib 2002, 26-28.). Rather, fundamental Human Rights opposed themselves everywhere to the imperialism of *taqlid* by making all authority answerable to fundamental rights. The protection of fundamental Human Rights represent a manifestation of cosmopolitan justice by which any source of authority can be held to account – not only from without, but more importantly, as we have seen in the case of Ms. Mai, from within.

## **PART VI: Conclusion**

In reviewing the diversity of information and argumentation advanced in this work, it is helpful to summarize how we went about it. To start, we clarified our terminology, paying particular attention to defining imperialism, Human Rights and cosmopolitan justice. We have focused on fundamental Human Rights (those rights which, when violated, constitute an egregious violation of justice) (Cranston, 1973). We have sourced those Human Rights in the fundamental right to rights (Arendt, 1986, p.436) and innate freedom and consequent necessity to demand respect (Kant, 1996, 6:237; Hoffe, 2006, p.121) in virtue of our pre-political humanity (Nussbaum, 2011, p. 30-35). We have

further posited that, in keeping with the arguments of Beitz and Pogge, the Rawlsian original position is applicable globally and provides an intuitive argument for showing that all persons could reasonably be expected to endorse fundamental Human Rights from behind the veil of ignorance. Moreover, the innovation of the veil of ignorance ensures that – to the degree possible- the *taqlid* of contingent socialization and other arbitrary circumstances of birth would not discolor this conclusion; inasmuch, Human Rights can be said to be just in a cosmopolitan sense both in application and derivation. We lastly advanced the argument that cosmopolitan justice thus understood represents principles of justice which transcend time and place (Mandle, 2006; Pogge, 2005).

We next turned to a brief overview of the evolution of the concepts of cosmopolitan justice and Human Rights through the (largely) Western canon. We paid particular attention to the explosive emergence of Human Rights into political dialogue following the American and French revolutions, with an additional uptick in Human Rights discourse following the Second World War.

Having defined our key terms and presented the historical context for current debates in Human Rights and cosmopolitan justice, we turned to addressing two major criticisms advanced against the claim to cosmopolitan justice of Human Rights.

The first criticism was that Human Rights represent a form of Western cultural imperialism. We focused on the particular criticism that Human Rights read like a

blueprint for liberal democracy and that this represents cultural imperialism underpinned by Western hegemony. We argued that Human Rights do in fact read like a blueprint for liberal democracy, but, far from being proof of cultural imperialism, the overwhelming global perception of the justness of democracy as a form of government (Dalton & Ngunjiri, 2005; Gallup, 2005; Heath, 2005; Inglehart, 2003; Park & Shin, 2006; Tessler, 2002), the global desire for fundamental Human Rights (CFR, 2012; Pew, 2003) and the association of the two as being related and mutually reinforcing (Pew, 2003; UN - UNHRC, 2012) strengthens our claims for the cosmopolitan justness of Human Rights.

The second criticism was related but distinct, being that Human Rights represent a form of Western imperialism. We first disentangled Human Rights from being intrinsically Western in any sense other than their origin. We next engaged with an important and ongoing debate relating to Human Rights as Western Imperialism – that surrounding Asian values. Having historically situated the emergence of Asian values and enumerated those advanced, we were able to argue that those advanced lacked political impartiality and credibility. Moreover, we saw that the majority of Asian values were in fact questions of *taqlid* and were not incompatible with fundamental Human Rights or cosmopolitan justice. We lastly took a cursory glance at several current BBC news stories to see that there is considerable dissonance between the rhetoric of Asian values and the desire of many Asians for Human Rights and cosmopolitan justice.

Having addressed criticisms of cultural and Western imperialism, we turned to further advancing our argument for the cosmopolitan justness of Human Rights. Exploring how Human Rights played important roles in the liberation of India and South Africa respectively, we provided further evidence of both the cosmopolitan nature and justness of Human Rights.

We continued in this vein by examining the case of Mukhtar Mai through the lens of our preceding discussions of Human Rights as cosmopolitan justice. Captured by both her actions and the words of scholars, we saw how the case of Ms. Mai captures the innate and cosmopolitan justness of fundamental Human Rights. We were able to see that she claimed justice according to her own standards – not anyone else’s – and we were able to closely examine an example of an individual empowered through cosmopolitan justice. Building on her example, we offered our own definition of cultural imperialism (dubbing it the imperialism of *taqlîd*). We argued that this real cultural imperialism was the idea that the contingent circumstances of one’s birth (i.e., culture, gender, etc.,) could allow the exercising of power, unrestrained by fundamental rights, over anyone by virtue of nothing more than the lottery of birth.

That summary brings us to our present point where we have an opportunity to reflect on what we have seen and what it means in a larger context (both practically and academically).

First and foremost, it is important to recognize that both the concepts of Human Rights and cosmopolitan justice can easily, and have been, seriously misused. Critics who advance arguments of Western and cultural imperialism against Human Rights and cosmopolitan justice do so not out of caprice, but informed by the brutal history of European colonialism (from the Spanish conquistadors to the late Victorian British Empire) which was predicated on its own perverse version of cosmopolitan justice and Human Rights. Both Human Rights and cosmopolitan justice are extremely powerful – perhaps the most powerful – normative endorsements of the modern age. This makes their misappropriation all the more likely and tempting as groups functioning under the aegis of Human Rights can justify otherwise unjustifiable actions (perhaps the most salient recent example was the American led invasion of Iraq).

It is because of this powerful normative force that properly defining and understanding cosmopolitan justice is crucially important, both to prevent its conceptual misuse and to further the cause of fundamental Human Rights and cosmopolitan justice. Though it is difficult to advance general rules, from the definition we have seen here and all the cases we have examined, the best test for whether or not something is truly just in a cosmopolitan sense is if it acknowledges the implicit, unwavering and inviolate right to rights of all persons. Too many versions of so-called cosmopolitan justice (including many forms of exploitative and paternalistic colonialism) have justified removing the right to rights from persons whom it is seeking to render civilized enough to have rights.

This is opportunistic chauvinism and it is a phenomenon with a horrifying historical record; inasmuch, it is something against which we should always be on guard.

Coming back to the beginning, are we now better equipped to reply to the question we set out to explore at the outset of this work: are fundamental Human Rights a manifestation of cosmopolitan justice?

Arguably we are. Significant theoretical argumentation exists (as outlined in our summary above and in our definitions at the beginning of this work) which suggests that fundamental Human Rights represent a manifestation of cosmopolitan justice and are valid for all people and at all times. Tentative empirical evidence is emerging (CFE, 2011; Pew, 2003) to confirm our intuitive understanding that the majority of people in the world want and endorse fundamental Human Rights (in addition, as our work has shown, to democracy). In an increasingly plural world this shared moral framework offers an excellent base for dialogue and for guaranteeing the security and freedom of all people. As more authoritarian countries rise to prominence (especially, but not only, China), as the Islamic world continues to contend with religious extremism and the complex transition to democracy and as the West loses its hegemonic power (and contends with ethnic and religious nativism of its own) this framework of fundamental Human Rights provides an invaluable standard and safeguard against totalitarian and essentializing systems.

In our overview of cosmopolitan justice and Human Rights we have looked at examples of its applicability and importance across the world, from South and East Asia, to South Africa, the Islamic world and the West. Discussions of cosmopolitan justice demand cosmopolitan examples and, as we have seen, the dynamic evolution of Human Rights is an ever more global phenomenon as both the local and worldwide implications of Human Rights as cosmopolitan justice are felt and addressed. Despite this focus beyond the borders of the West, it is important to keep in mind that Human Rights and cosmopolitan justice remain central to ongoing debates in our societies and are by no means assured. In particular, the recent and troubling revelation of widespread data monitoring by the NSA in the United States and the GCHQ in the United Kingdom reminds us that questions of what constitutes a fundamental Human Rights, what constitutes an egregious violation of justice and whether all of humanity is in a shared moral community are just as pertinent and contentious in the West as elsewhere.

Surely one of the most important discussions in Human Rights (both academically and practically) is and will continue to be the claims of various forms of Human Rights against one another (social, economic, cultural, etc.). Establishing priority among these rights requires a meaningful cross-cultural dialogue (and is one where more local ideas, like Asian Values, can play a more legitimate role). Nevertheless, we must be careful to ensure that disagreements about these ideal Human Rights do not in any way endanger the expansion, adoption and adamant defence of the fundamental Human Rights we have advanced herein (as they almost were at the 1993 Human Rights Conference in

Vienna). Such fundamental Human Rights represent a cosmopolitan form of justice whereby basic human dignity and security is protected and sources of authority and power are curtailed and held to fundamental account. No mandate, be it democratic, theistic, authoritarian or otherwise, trumps our collective and individual claims to these fundamental and pre-political Human Rights which are held in virtue of our humanity alone. These fundamental Human Rights do not guarantee the best but they are irreplaceable both in protecting the most vulnerable amongst us and preventing the worst.

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