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Book review of International Human Rights Law: Universalism Versus Relativism

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would imply for other international declarations, resolutions and unratified conventions going beyond individual rights and freedoms.

Federal judges, at least, may well await encouragement for such creativity from government lawyers or the U.S. Supreme Court. Hannum's summary of recent federal opinions examining claims under international human rights law is properly cautious (pp. 6-7). Claims pressed by plaintiffs against foreign officials or by nonresidents against American officials often involve issues different from those that might be raised by a defendant in a domestic criminal case. The book sees greater potential if lawyers and courts use international materials in applying state and federal statutes, and particularly the broader constitutional guarantees of liberty, due process and humane treatment (p. 10).

The question remains how that might be accomplished. Again, if the guarantees are the federal Fourth, Fifth, Sixth, Eighth, or Fourteenth Amendments, any holding with or without reference to international sources depends ultimately on the U.S. Supreme Court. The book briefly observes that some state courts have taken the logical step of considering their own state constitutions before reaching a federal constitutional claim, and that reference to international standards is "equally valid in the state context" (p. 12). Actually, it can be more promising in that context. If a state court is persuaded that the state's people deserve no less liberty, fairness or humane treatment under its Bill of Rights than are received by citizens of other countries, it can so decide without concern about federal holdings or doctrines. It need not assert that the international standard binds the United States or any state. But the book gives this possibility only lip service; its comparisons (like law school teaching materials) quote only leading decisions interpreting federal provisions without noting many cases in which state courts have read comparable state guarantees differently.

The task is to bring to the courts' attention that familiar penal processes do not always meet what others whose respect we value consider essential human rights standards. As the book notes (p. 10, n.60), the Aspen Institute has made an important

start with selected judges, but more is needed. If the present brief, readable and inexpensive volume can be widely distributed to those who judge, argue and teach criminal law, it can contribute much to that end.

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International Human Rights. Universalism Versus Relativism. By Alison Dundes Renteln. Newbury Park, London, New Delhi: Sage Publications, 1990. Pp. 205. Index. \$35, cloth; \$16.95, paper.

Anthropologists and philosophers have long debated whether moral values are universal or relative to the cultural context in which they arise. In recent years this debate has gained importance in international human rights as both scholars and politicians have challenged the often-presumed universality of human rights standards, arguing that the validity and meaning of human rights are relative to particular cultural, social and political contexts. The universalist versus relativist debate has been dauntingly complex, requiring consideration of fundamental, and perhaps unresolvable, issues regarding morals, the nature of rights and the philosophical foundations of human rights.

In 140 pages, Alison Dundes Renteln sets out what she describes as a reconciliation of the seemingly contradictory universalist versus relativist positions. Endorsing a version of ethical relativism, Renteln essentially posits that comparative, empirical, anthropological research may reveal certain basic cross-cultural values from which human rights norms of a universal nature could be derived. Although falling well short of its promises, the book provides an interesting, if somewhat cursory, attempt to justify international human rights norms and critiques within the relativist framework.

The first two chapters are largely devoted to developing the theme that international human rights exhibit a "western bias" and lack the consensus allegedly presumed by human rights advocates. The first chapter is largely a historical account of the development of major human rights instruments and institutions. Pointing out that

the human rights movement has proceeded without any real consensus regarding the philosophical basis for human rights, Renteln argues that the mediocre ratification record of multilateral human rights treaties and the role of western-educated elites in formulating human rights policy in the Third World raise serious doubts about whether international human rights instruments, including the Universal Declaration, reflect cross-culturally shared fundamental values.¹

Renteln continues these themes in the second chapter, briefly setting forth her position regarding the philosophical foundation and nature of human rights. According to Renteln, "traditional rights theorists" have constructed an unduly restrictive rights framework based on a number of "artificial distinctions" (p. 44). In just over seven pages, she dismisses a variety of arguments that reflect these "distinctions" regarding such complex issues as the correlation between rights and duties, the existence of positive versus negative rights, the character of legal versus moral or natural rights, the contingent versus the inalienable nature of rights, and individual versus group rights (pp. 39-47). In three pages, Renteln similarly dispatches a number of traditional human rights theories that have attempted to derive human rights alternatively from natural law, human dignity, rationality, human nature, fundamental needs and purposive agency. Renteln challenges what she describes as a presumption of universality in current human rights thinking by demonstrating the western origins of many rights set forth in the Universal Declaration. She similarly discounts the contributions of such diverse thinkers as John Rawls, Immanuel

Kant and Lawrence Kohlberg, among others, for allegedly operating upon a "presumption" of the universality of morals.

Renteln's arguments in these two chapters appear largely designed to demonstrate that human rights can flourish within various cultural frameworks and be adequately protected by mechanisms other than traditional western entitlement rights. The most important aspect of Renteln's discussion here is her prudent, although hardly novel, observation that it is shortsighted and perhaps ethnocentric simply to presume the universality of current international norms, given the array of divergent perspectives on international human rights.

In her third chapter (pp. 61-87), Renteln sets forth the basic elements of her attempted reconciliation of relativism and universalism. With ample references to the literature, Renteln first reviews the major forms of relativist theory, which have been extensively debated among anthropologists and philosophers for many years. She then endorses a form of ethical relativism that insists that "there can be no value judgments that are true, that is, objectively justifiable independent of specific cultures" (p. 71).² With this relativist viewpoint as a premise, Renteln's project, it seems, is not so much a reconciliation of universalism with relativism as an attempt to fit international human rights within a relativist framework.

With this project in mind, Renteln attempts first to "reformulate" prior anthropological articulations of relativism. According to her, relativists in the past have incorrectly insisted on, or implied, a correlation between the relativity of moral values and the ideals of toleration and objectivity. Renteln argues instead that relativism is primarily a "meta-ethical theory" about moral perceptions that is empowered not by toleration or objectivity (themselves culturally specific values) but, rather, by the realization that moral judgments are the product of ethnocentricity and enculturation.³ By arguing that neither toleration nor objectivity is necessary to the relativist position, Renteln

¹ Throughout the book Renteln suggests that the words, deeds and values of national representatives or "elites" of "third world" nations may not, for purposes of human rights, accurately represent the values of their national constituencies. See, e.g., pp. 38, 54, 89 and 92. Whether this assertion is true or not, Renteln fails to provide any empirical support whatsoever for her supposition or explain why this alleged discrepancy is not equally true for western industrialized countries (whose representatives are similarly composed of social "elites"). Nor does Renteln explain who might be sufficiently populist to reflect "people's" values "accurately."

² Quoting Schmidt, *Some Criticisms of Cultural Relativism*, 70 J. PHIL. 780, 782 (1955).

³ Enculturation is the process by which people unconsciously acquire the moral values of their own culture and accept them as universal truths.

hopes to justify certain forms of external critique of specific human rights practices while insisting on the ultimate relativity of values.

International human rights and state actors, the argument goes, should somehow acknowledge the relativity of moral values but need not necessarily tolerate the diverse results. The relativity of moral judgments requires that human rights account for the role of enculturation and ethnocentrism in the development of human rights standards and in the critique of specific human rights practices. Utilizing relativism in this manner, Renteln argues that the basis for human rights standards and critiques should be empirically discovered, cross-cultural, universal values, which are, in essence, the least common denominators between diverse cultures.

The complexity involved in attempting to reconcile relativism with universal human rights is revealed by the confusing implications of Renteln's analysis, implications that appear to deprive that analysis of any real significance. On the one hand, Renteln posits that moral values and judgments only have objective validity or meaning in their specific cultural contexts. On the other hand, since toleration and objectivity are not *logically* necessary to this metaethical relativist viewpoint, external moral values may nevertheless be used to criticize any culture's social practices. If, however, such external judgments are not only possible, but valid in the sense that one need not tolerate moral practices contrary to one's own, the relativist insight is reduced to a seemingly empty acknowledgment that all moral judgments, including international human rights critiques, ultimately reflect a degree of ethnocentricity and enculturation. The international community is nevertheless justified in condemning what it jointly deems to be unacceptable practices within member societies, and states may act out, alone or with other states, their own culturally bound views of morality as articulated in the form of international human rights.

From this perspective it seems evident that toleration, at least in the sense of non-interference, is the most significant practical implication of relativism. Certainly, tol-

eration is what most governments and scholars espousing a relativist position have in mind. By eliminating toleration, Renteln's message seems to be nothing more than a plea to the international community for sensitivity to cultural diversity and the dangers of ethnocentricity. Without the ideal of toleration, however, this message seems powerless.

Although it is never clearly articulated, Renteln apparently intends more than this. For Renteln, the only effective human rights critiques are those directed at violations of cross-cultural universals or a society's violation of its internal standards, to the extent they are different. External (international) judgments, if not consistent with the moral standards of the criticized state, are essentially invalid as displays of self-righteous ethnocentricity and, if western, "cultural imperialism" (e.g., pp. 47, 77-78, 86-87 and 138-40). Moreover, if one accepts Renteln's relativist premise, such ethnocentric external critiques are also without any moral force. Since such external judgments are without moral validity outside their specific cultural origins, a scrutinized society is perfectly justified, on a moral level, in simply ignoring any international human rights critique that is inconsistent with its culturally based practices.

The implication that external standards are morally invalid is what justifies the second major facet of Renteln's analysis: that the only real hope for international human rights is to discover, through empirical data, those cross-cultural, moral values that are shared by all societies. Yet, in this sense, Renteln's whole argument appears to be built around an idea that has always served as both a theoretical and a practical premise of international human rights: that all rights promoted on the international level must be sufficiently shared among the world's diverse societies as to be essentially universal. The content of Renteln's argument for cross-cultural universals is therefore surprising in that she simply ignores over forty years of international discourse focused upon this goal. Indeed, in light of that history, Renteln's attempt later in the book to identify one such universal value reflects a limited analysis that essentially ignores the ongoing international dialogue over which

rights and moral values are sufficiently shared among the world's diverse cultures to be promoted on the international level.

Renteln's fourth and final substantive chapter (pp. 88-138) consists of a case study in which she attempts to implement her theoretical framework. After briefly critiquing prior attempts at comparative, cross-cultural research in human rights and anthropology, Renteln provides a detailed description of previously available anthropological data relating to the principle of proportional retribution for wrongdoing. Renteln's review of this evidence indicates that most, if not all, societies believe in the concept of retribution although their vision of proportionality may differ significantly.

There are several serious problems with the author's attempt to put her theoretical framework into practice, each of which reveals basic weaknesses in the underlying analysis as well. First, the author's own case study, rather than demonstrating the efficacy of an empirical, anthropological approach in deriving meaningful human rights standards, reveals the porous, indeterminate nature of general, abstract cultural values. The end result of her detailed review of older anthropological data is the conclusion that most, if not all, societies have social practices reflecting a general principle of retribution tied to proportionality—a concept so abstract that Renteln herself seems at a loss to derive from it concrete standards (regardless of their form). The ethnographers cited, for example, show that proportionality is interpreted in such divergent ways that it often results in practices in one society considered morally repugnant by other societies that share the generalized value.

Thus, the author's evidence simply demonstrates that divergent interpretations of abstract concepts may result in disparate social practices when brought to bear on practical situations in diverse cultural contexts. If the author's case study is any example, it is nearly impossible to derive meaningful, specific human rights standards from such abstract values, regardless of whether the underlying value is shared cross-culturally. The problem here, however, may be more one of application of the methodology than a fatal flaw in the underlying concept. In-

deed, others have suggested, more convincingly, that such empirical data can be used effectively to identify legitimate, factually based cultural disagreements over specific human rights standards.⁴

Second, the author presents an inadequate case for her argument that empirical, anthropological research into specific social practices is the appropriate manner in which to arrive at cross-cultural, universal human rights values. Renteln clearly recognizes the problem of confusing the question of what ought to be, with what is, but struggles unsatisfactorily over its resolution (pp. 89-91). Expressly seeking "native moral categories" (p. 89), Renteln clearly believes that the specific, traditional social practices and beliefs of cultural groups are the best indicators of a society's moral values, and thus, international human rights standards. Renteln fails, however, to explain adequately why social practices and beliefs are, by themselves, accurate measures of the prevailing moral precepts for any society. The unhappy implication of the author's limited approach is the one that relativism suffers from generally, as its opponents cite such culturally based practices as slavery in Mauritania, the caste system in India, the treatment of the poor in the United States and the status of women in many countries.

The author also fails to explain why the social groups whose practices she has chosen as the measure of moral standards should be deemed significant (as opposed to family, church or state) or by what criteria one determines the appropriate cultural group for discovering universal values. Indeed, it seems evident that specific cultural practices are not uniformly considered moral within the entire population of any modern society. These considerations raise the fundamental question, essentially unanswered by the author, of who or what speaks for a society as to the existence of its specific human rights values.

The limitations of the data favored by the author could, it seems, be partially remedied by reference to other indicia of moral values. Renteln, however, cursorily dismisses moral ideals reflected in the legal

⁴ See, e.g., R. HOWARD, HUMAN RIGHTS IN COMMONWEALTH AFRICA 16-29 (1987).

structures of societies, including constitutional and international obligations, as the products of western-educated, and therefore presumably biased, elites (pp. 38, 54, 89, 92 and 94-95). The omission of such manifestly relevant sources seriously undermines the credibility of the author's case study.

Renteln's project in this book relates to a daunting problem in international rights: how can the international community develop human rights standards of universal application while maintaining respect for the cultural values and practices of the world's diverse societies? Renteln attempts to further this goal within the tenets of relativism by eliminating the ideals of toleration and objectivity from the relativist discourse and appealing to empirical, anthropological evidence to establish cross-cultural universal values from which human rights can be derived. Although thoroughly researched and at times provocative, the resulting analysis ultimately suffers from conflicting implications, which render the author's conclusions of questionable significance for international human rights.

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Out of the Shadows of Night. The Struggle for International Human Rights. By Marvin E. Frankel and Ellen Saideman. New York: Delacorte Press, 1989. Pp. 257. Index. \$16.96, cloth; \$8.95, paper.

This easy-to-read book contains a concise introduction to international human rights for a general U.S. audience and, perhaps, for college or high school classes. To enliven the text, the authors rely heavily on their personal experience in working with human rights organizations centered in New York. For example, Frankel, a former federal district court judge, recounts his attempt to observe an inquest in Kenya, during which he and his fellow observer were detained for several hours, questioned by the Kenyan authorities, and then forced to leave the country. Indeed, the book focuses on the efforts of nongovernmental organizations and encourages the reader to volunteer for human rights work. To illustrate

the need, several chapters focus on the plight of well-known and lesser-known people who have been imprisoned, "disappeared," killed or subjected to discrimination in such countries as Argentina, El Salvador, the Philippines, South Africa, South Vietnam and the USSR.

Chapters on the historical and normative basis for human rights activities deal with the Holocaust, the Nuremberg trials and the Universal Declaration of Human Rights, with brief references to the UN Charter, the two Human Rights Covenants and several other human rights treaties. Though the authors make very little use of the human rights treaties and instruments in the brief text of 161 pages, the volume concludes with a sixty-five-page appendix excerpting or reprinting several of them. The authors praise the accomplishments of the United Nations in drafting treaties and for other standard setting, but provide an incomplete account of UN efforts to apply those standards in specific countries. Almost nothing is said about the Human Rights Committee, other treaty-based bodies, the UN High Commissioner for Refugees, the Inter-American Commission and Court, or the European Commission and Court.

The book has a distinctly U.S. focus, with chapters on the civil rights movement and U.S. foreign policy, and a somewhat dated chapter on competition with the USSR in such contexts as the Helsinki process. While the book is entertaining and usually well informed, it has a limited perspective. Indeed, the book suffers from the unfortunate, but all-too-prevalent, attitude of some New York activists who ignore much of the human rights work done in other places. One is reminded of the famous March 29, 1976, *New Yorker* cover by Steinberg, showing a New Yorker's view of the world with Ninth Avenue, Tenth Avenue and New Jersey in the foreground, and far in the distance California, Japan, China and Russia.

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La Función Consultiva de la Corte Interamericana de Derechos Humanos: Naturaleza y Principios 1982-1987. By M. E. Ventura