Relativism, Neutrality, and Transcendentalism: Beyond Autonomy

Bobby Jindal
Relativism, Neutrality, and Transcendentalism: Beyond Autonomy

Bobby Jindal

The promotion of human well-being is the function which accords just societies legitimacy. Thus, different political theorists transform benign assumptions, seemingly truisms, about human welfare into startling conclusions by focusing on particular aspects of human flourishing. For example, Rawls turns equality into an absolute concern for the least advantaged; Dworkin starts with people’s preferences and concludes with elaborate social welfare programs; Nozick goes from self-ownership to inviolable property rights, etc. A theorist’s conception of human well-being, the good, determines the shape of his just society.

All conceptions of the good invoke transcendental assumptions; any justification for acting in a non-random manner involves non-derivable morality. Political disputes are not always mere matters of partisanship, but rather often involve transcendental ideals; whether one appeals to justice, love, value of human life, etc., one is appealing to a common belief in some abstract principle of good. Even the nihilist must acknowledge some higher good, even if only the truth of his perspective. Ethics, the study of how society and the individual promote fundamental goods, is thus the core of a political conception of justice. However, communitarianism, which enshrines societal preferences and traditions as morality, incorrectly reduces ethics to the study of sociology; liberalism, as expressed by Rawls’ neutrality, does not even consider ethics relevant to the notion of justice. Neither properly considers the realm of ethics in formulating principles of justice.

The liberal goal of neutrality, which makes autonomy man’s most crucial and defining right, is misguided and forces man to be hostage to his most base instincts, with no hope to rise above himself and no appeal to external standards. The communitarian goal of multiculturalism merely moves the focus from man to society, claiming autonomy as a group, rather than individual, right. Plato recognizes the danger of the relativists’ perspective that morality is nothing more than individual preferences or societal convention; he rightfully criticizes them for being obsessed with the superficial accidents, as opposed to essences, of the world, unable to abstract from their particular experiences to universal truth claims.

Copyright 1997, by Louisiana Law Review.


Liberals and communitarians both regard their lack of transcendental truth claims as an attractive aspect of their theories. Communitarians accept each society's shared values as the right conception of the good for that community, and liberals, at least those committed to neutrality, avoid commenting on a comprehensive conception of the good. Yet, neither group truly avoids making transcendental claims; their pretense unfairly prevents others from commenting on their ideals.

I. LIBERAL NEUTRALITY

Modern liberals accomplish much towards illustrating the intuitive appeal of treating all individuals with respect. Both Rawls and Dworkin have devised models which force one to consider the well-being of others. Their egalitarianism "rests on the assumption of a natural right of all men and women to equality of concern and respect, a right they possess . . . simply as human beings." Yet, both theorists fail to build on this bold assertion and instead retreat by defining this right in terms of self-determination rather than objective interests; the result is a liberal neutrality towards conceptions of the good life.4

Rawls attempts to avoid commenting on controversial moral truths, specific conceptions of the good, due to a commitment to public consensus; thus, he requires individuals to set aside their comprehensive notions of the good in the political sphere to facilitate agreement. Rawls formulates his principles of justice as a codification of people's rational, or universalizable, self-interest, rather than their particular self-interests. Rawls does not intend tō posit any significant beliefs through this Kantian abstraction, but rather to help individuals discern and develop what they already believe;5 however, his is but one of many competing models which guarantee impartiality, e.g., utilitarianism, and thus requires specific justification,6 rather than being a neutral starting position from which other theories must justify their departure.

Rawls interprets consensus as requiring a commitment to promoting diversity and thus allows individuals the liberties and resources to "question and reject any particular relationship."7 People must be free to examine humanity's collective experience, not merely what others have chosen for them, and select what is relevant to their lives.8 Without the right to question the norms of birth,

communities would be deprived of the experiences of others based on geography; man would be condemned to reinventing the wheel in every locale. It is exposure to outside influences that leads individuals to abandon the parochial attitude that produces racism and other forms of intolerant isolation.

Communitarians and others object that this liberal commitment to the right to change one's conception of the good is itself a controversial conception of the good, not a rationality which transcends cultural influences. Though Rawls happily concedes that his theory draws upon beliefs latent in democratic societies, he denies that positing the common aim of justice is the same as advancing a particular conception of the good. However, Rawls must presume those institutional arrangements necessary to support his conception. A completely neutral liberalism is unable to encourage autonomy or other capacities necessary for exercising choice; liberal values require communal structures like universities to thrive. Rawls himself promotes certain virtues, e.g., toleration and trust, necessary for a liberal state; this follows from the observation that such virtues are necessary for a well-ordered political society which is needed to secure common goods which are not available to the individual. Yet, liberal goods such as education must be justified either as communitarian, formulated in a cultural context, or as serving an objective interest, e.g., promoting knowledge for the sake of learning.

Liberal theorists respond differently to the claim that their theories contain particular conceptions of the good. Richard Rorty acknowledges that Rawls does not provide an independent reason for justice, but rather articulates liberal intuitions. Rorty thus denies the value of neutrality and sees no reason to separate liberal democratic institutions from their particular historical context. He goes so far as to attack theorists living in a particular culture who reject the basic principles of that same culture. Rawls himself claims his conception of justice is particular to those readers who share his membership in a liberal constitutional democracy and thus also share significant political traditions.

In contrast, Dworkin argues that the principles embedded in the original position may be "constitutive of [man's] moral capacity," rather than merely being widely shared within a particular community. Instead of appealing to and depending upon assumptions people already hold concerning justice, Rawls may be advancing principles which include "innate categories of morality common to all men, imprinted in their neural structure, so that man could not deny these principles short of abandoning the power to reason about morality at

---

Dworkin is certainly not advocating complete abstraction from societal influence. He readily admits that liberals start with foundational values, i.e., liberty, equality, and community, but claims these assumptions are substantially different and far more valuable than other social values, e.g., attitudes concerning sexual preference, adopted by communitarians. Dworkin claims social agreement on justice, but not values like sexual preference, is a necessary component of leading the good life; social justice is a collective good necessary for individual flourishing, but obtainable only by society.

These two contrasting approaches to liberal notions of justice, considering them coincidental to society or with inherent value, reflect opposing perspectives on the value of neutrality. Rawls views his neutrality regarding the good as a positive aspect of his theory which responds to the fact that reasonable individuals disagree about the good. If Rawls is merely making an empirical claim about pluralism, his neutralism evaporates once society agrees on a conception of the good, e.g., fundamentalist Muslim countries, or at least on a thicker conception than his. On the other hand, if Rawls is advocating pluralism as a goal for society, then he is advancing a comprehensive notion of the good which cannot claim neutrality. The latter tactic, adopted by Rorty, is considered below in the section on communitarianism; the acceptance of neutrality is discussed here.

Ignoring Rawls' later writings limiting his theory of justice to a particular community allows one to analyze his claims of universalizability and neutrality. Rawls denies communities the right to be unified on any "comprehensive religious, philosophical, or moral doctrine." Yet, a commitment to liberal neutrality is self-defeating since its denial of the necessity of a first principle is itself a particular conception of the good. Unlike those who oppose an overly zealous perfectionist state because of the possibility of error or civil strife, Rawls rejects any degree of perfectionism on principle and thus seemingly believes one of the following:

1. a true conception of the good does not exist
2. the true conception is completely unintelligible to man
3. diversity and popular support are more important than truth.

Any one of these three beliefs represents a thicker conception of the good than is suggested by neutrality. The significance of these positions is evidenced by contrasting conceptions of the good; surely, a liberal would have difficulty convincing a religious fundamentalist that divine revelation is either fraudulent, illusory, or irrelevant.

14. Id.
Rawls' conflation of self-determination with the good leads to a subjectivism which is hardly neutral. Though he explicitly rejects moral relativism, Rawls views the changing of conceptions of the good as nothing more than a change in preferences. Rawls' description of an individual choosing his ends does not allow one to discover inherent ends which form integral aspects of one's identity, to rise above desires through self-reflection.\(^9\)

Both past liberal and contemporary communitarian theorists reject Rawls' equation of the good with individual desires. For example, Hobbes argues that nature forces man to adopt an objective concept of good and evil, transcending subjectivity to derive universal precepts.\(^{20}\) Going even further than Hobbes' dictates, Charles Taylor posits the existence and necessity of a moral space, a religious or political framework which serves as a context for man's preferences, independent of man's ability to find himself within it.\(^{21}\) As the necessity of such a perspective is "constitutive" of humanity and not merely an empirical psychological fact, Taylor agrees with Alisdair MacIntyre in claiming that morality makes sense only with respect to objective ends; both theorists claim the function of morality is to allow man to move towards those goals inherent in his nature.\(^{22}\)

Despite his rhetoric about neutrality, Rawls makes significant assumptions about human well-being; for example, he uses "reasonable constraints" to order the original principle, in which rational choice is exercised and primary goods are assumed necessary for human well-being. Reasonable constraints, rational choice, and primary goods all constitute a conception of the good.\(^{23}\) Though the two transcendental assumptions which underlie Rawls' theory, i.e., rationality and human well-being, are not critiqued for being mistaken, they cannot be assumed as self-evident. Such particular notions demand particular justifications or, at least, an explicit acknowledgement of their content and significance.

A. Rationality

The first of two significant assumptions made by liberal theorists is the power of rationality. All theorists use at least procedural rationality, supposedly devoid of moral or political content, without questioning its source and credibility. As all beliefs must either be grounded in a rational framework or accepted on faith, liberals choose the former, since the latter allows the fanatic who knows he is right regardless of evidence to the contrary. There is no arguing with principles held on faith, and thus the more reasonable, and thus

---

neutral, alternative of rationality is usually advanced in defense of political
theories. However, this disingenuous move of claiming the transparency of
rational thought contains very significant assumptions, i.e., involves a degree of
faith.

The universality of reason allows individuals to interact and thus move from
their subjective experiences to interpersonal communication. Indeed, it does not
seem possible to overstate the power and indispensability of reason; it is no
wonder that people commonly use reason without questioning it or its origin. If
reason did not exist, society would have to make it up; yet, it is impossible to
conceive of the creation of reason without invoking it.

Kant argues that reason serves as the criterion by which one judges
experience, and is thus the basis of all moral concepts. One can take another
step back and realize that the basic principles of logic cannot be accepted without
reference to some a priori criteria. For example, treating like cases alike, laws
of inference, the principle of economy, and other basic building blocks of logic
can be accepted only on faith and are not self-evident. Imagine trying to
convince one who does not believe in reason without resorting to reason itself;
logic does the work behind all proofs.

While reason, e.g., the laws of causation, is almost universally accepted, the
only supporting evidence seems to be experience, and perhaps probabilities, the
same criteria rejected by Kant as an insufficient foundation. The fact that event
Y occurs immediately after event X in every occurrence may be coincidence.
Perhaps in the billionth instance, X and not Y will be observed. Man observes
and then formulates general principles. For example, biologists observe patterns
in genetic materials that produce proteins that result in characteristics like eye
color; they then conclude that the genes cause the characteristics. In reality, the
scientist only knows that genes coincide with phenotype patterns; their assumed
causal relationship may be no more valid than a child’s belief that his toy
steering wheel causes the family car to turn. Humans are incapable of proving
with absolute certainty even the simplest causal relationship. It is always
possible that some unseen force is at work, further observations will prove an
unstable relationship between supposed cause and effect, the laws of deduction
are mistaken, etc.

Natural laws, which allow man to assume an ordered and predictable world,
reflect past observations and are thus descriptions of reality based on laws of
logic accepted on faith. This conditional view of reality suggests more
acceptance for the exceptional and seemingly irrational claim, currently labelled
miracle by proponent and nonsense by skeptic, as an improbable but possible
event. If natural laws are based on experience, then any exceptional observation
has diminished but not insignificant grounds for acceptance. If a series of
observations are irreconcilable, it is the principle of rationality and not the

Torchbooks 1964).
observations which must be reexamined. Perhaps rationality and natural laws are merely the most probable explanation of events and circumstances, likely but not absolutely true.

Much evidence suggests that reality may be governed by rules of probability rather than absolute physical laws: the Uncertainty Principle, which claims that one cannot know both the momentum and the position of electrons, and the resulting electron clouds, or wave-like distributions, which represent the probable location of particle-like objects; the fact that apparently solid objects are actually non-continuous and composed of atoms with gaps and spaces between and within them; and quantum physics. However, the rules of probability are no more self-evident than the rules of rationality and must themselves be accepted by some criteria.

Expecting future events to coincide with expectations based on past observations involves a leap of faith. For example, there is no absolute reason to believe that removing one's sock will reveal a foot, rather than a tomato, or to trust one's visual perception that a foot is revealed. Not even relative properties can be predicted, e.g., that which looks and smells like vinegar will have a bitter taste, as there is no basis for a relationship to persist through time.

Given the lack of an independent reason to believe in rationality as a means to understand an ordered world, human observations are subject to skepticism. There is no apparent reason to believe that the human mind is capable of anything more than subjective perceptions and random reaction to external stimuli. Indeed, future forms of virtual reality may render the human brain incapable of discerning which images reflect reality. Relativism applied to an individual's senses and thought processes leaves him incapable of making sense of the external world in a manner which makes sense to others.

Even if the individual's perceptions are left intact, there is no independent reason to expect an objective external world. Many a child wonders about the existence of objects not directly affecting himself; such questions may not be easily dismissed. How does one know that others continue to exist once they cease interacting with the subject? How can one even know that he exists and is not merely a part of another's imagination? Such questions demand the existence of something larger than oneself to give meaning and substance to reality, life, and thoughts. Indeed, Descartes, author of the statement "I think, therefore I am," used this necessity to argue for the existence of God. However, even Descartes assumed much in insisting that his consciousness established the veracity of his existence.

Perhaps the patterning of human responses or external images are neither completely random nor governed by absolute rules, but are subject to periodic and unexplainable fluctuations. Entropy counters the common assumption that the world must be an ordered place. Without a transcendental basis for accepting rationality as a means of discerning reality, it is entirely possible, and perhaps

even likely, that brief interruptions of the ordering of the world are commonplace. Thus, rather than total chaos, which would be a rule unto itself, the world follows no predictable rules. The intermix of chaos and rule may be so random as to make it impossible to discern whether Elvis sightings, UFOs landing in the middle of the night, and the laws governing the behavior of gases are more or less credible. The individual has no reason to appeal to rationality to judge his or others' experiences; the world is rendered inaccessible to man's thought processes.

The lack of an independent justification for rationality, which calls into question the ability of man to perceive reality, jeopardizes the projects of theorists who use reason to make conclusions about man's moral obligations to his fellow citizens. Such metaphysical and epistemological questions have been the center of many philosophical debates throughout the centuries. Traditional Western thought, grounded in a Judeo-Christian context best articulated by St. Thomas Aquinas, accepts rationality and a natural order based on divine revelation. Such an ordering is stronger than rationality based on observation alone, but is still contingent. Descartes' postulate may be rephrased as: "God exists and has revealed to me; therefore I am"; instead of going from the individual to God, one goes from God to oneself. In contrast with Kant's claim that reason is necessary to comprehend God's revelation, God's revelation may be necessary to comprehend reason; God must, therefore, communicate to man via intuition, or other mystical channels, and then legitimize man's intellect.

The presumption of an ordered world accessible to man, in an otherwise chaotic system, requires an assumption as significant as belief in a purposeful Creator. The original creation of matter, life, and order seemingly defies the laws of entropy and conservation of matter and energy. Therefore, Western philosophers have traditionally accepted both the natural order and a limited number of miracles, supernatural events like creation itself, to explain reality. The alternatives, either a blind faith in reason to explain even creation and to justify itself or the complete abandonment of reason, would render natural laws either a deity or useless. Given the contingency of rationality, the world would be a chaotic and unintelligible place without such basic assumptions.

A world governed by natural laws and accessible to man via reason may be contrasted with certain Eastern perspectives, e.g., Buddhism, which ground eternal truths on a plane which transcends physical reality and discern these truths through contemplative meditation rather than analytical thought. For Hindi philosophers and others in this context, physical reality is only relevant insofar as it contains an indirect relationship with the spiritual world. Hindus do not predicate their beliefs on any historical or objective incident, person, or truth. Hinduism is a completely transcendental religion concerned with inner sanctification rather than external teachings.

26. The assumptions discussed are common to the traditions of Moslem, Jewish, and Christian faiths.
The Eastern detachment from and deemphasis on the physical world is evidenced by the lack of importance Hindus place on material circumstances; one soul has many bodily forms, and nirvana involves a complete detachment from one's body to be joined with other souls. This is in sharp contrast with Christianity which links the spiritual and physical worlds and is based on a specific event. The contrast in perspectives is what produces such divergent conclusions such as sacramental theology, which elevates the physical to the supernatural, and nirvana, which uses and then escapes from the physical to achieve the supernatural.

The contrast between Western and Eastern perspectives is not meant to suggest that rationality is an exclusive product of the West. However, Hinduism and Buddhism are both more concerned with inner realization, rather than external reality, through meditation, rather than thought. Abstracting from one's identity, and even mind, to engage in epiphanies is the Hindi and Buddhist path to ultimate knowledge. Though Easterners utilize reason to resolve mundane problems such as managing an economy and preparing a meal, the deeper questions considered in political philosophy, e.g., the notion of individuality and extent of obligations to others, are answered using meditation.

The provision of justification for rationality through a Judeo-Christian context does not preclude other paths to reach the same conclusion. For example, a pragmatist may accept rationality due to its common acceptability and utility. Secular humanists may deify the individual's potential for enlightenment and progress through the use of intellect to overcome his limitations. Yet, such "ends justify the means" approaches that accept rationality based on its consequences rather than the process itself make no ontological claims and hardly suggest an overpowering incentive to choose reason when facing conflicting internal motivators. Reason is but one of many forces which an individual may choose to decide his course of action; emotion, subjective preferences, and arbitrariness must be overcome. Indeed, certain feminists reject linear logic as a male-centered approach to the world.

The Aquinas view of reason, which provides a powerful, but not always successful, argument for choosing reason over emotivism or other competing perspectives, makes reason dependent on the credibility of its source. If one accepts reason based on revelation, one is seemingly obligated to accept other revelations from the same source. This restriction and its unconventionality are perhaps why most theorists accept rationality without questioning its source. However, the most rational act may be to accept that which is beyond reason as evidence for reason itself. Why theorists believe is as important as what they believe.

Rawls, Dworkin, and other liberals are definitely grounded in the Western tradition and accept rationality, the importance of the physical world, free will, and other principles historically accepted on religious faith as transcendental principles prior to chosen beliefs. Indeed, such principles are used to discern society's good; Rawls assumes individuals are motivated by self-interest expressed rationally in the original position. Yet, Rawls does not justify
excluding one’s religious convictions, and other sources of “bias,” to form the veil of ignorance, while maintaining rationality; indeed, talking meaningfully about justice involves cultural values embedded in language. The very experiences and natural characteristics which he ignores are essential in motivating individuals to be rational. Though the disembodied selves present in the original position, devoid of any particular characteristics and preferences, resemble the Eastern notion of the physical world, Rawls relies on Western rationality.

Even more significant than Rawls’ use of rationality within the original position is his reliance on a particular conception of the good to design the original position. While reason may inform Rawls of the desirability of a progressive income tax, given his desire to assist the least advantaged, reason cannot provide the initial impulse towards equality. Procedural reason informs man of how best to achieve his goals, but does not provide those goals. Reason helps man choose among courses of action only by referencing previously held beliefs; a particular conception of the good, not reason, motivates man to act. Thus, each theory’s conception of the good provides rationality with the premise it needs to make conclusions. Liberals depend upon their view of human well-being to do the work in their theories, i.e., provide reason with the good to be maximized.

B. Human Well-Being

Liberal theories depend on particular notions of humanity and its welfare for their moral force. Regardless of whether the original position is presented as proof or illustration, Rawls posits his interpretation of human well-being as the proper criteria by which to judge society. Without defending their particular interpretations of the right to equal respect, both Rawls and Dworkin claim “the right is ‘owed to human beings as moral persons’ and follows from the moral personality that distinguishes humans from animals.” Thus, Rawls’ expression of the liberal good of equality is a transcendental moral principle which precedes his original position.

Dworkin, at least, claims his goal of equality as both the result of people’s preferences and also an objective good. He claims, as an obviously established political tradition, “principles are fair if they have . . . been chosen by those whom they govern, or if they [are] in their antecedent common interest.” Like Rawls, Dworkin is loath to commit himself to a universal theory; unlike Rawls, Dworkin is more willing to admit that his notion of human well-being is objectively valuable. Dworkin resolves this tension between his desire for

27. Rawls, Distributive Justice, supra note 1, at 203-05, 209; Rawls, A Kantian Conception of Equality, supra note 1, at 188, 290, 192.
29. Id. at 24.
tolerance and an objective good by expecting people's preferences to coincide with his good. He offers no independent argument for his notion of human well-being, but rather hopes his notion resonates with his audience's beliefs; Dworkin has nothing to say to fundamentalists and others with no regard for liberal ideals.

Liberals are not alone in presuming a transcendental good; however, they are particularly vulnerable to the charge of hypocrisy to the extent they claim neutrality. As liberal theorists argue from particular conceptions of the good, involving transcendental assumptions, they should justify their starting points or at least make clear the significance of their first principles. The liberal claim to neutrality, used to critique other theories which adopt fuller conceptions of the good, renders liberals guilty of assuming the better part of their conclusions without warning their readers.

The significance of liberal assumptions concerning human well-being is highlighted when contrasted with Eastern notions of the good. The liberal concern for the material welfare of each individual represents a particular approach to morality. Similar to the way in which Aquinas accepted logic through divine revelation, Western thinkers have accepted this view of the good based on the thought that people are made in God's image and are commanded to love each other.30

The conception of human worth common to the Judeo-Christian and Islamic traditions is historically and philosophically tied to man's unique possession of a soul. Other traditions, like Hinduism, reject any substantive moral difference between human and animal life; the doctrine of reincarnation, when linked with the incorporation of souls into animal forms and the resulting Jainist prohibition against killing animals, denies any morally relevant feature which provides man with unique rights. Traditions which deny man's unique moral worth often deny personal identity and exhibit little concern for man's material welfare, two notions which underlie the liberal view of human dignity.

Liberalism's endowment of the individual with agency and independent value is inconsistent with a collective view of identity. For example, Buddhism encourages one to overcome desire and to realize there is no self. Whereas Christianity encourages the individual to discipline his ego, Buddhism denies the existence of the ego. Thus, the Buddhist ideal is to transcend, perhaps eliminate, the self and be released from suffering and even joy. Similarly, the Hindu's goal is to achieve nirvana, union with the Creator, and thus lose individuality; this goal is gradually achieved through reincarnations. Whereas Buddhists recognize no identity, Hindus recognize one collective identity; this is in contrast with the Christian perspective which invests each human with a unique identity.

Liberalism's adoption of the promotion of human flourishing as society's goal is contrary to a view which condones physical suffering. For example, certain Hindi scholars discourage acts of charity towards the less fortunate in

order to allow them to suffer for the mistakes of past lives and progress towards nirvana; the charitable act is to allow the impoverished to endure this life's punishments to secure a greater reward in the next one. Physical suffering may be efficacious at producing longer-lasting and more valuable spiritual benefits, a teaching partially adopted by the Catholic Church and evidenced by its doctrines concerning purgatory, euthanasia, atonement, fasting, Lent, etc.

Though liberals present their notion of the good as self-evident, history testifies to the particularity of equating autonomy rights and physical well-being with human flourishing. The liberal good of autonomy has not been accorded primacy throughout much of Western civilization's history, as evidenced by feudalism, aristocracy, divinely appointed monarchies, etc., and is still not the most valuable good in many Eastern countries. For example, Calvin and his followers denied the priority of liberty over a particular conception of the good and defined human well-being in spiritual, rather than material, terms; his administration imprisoned a lady for dancing, forced a man to eat nothing but bread and water for criticizing a sermon, burned another for denying the Trinity, etc. Lest one thinks Calvin's perspective represents an unenlightened age, irrelevant to modern man, it is useful to note that certain adherents of the Islamic faith practice conversion by the sword and view the state's purpose as the promotion of "a good Muslim life." Yet, it is not only fundamentalists who reject the liberal notion of the good. Mainstream religions of both the East and West view spiritual goods as necessary for human flourishing; liberal neutrality which prevents the state from promoting or obstructing religious activities is not necessarily the most effective way to serve this conception of the good.

Philosophers in other time periods and cultures have identified human interests differently than modern liberals; the notion of human dignity, involving both material worth and individual identity, is a significant tradition which requires supporting argument or at least explicit acknowledgement. Neither Dworkin nor Rawls has presented a self-evident, neutral, universally accepted, or least intrusive concept of the good life; their chosen methods of promoting the good life, e.g., Dworkin's defense of pornography and public financing of art, are controversial and contradict the values of many. Competing goals for society, which may be more or less consistent with people's intuitions, include maximizing general welfare, protecting an absolute right to private property, protecting differential rights based on a historical caste system, and other ideas which have been adopted throughout history. Though liberals may be correct in advancing their good, requiring individuals to abstract from selfish interests and comprehensive conceptions to frame society's institutions, they must acknowledge their dependence on a transcendental notion of human well-being.

32. C.P.S. Clarke, Short History of the Christian Church 279-80 (1929).
34. Dworkin, supra note 1, at 337-73.
C. Conclusion

Liberal assumptions concerning rationality and human well-being have not been criticized for being incorrect, but have been shown to require justification. Liberals may adopt such notions only by appealing to transcendental truths. The Western notions of rationality and the sanctity of humanity should not be hidden behind neutrality, claiming an a priori victory over differing notions, but rather made explicit so that they can be used forcefully and consistently to confront competing conceptions.

The problem with liberal neutrality is not that it is used in the defense of the wrong goods, but rather that it is ineffective at promoting these particular goods. Critics do not necessarily disagree with the liberal goals of tolerance, universalism, fairness, etc., but rather claim that liberals are trapped in a paradox whereby they must deny their own goods in order to secure them. This denial, performed in the name of tolerance, undercuts the liberal commitment to the very goods supposedly motivating the denial.

In addition to being ineffective at promoting liberal goals, e.g., neutrality itself, neutrality strips liberal goals of their content and thus renders them incoherent. Though Rawls and other liberals may have correctly identified the proper locus of concern for a political theory of justice, the least advanced, their discussion of the legitimate claims of individuals is meaningless without reference to an objective good, a comprehensive and particular conception, which those rights serve. All theories require a good to articulate those intuitions which society should follow, else they risk reducing intuitions to being no more morally significant than brute reactions, e.g., nausea. Any conception of the good is dependent upon a conception of the nature and worth of human beings. While human nature informs society of how to act justly, human worth tells it why it must do so, i.e., provides the motivation to accompany the content.

Liberals, insofar as they are committed to neutrality, fail to justify why they believe what they believe and instead rely on their readers’ residual attachment to the morality of past codes. The danger is that the farther removed the individual is from the objective code, the more likely its implications will lose their binding force. Conditioned in an age of relativism, individuals are unlikely to sacrifice their perceived interests for the sake of some abstract code which holds only vague emotional, sentimental value rather than objective, moral force. Liberals insist on neutrality, but rely on the norms of objective morality in formulating codes and resolving moral conflicts; they refuse to preach what they practice, pretending their ethics are the result of choice rather than being objectively correct.

35. Taylor, supra note 21, at 88.
36. Id. at 89.
Rousseau notes that contract theories, whose conditions Rawls attempts to mimic, require the participants to be citizens before the state is created; the morality being modelled, e.g., the institution of promise-keeping, is already presumed in order to form a binding contract. Morals, customs, and belief are necessary to sustain the state.\(^3\) Rousseau's provision of these essential components via a mystical Lawgiver is perhaps more honest than modern liberal theorists who do not explain how their neutral theories obtain these transcendental values.

**D. Beyond Choice**

The liberal project of investing each individual with inherent worth is undercut by its refusal to advance a transcendental notion of the good. Rawls and Dworkin both recognize this flaw in practice, if not in theory. An absolute respect for self-determination is not the best means to furthering human flourishing; however, individual choice can only be overridden by reference to an objective good.

The case of natural disabilities illustrates the inability of choice to fully capture the concept of human well-being. The challenge for a society wishing to mitigate the effects of fortune, so that each individual's life is determined by his decisions, is the impossibility of compensating the handicapped without unduly restricting the rights of others. The liberal devotion to self-determination suggests that the child born with genetic defects is as entitled to compensation as the one injured in an accident due to another's negligence. Yet, counteracting the disadvantage, especially emotional suffering, associated with many ailments would require most or all of society's resources, thus enslaving the healthy.\(^3\) An ordering of human interests, available only to theories with a comprehensive conception of the good, is necessary to discriminate among claims of disadvantage.

Rawls, acknowledging this dilemma, sets aside the issue of illness. Yet, since the arbitrary distribution of natural primary goods, e.g., health and intelligence, motivate him to redistribute society's resources, guaranteeing the disabled the same income as the healthy, he should also mitigate the effects of the natural goods themselves, compensating the handicapped for their suffering. Dworkin handles the potentially overwhelming claims of the disabled by requiring society to respect collective preferences, rather than providing every individual with meaningful control over his life. Conceding the impracticality of fully compensating the handicapped,\(^4\) Dworkin limits their compensation to the aggregate premiums reasonable individuals are willing to pay to insure their welfare if they were to become similarly disadvantaged.


Dworkin's reliance on society's risk-averseness to determine the compensation owed the disabled is a more honest confrontation of the issue, in contrast with Rawls' silence, but lacks the force of transcendental rights. The tough question is what to do with gamblers who find themselves without adequate welfare provisions. Regret, false consciousness, incomplete information, and other issues complicate the reasonability of hypothetical consent, but a more significant critique is that a society simply cannot abandon individuals in need.

The issue of self-inflicted afflictions, e.g., lung cancer, illustrates how irrational preference formation may result in illiberal consequences. Liberals must either abandon smokers or their commitment to self-determination. In order to provide health care to smokers, liberals must either divorce the connection between actions and consequences or discount choices which contradict a person's welfare; either limits the concept of choice. Allowing individuals to choose a cause, but not the effect, or ignoring certain choices involves determining an individual's interests independent of his preferences, i.e., a thick conception of the good. Respect for individual choice fails to protect the individual from harming himself, but allowing society to intervene without an objective good allows individuals to act on desires, often reflecting self-interest or prejudice, concerning how others should lead their lives. A just society may override the liberal good of self-determination in the case of willful cigarette consumers, and other cases in which fundamental human interests are threatened, but only by referring to an objective notion of human well-being.

Liberals respect choice too much by allowing individuals, e.g., smokers, to give away rights that are non-transferrable, but respect choice too little by ignoring the possibility that individuals, e.g., gamblers, may express regret over earlier decisions. A just society cannot abandon human beings, regardless of the choices they make. Liberals wrongly discriminate among individuals, failing to compensate fully the disabled, rather than conceptions of the good. Liberals need not sacrifice their commitment to equality, but rather to neutrality; an objective ordering of human interests allows society to frustrate the liberal goal of self-determination to secure basic rights for all.

The modern liberal notion of rights, predicated on the inherent worth of each individual, accomplishes much in promoting human well-being, but its refusal to draw upon objective human interests causes it to fall short of serving this goal fully. Liberal rights cannot be voided because of efficiency or democratic considerations; neither utility nor electoral tallies are relevant. However, the fact that rights are socially derived prevents them from serving as absolute moral trumps. Dworkin explicitly rejects legal positivism, especially in its utilitarian manifestation, for a more normative perspective, but fails to ground rights in anything substantive.

Liberals insist that rights not be overridden by popular opinion, but locate the justification of rights in rational choice; liberal equality, without any

---

41. This option also limits the autonomy of non-smokers by forcing them to subsidize the behavior of others.
additional moral content concerning human well-being, codifies those preferences expressed when individuals abstract from their particulars. Dworkin seemingly recognizes that there must exist rights separate from and prior to political rights; yet, he never discusses the source or extent of these moral rights. Defending individuals who break laws in the name of moral rights and arguing that prosecutors "do the right thing in failing to prosecute them," Dworkin leaves too much discretion to the individual official; he does not require the official to enforce the law or provide another objective code. Denying Supreme Court decisions and laws as having "special" weight and then leaving the discernment of moral rights to "reasonable men" is a plan for anarchy, not just rule.

The weak link in Dworkin's theory of rights is his reluctance to protect explicitly specific interests and freedoms against society's collective preferences. In contrast, traditional liberal philosophers, including the first proponents of hypothetical consent, value certain rights as inviolable. For example, Locke thinks natural rights to be prior to society, thus exerting a special claim on subsequent political morality. Locke allows citizens to "appeal to God"; a collective right to rebellion is guaranteed if societal preferences contradict a group's transcendental rights. Similarly, Rousseau views freedom as an inviolable and non-transferable right. Even Dworkin admits, albeit briefly, that there may exist certain rights that individuals should not be allowed to give away. Only the modern notion of neutrality prevents liberals from continuing in this tradition of forcing society to respect transcendental rights, independent of reasonable consent. Dworkin's aggregate morality is no substitute for objective morality; evaluating interests from a transcendental perspective, that of no one, is not the same as from everyone's perspective.

Dworkin's aversion to ontological claims prevents him from valuing rights as anything more than a codification of collective preferences. He rejects the claim that "whatever rights people have are at least in part timeless rights necessary to protect enduring and important interests fixed by human nature . . . [e.g.,] the choice of sexual partners and acts and choice of religious convictions . . . ." Either Dworkin is hiding his transcendental principles in his requirement of reasonable consent or his rights serve as moral trumps over a utilitarian calculus, but are themselves trumped by society.

This dual commitment to rights as trumps and the product of societal preferences often renders the liberal notion of rights impotent in particular

45. Rousseau, supra note 38, at 182-89.
46. Dworkin, supra note 39, at 295.
47. Dworkin does exclude "external preferences" concerning how others should live. Dworkin, supra note 1, at 194-98; Dworkin, supra note 40, at 201-04.
situations. Dworkin's rights do not prevent the sacrifice of inviolable interests for the common good; for example, he does not protect talents, organs, and other intrinsic aspects of human identity which should not be given or taken away. Society may implement a “spare organs lottery” to redistribute second kidneys and other superfluous organs from the healthy to the handicapped; society may require individuals to sacrifice one eye, and thus partial vision, so that blind individuals might also have partial vision.\textsuperscript{49} Even more drastic would be the killing of a few individuals to better or save the lives of many handicapped.\textsuperscript{50} Equality, which merely demands random selection when harvesting organs, cannot stop such brutal policies. Liberals must pack more content into the concept of equality, including objective interests which society must respect.\textsuperscript{51} Transcendental rights, e.g., a privacy right to bodily integrity, must supersede even the terms of hypothetical consent.

Though better than utilitarian theorists in protecting human interests, liberals depend on consent to move from procedural or formal to substantive justice, regardless of the consequences. The lack of content in liberal rights renders them unable to condemn the most unjust societal arrangements, as long as the requirements of hypothetical consent are satisfied. This minimal view of rights, protecting only the right to define the good, is derived from the desire to be neutral.\textsuperscript{52} However, rights have no content without considerations of human interests, which are hardly neutral or uncontroversial.\textsuperscript{53} Indeed, Kierkegaard, Kant, Diderot, Hume, Smith, and other Enlightenment philosophers all agreed that morality must serve man's objective nature, which gives ethical principles their content.\textsuperscript{54}

Certain liberal theorists recognize the need for a fuller conception of human flourishing; for example, Rawls' primary goods and George Klosko's presumptive benefits serve objective human interests. Klosko postulates the existence of certain goods, e.g., physical security and bodily integrity, which appeal to all people regardless of their conception of the good life. Given a choice, rational self-interested individuals accept these goods and the services necessary to secure them, e.g., national defense and public order.\textsuperscript{55} Similarly, Rawls identifies primary goods which reasonable individuals desire to enhance their well-being.\textsuperscript{56} Rawls and Klosko both identify interests common to all of humanity; this objective notion of human welfare allows the protection of vital interests against competing choices.

\textsuperscript{50} Judith Thomson, \textit{The Realm of Rights} 135 (1990).
\textsuperscript{51} As a start, Rawls separates transferable resources from natural endowments; Dworkin distinguishes physical and mental powers from resources. See Rawls, \textit{supra} note 15, at 62; Dworkin, \textit{supra} note 39, at 300-01.
\textsuperscript{52} Dworkin, \textit{supra} note 1, at 191-92; Nagel, \textit{supra} note 6, at 258; Rawls, \textit{supra} note 15, at 433; Rawls, \textit{supra} note 9, at 10; Raz, \textit{supra} note 18, at 160.
\textsuperscript{53} Raz, \textit{supra} note 18, at 240.
\textsuperscript{54} Mulhall and Swift, \textit{supra} note 10, at 77.
\textsuperscript{56} Rawls, \textit{supra} note 15, at 94-95.
The most fundamental presumptive benefits or primary goods must be provided by society; objective interests, combined with the notion of human dignity, invests individuals with rights. Certain liberal writers are beginning to realize the need to protect welfare rights as more than instrumental in preserving political rights, e.g., autonomy. Indeed, some liberals are even beginning to discuss political rights as instrumental to articulating and preserving welfare rights. However, lacking an objective notion of human interests, liberals are still too likely to prioritize the political right to autonomy, interpreted as requiring neutrality, over other aspects of human well-being which are equally or even more important.

E. Freedom and Well-Being

Rawls is right to value plurality for its broad appeal to individuals with differing fundamental commitments, lack of condemnation of unpopular lifestyles, and limitation of the state's power to promote particular values. Neutrality prevents an overly ambitious state from interfering in the private spheres of its members' lives. However, it is nonsensical to require society to infringe on certain rights, e.g., property claims, without committing to an objective ordering of human interests; the state can redistribute only by reference to the priority a child's hunger takes over another's liberty. The resolution lies not in a libertarian protection of all autonomy interests, but rather in divorcing the connection between anti-perfectionism and absolute skepticism towards the good; neutrality, not justice, should be sacrificed.

Political freedom is only valuable insofar that it advances a valid conception of the good, rather than being valuable for its own sake. A state respects its members by treating them according to moral principles rather than merely providing freedom. Human well-being involves living a life with independent value, rather than one which one thinks is valuable; freedom is a necessary, but not sufficient, condition of well-being. It is not choice itself, abstracted from human well-being, that is worthwhile, but rather projects external to the individual and his culture often give life meaning, e.g., a religious commitment to God. Actualized liberty and not merely the potential to be free should be given priority; being correct is often more important than having a choice. Indeed, Lord Acton taught that "freedom is not the power of doing what one likes, but the right of being able to do what

59. Raz, supra note 18, at 4, 417; John Paul II, The Vatican on Veritatis Splendor, 4 This Rock 14, 15 (1993).
60. Raz, supra note 18, at 157, 255.
61. Mulhall and Swift, supra note 10, at 293.
Individuals possess limited freedom to choose invalid conceptions of the good, but such freedom does not validate mistaken choices. In contrast, liberals value liberty because it facilitates "self-realization" by allowing individuals to pursue their own conceptions of the good. The liberal notion that self-realization may have a unique form for each individual is traditionally linked with freedom from external intervention. Any fuller conception of liberty requires an evaluation of whether an individual has properly determined the course of his life. Individuals have conflicting desires and an imperfect sense of what is in their best interests; suppressing an individual's stated desires may even serve his welfare. While a fuller conception of liberty allows individuals to overcome internal obstacles to true freedom, e.g., irrational fears or self-deception, and achieve self-realization, liberal liberty leaves individuals hostage to their "motivational fetters." Admitting the "agent himself is not the final authority on his own freedom" may be the first step in insuring true freedom.

Allowing an individual's desires to be superseded for his own benefit divides the individual into "the transcendent, dominant controller, and the empirical bundle of desires and passions to be disciplined." Plato first made this division between man's reasoning and desiring capacity; the former must control the instant gratification impulses of the latter. Though liberals routinely use reason to constrain one's selfish interests for the common good, they make no allowance for this possibility of an individual controlling his desires for his own good. Original sin motivates man to desire goods contrary to his inherent purpose; meaningful liberty involves freeing man from such self-destructive desires rather than respecting them.

Rawls seemingly realizes the necessity of a transcendental good and now allows justice as fairness to supersede the goal of consensus; he admits his view of justice is a moral conception and desires public acceptance for support rather than validity. Thus, Rawls advances his theory not as the result of public deliberation, but rather as a liberal moral conception which happily coincides with cultural values. Dworkin even accepts the state's role in promoting a range of options, his choice of worthy options reflecting a thick conception of the good. Liberals must be even more forthcoming about the transcendental nature of their project.

63. Taylor, supra note 21, at 176.
64. Id. at 180.
66. Plato, supra note 2, at 280-83.
69. Mulhall and Swift, supra note 10, at 187-95.
70. Dworkin, supra note 1, at 202, 209, 221-33.
I. COMMUNITARIAN RELATIVISM

Communitarians share the liberal avoidance of a transcendental good, but rely on group rather than individual preferences. The communitarian notion of human well-being includes interests which can be provided only through community and prior to individual choice; in contrast, Rawls presumes that the self is complete before social cooperation. Though Rawls claims his conception of the person is political and not metaphysical, a mental construct and not a truth claim, its central role in his theory may preclude such a distinction. The liberal commitment to self-determination is what allows, if not motivates, Rawls to be neutral regarding the good; his belief that individuals can know their political interests without reference to their relationships leads Rawls to affirm each individual's freedom to choose his own good. Communitarians are right to criticize the liberal obsession with self-determination, but do not go far enough.

Communitarians disagree with liberalism's assertion of the primacy of justice, without reference to the goods being distributed, and the fullness of the individual before his ends. They deny that it is possible, much less constructive, to abstract an individual from his relationships and projects, i.e., social context, and still maintain a meaningful notion of the person. Certain ends are crucial to the self's identity, and some of these ends can be known only through the common good. In contrast with the liberal combination of individual preferences into the common good, communitarians use the common good to judge individual preferences.

Rousseau takes the communitarian emphasis on the common good to its extreme conclusion. Individuals become indivisible parts of the collective entity; dissenting opinions do not truly reflect what the individual desires. Even if external force is required, the private interest must be sacrificed for the general will. Whereas Rousseau and Rawls both recognize that society must treat individuals equally, Rawls chooses plurality, requiring the state to promote divergent conceptions of the good, and Rousseau requires the state to ignore private interests. Rather than requiring the state to support the expression of individual interests, Rousseau views such interests as detrimental to the vitality of the state.

Though liberal individualism may appear to be at odds with communitarian collectivism, Rawls' view of autonomy is delimited by significant communal

72. Rawls, supra note 5, at 245.
73. Mulhall and Swift, supra note 10, at 42-43.
75. Kymlicka, supra note 7, at 206-07; Rousseau, supra note 38, at 201-02.
76. Rousseau, supra note 38, at 193-95, 203-08, 213-19, 276-79.
77. All activities unavailable to the individual acting alone and requiring societal support (for example, forming a family) are not necessarily included.
78. Rousseau, supra note 38, at 265-68.
restrictions. Rawls claims that talents do not belong to the individual, but rather to society. His assumption that individuals own nothing more than a claim on others represents a conception of the self as inherently linked with other members of society. Thus, Rawls' derivation of his principles of justice, dependent on the preferences of individuals abstracted from their interests, entails each individual discovering rather than choosing ties to fellow members of his political community.

Despite the liberal claim to universalism, a supposed benefit of neutrality, both Dworkin and Rawls actually rely on communitarian justifications. While Dworkin appeals to intuitions already held by his reader, Rawls limits his theoretical speculation to liberal Western democracies that have supposedly already accepted his premises. Rawls states that his conception of justice does not rest on "claims to universal truth, or claims about the essential nature and identity of persons." Rawls denies that any comprehensive moral conception can provide a "publicly recognized basis for a conception of justice" in a modern democratic state and instead draws his first principles from those intuitions already contained in political traditions. The fact that liberals refuse to posit universally applicable or correct principles reduces their positions to a communitarian dependence on empirical data concerning a particular society's existing beliefs.

Communitarians make their denial of a transcendental good an essential part of their theories. For example, Michael Walzer claims that the appropriate distribution of any good depends on its social meaning; indeed, he allows only internal criticism, faulting a society for not acting consistently, but not arguing with society's basic principles. Recognizing the appeal of universality, Walzer claims dominant ideologies make transcendental claims to appear convincing, but actually advance particular interests behind these "universalist
The liberal transcendental principle appears partially self-refuting. It is incoherent to claim, "I know that I know nothing"; the act of knowing that one is ignorant credits one with knowledge. The less radical communitarian claim that "there are no other objective truths" admits that transcendental truth exists, raises the question of how such truth is known, and gives cause for searching for other maxims. The communitarian claim that only people's collective preferences should guide society involves assumptions about human well-being and the existence of other universal truths. Rather than arguing over the existence of transcendental principles, it remains to be seen whether communitarianism is the appropriate transcendental principle by which to order society.

A. Intersocietal Judgments

The first problem with a relativist approach to morality is that, even assuming a society's members agree on a set of moral laws, it does not allow for intersocietal comparisons. Perhaps the most tragic aspect of relativism's failure to address intersocietal comparisons is the lack of guidance just societies can provide others. Rawls limits his discussion to modern constitutional democracies; despite the flaws of such societies, others are in far greater need of his principles. Fellow liberal Rorty, who is much more openly communitarian, admits the impossibility of even discussing topics with others; the lack of a transcendental common ground prevents a liberal democrat from discussing, much less assessing, the views of a fascist, communist, etc. The nature of subjective morality is that it is entirely dependent on one's experience and cannot be transmitted to others. Neither acceptance nor condemnation of another society is allowed according to such a society-specific view of morality.

Communitarianism's equation of society's preferences with moral principles provides no objective criteria by which one can condemn particular actions or beliefs. Indeed, relativists tend to concern themselves with "inner judgments," deciding whether an individual ought to act in a certain way, given his beliefs, and some do not even discuss "outer judgments," determining whether certain beliefs are better, evil, or unjust. Yet, despite their rhetoric concerning man's inability to judge the beliefs of others, many multiculturalists reserve the right to condemn genocide, female circumcision, and other practices condoned in specific societies.

Communitarians may appeal to their concern for group autonomy, without sacrificing their relativism, to resolve cases like Bosnia, in which a majority denies an identifiable cultural group the right to order their lives according to their principles; such cases involve the domination of another culture or nation by a stronger one. Walzer's claim that people are equally worthwhile due to

88. Rorty, supra note 11, at 190.
their ability to create culture may result in a universal principle that societies may intervene to prevent other societies from suppressing this capacity.90 Thus, communitarians can condemn imperialistic moral codes, e.g., "white man's burden" or "manifest destiny," which override a group's claim to self-definition.

A more difficult dilemma for the relativist is the situation of slavery in which the oppressed have been trained to expect and accept subordination, e.g., Untouchables in India's caste system. In contrast with the case of Nazi Germany, in which the communitarian can appeal to the autonomy rights of the Jewish people, he must choose between paternalistic intervention and slavery. However, relativism seemingly denies the possibility of identifying an individual's interests independent of his preferences; a communitarian cannot argue the slave is being duped, since such a judgment depends upon an objective notion of his interests. Though some institutions of slavery may contradict other principles inherent in particular societies or some slaves may realize the unjustness of their predicaments, surely, the communitarian does not expect the external observer to refrain from making value judgments concerning other situations.

The ethical individual's distaste for slavery, whether in his society or in another, is morally more significant than his preference for vanilla ice cream; communitarianism allows no room for such a distinction between moral preferences, based on an objective code, and subjective tastes. It is nonsensical to condemn the injustices of slavery or genocide and justify paternalistic intervention without basing one's arguments on universal human rights, the inherent value of human life, and the natural preference for liberty.91 No rational individual acts as if all moral judgments of others are equally valid; yet, evaluating the actions of others requires an objective standard.

The inability of relativism to facilitate intersocietal interactions is a shortcoming if one grants that morality must be functional. Claiming that moral issues are essentially contestable is both frustrating and alien to the human condition. Experience shows that contradicting moral codes develop; many wars stand as testimony to the conflicts between different societies and their beliefs. Something further must be offered unless one admits that no code is better than another, leaving violence as the only way to settle disputes.

Many relativists condemn imperialism and other attributes of particular societies, motivated by the same tolerance which first led them to relativism. It would be self-defeating for relativism, a theory based on tolerance, to be unable to condemn racism, sexism, or other intolerant acts merely because they are committed in a particular geographical location. Indeed, even Walzer concedes that universal morality, based on a natural law that is not necessarily accepted or understood by the actors, allows a society to intercede in the affairs of another

90. Walzer, supra note 84, at 314; Mulhall and Swift, supra note 10, at 145.
91. See, e.g., Aristotle, supra note 42, at 70-75, 430-36, for a defense of slavery.
on rare occasions to prevent gross atrocities such as human sacrifice. Without a transcendental code, one is forced to abdicate any responsibility to advise, guide, or judge the policies of another society, whether separated by time or geography.

B. Intrasocietal Judgments

More troubling than the dilemma of intersocietal judgments is relativism's inability to resolve intrasocietal tensions. Claiming that societal preferences form the justification for morality merely enshrines the status quo and prevents meaningful change. Many societies desire horrible things, and the minority must have the right of appealing to some external morality to criticize the majority. For example, the mere fact that a majority, perhaps even an overwhelming majority, of the citizens of a country desire to enslave a portion of the population to increase the overall welfare does not give this state of slavery moral force. Communitarians are forced to start with a community's given beliefs and leave little room for the ethical individual opposing an unjust society; the act of choosing among competing principles is pointless without reference to an objective moral code.

The very tolerance which makes relativism so attractive is self-defeating in practice. Communitarians forfeit the right to claim particular choices are morally praiseworthy; moral relativism renders an evaluation of whether society's laws are just nonsensical. However, a minority dissenting group is not necessarily morally incorrect. Examples of praiseworthy leaders of protest groups include Mahatma Gandhi, Martin Luther King, and others that protested against and transformed their respective societies. The causes of history's social reformers did not become just upon approval of the majority, but rather were correct in spite of the rejection of the general population; civil disobedience can be legitimate independent of the latent convictions of the majority.

The lack of a suprasocietal moral code prevents relativists from appealing to external reality to reform or assess a given society. Whereas a relativist cannot abstract from society to evaluate that society's actions, such detachment is often necessary to condemn the evils performed out of majoritarian self-interest or prejudice. History has taught that mankind can be horribly cruel and at the same time consistent. "Might makes right" is hardly satisfying when individuals like Hitler, Stalin, etc. have obtained so much power. Relativists conflate the perpetuation with the creation of morality, giving credit to society for both when it does only the former. Noting the transmission of morals via societal influence is merely a descriptive, not a causal, statement;

92. Walzer, supra note 84, at 45.
93. Merely claiming the subgroup is a distinct society transfers the problem to an intersocietal one and divides society into fragmented subgroups until only individuals remain.
94. In contrast, see Dworkin, supra note 43, at 184-205.
one may observe societal influence on morality without concluding that it serves as justification. Though the relativist goes too far in claiming that morality is determined, not merely influenced, by societal pressures, he makes a valuable contribution by observing that political institutions influence the formation of individually held values. Noting this influence raises the issue of which principles should form society.

C. The Rise of Moral Relativism

Relativism has gained popular support due to the appeal of tolerance, the need to process the modern age’s rapid pace of change, and the individual’s frequent exposure to foreign cultures; however, none of the phenomena justifies relativism’s influence on morality. A proper understanding of tolerance, change, and diversity leads to an objective moral code. While critiquing relativism’s influence in the realm of morality, it is useful to understand why relativism has become so popular.

First, the desire for tolerance often results in moral relativism. After many turbulent periods of changing prejudices, people tired of the condemning attitude that seemed so intrinsically tied with objective views of morality. If one correct moral code existed, it seemed only natural to impose this code on all so that everyone could lead morally correct lives. Historical events like the Inquisition remind communitarians of the danger of absolutism and provide strong data for arguments in favor of multiculturalism.

Second, the rapid pace of change has produced further support for relativism. Never before has change, in the political, scientific, and other spheres, occurred so quickly. Only fifty years ago, sending a man to the moon was beyond people’s wildest imaginations, much less expectations. Rapid change, with each year’s progress being made obsolete during the very next, weakens people’s trust in authority and eternal truths. Furthermore, modern technology transforms yesterday’s miracles into commonplace events. For example, video and audio equipment can be used to create illusions which disrupt the simple relationship between reality and man’s senses; seeing is no longer believing. The increasingly complex and changing world replaces man’s confidence in himself to understand and control his environment with doubt and leads to skepticism towards claims of universal truths.

Third, accessibility to foreign lands, due to the ease of modern travel, encourages relativism. The existence of others different from one threatens heretofore unchallenged faith in the correctness of one’s views. The fact that others differ from the subject in ways that did not even seem possible leads the subject to conclude that none of his views is valid for others. At the same time, a small insecure group clings to the firm voice of permanence and confident authority, without making allowances for change and growth. These ultraconservatives destroy any credibility that tradition might have.

Though the desire for tolerance, the contingency of truth caused by continuous discoveries, and the contextualization of one’s experience may seem like good reasons to adopt a relativist view of the world, a better understanding of these
phenomena actually suggests an objective moral code. First, the good of tolerance has been perverted by the multicultural agenda; the absolute valuing of tolerance over integrity is a self-defeating proposition. Interactions between dissenters within society and between different societies are not facilitated by supposedly tolerant multiculturalism; for example, communitarianism offers little meaningful protection for individuals suffering under a dominant culture, e.g., Christians in Iran. An aversion to judging the actions of others prevents communitarians from condemning evil rulers who command popular support; merely assessing those actions which affect the culture rights of an identifiable society is not enough to express the appropriate moral outrage over the many atrocities they commit against their own people.

Moral relativism is often advanced in the name of tolerance and diversity; however, its lack of objective protection for the weak and dependence on society for morality often leads to intolerant and monolithic conclusions. All moral codes rely on objective assumptions, e.g., the importance of human beings and their preferences, to provide a solid foundation. Objective morality, which transcends the particulars of any given situation or society, allows the minority to criticize atrocities and also coincides with the manner in which most people resolve moral conflicts. Pluralism itself depends on an objective valuation of autonomy; the tolerance of relativism is incomplete without the protection of objectivism.

Second, despite the rapid pace of change, certain basics remain constant. It is a mistake to focus only on the many superficialities, which, despite their appearance of importance due to their large number and frequent contact with one's daily life, do not constitute the greater part of reality. Fundamentals, e.g., the infinite worth of man and the rules of logic, remain constant and rise above the specifics of any place or time. Despite new subatomic particles discovered by physicists and genetic information decoded by biologists, scientists use the same laws of inference used many centuries ago by Aristotle, Plato, and other early Western political theorists.

Third, despite the variability between different cultures, certain moral principles apply across national and chronological demarcations. An objective truth may have particular applications which vary according to locale. One example of a belief being translated into superficially different practices is the right to political participation requiring a free press in literate societies and alternative means of communication in others. Thus, diversity does not necessarily contradict objective and universal underlying principles.

In summary, though the rise of relativism is an understandable response to recent events, objectivism provides an alternative approach to tolerance, change, and diversity. Despite the popular reaction, none of the three phenomena argues decisively in favor of relativism. Indeed, objectivism is better equipped to resolve the issues raised by the modern age.

D. Moral Relativism Versus Objectivism

Whereas objectivists believe that moral intuitions are unlike other reactions in that they can be questioned and examined with reason, relativists reduce moral intuitions to subjective preferences with no value independent of the subject. Objectivists, thus, link truth with an external reality; intuitions are instinctive reactions to external objects whose properties exist independent of man’s response. Relativists deny both the possibility of making truth claims and a link between intuitions and independently existing properties. Relativists view politics as the study of societal arrangements particular to a historical context; the study of politics is presented as an empirical investigation of man’s experience, not a search for the right answer.

Relativists do not understand the purpose and function of morality. Their conception of morality as a summary of society’s preferences does not differentiate morality from rules of etiquette, customs, and other evolving traditions. Surely, morality must contain some stronger motivating force if it is to serve any function other than mere window dressing giving society the appearance of legitimacy. The claim that morality is an artificial construct perpetuated solely to advance or represent society’s interests contains two fundamental flaws.

First, such a weakened form of morality never motivates individuals to act against their interests; morality would lose when conflicting with expediency. Any rational individual, enlightened enough to realize that morality is a social construct, could act as a “free rider.” There is no incentive for any given individual to refrain from stealing or committing other selfish acts. The argument that society cannot function if everyone steals makes no sense at the margin; the individual knows he can steal without causing the entire system to self-destruct. Thus, only the risk of getting caught prevents the consistent relativist from stealing or acting in any other selfish manner. There is no reason to care for others, including loved ones and future generations, except for the feeling of pleasure generated by such feelings; true selflessness is rendered nonsensical.

Benevolence, charity, and goodwill have no ethical value in a relativist framework and may be dismissed as social constructs designed to force the individual to conform to society’s expectations. However, people refrain from selfish behavior for reasons more complex than the chance of being caught. All feelings of guilt are not products of social training; people possess an innate sense of right and wrong. People also care for others and engage in true altruism, for reasons more noble than self-gratification. It is the height of

96. Mulhall and Swift, supra note 10, at 102-03.
97. Taylor, supra note 21, at 8.
99. Aristotle, supra note 42, at 4-6, 154-56.
arrogance to assert that such individuals, the vast majority of the population, are simply not rational enough to discern that they are being duped. Without claiming that all individuals are fully consciously self-reflecting beings, it is possible to maintain that individuals act with free will to follow an objective morality. Such a view of morality as larger than man’s material existence is necessary to ground principles of justice which require personal sacrifice.100

The second fundamental flaw with the relativist’s view is that much of morality does not coincide with society’s material interests. Plato, and later Marx, considered the relativist critique that states utilize the rhetoric of political theory to legitimize and advance the interests of the stronger members of society.101 However, the empirical evidence shows that morality often causes inefficiencies in the daily workings of society; the very purpose of moral codes is to counter other forces in society, such as the drive for efficiency, which threaten transcendental goods, like the inherent dignity of human life. Though most realize the inefficiency of morality is the necessary cost of protecting human dignity, theories without transcendental notions of human worth can easily adopt a Machiavellian view of individuals as citizens to be used for the good of the state, rather than using the state for the person.102

Though one may explain the need for honesty and the Protestant work ethic in terms of economic production, it is not so obvious what material justifications can be found for protection of the weak, the basic value of all human life, especially the aged and the disabled, and other seemingly unproductive tenets of all mainstream religious faiths and most moral codes. The argument that preservation of life is necessary to give society stability certainly does not explain why no moral code advocates eugenics, concentration of resources on the productive, and killing the disabled. Certainly, efficiency would dictate that one life be sacrificed to provide organs to save the lives of ten others. However, objective suprasocietal notions like bodily integrity, human rights, and basic human dignity trump such utilitarian considerations.

Relativism, thus, fails to explain both the motivational power and content of morality. Unlike relativism, which leaves man hostage to his preferences, objectivism allows the individual to step back and evaluate his intuitions against an external standard. It is possible for individuals to possess the wrong conception of the good life, thus requiring them to either repress or alter particular intuitions for the sake of moral growth.103 The existence of an objective criteria of moral goodness, independent of man’s preferences, allows objectivists to explain how individuals and societies improve themselves, a phenomenon left unexplained in the relativist account of political morality.

102. Rousseau, supra note 38, at 298-308.
103. Mulhall and Swift, supra note 10, at 103-05.
III. CONCLUSION

Relativism is incapable of resolving the moral dilemmas which commonly confront individuals and societies; both liberalism and communitarianism have been shown to depend instead on transcendental principles. As theories which reject transcendentalism fail at providing effective conceptions of justice, transcendental principles are an unavoidable and necessary aspect of the political discourse. The diversity of first principles, e.g., priority of liberty rights versus welfare rights, cultural relativism versus objective reality, etc., may prevent universal agreement, but one must make explicit such transcendental assumptions.

Communitarians are right in asserting the existence of certain goods which an individual cannot choose. Certain goods, and perhaps even an appreciation for the good life, can only be provided in a social context. For example, particular religious communities practice infant baptism and circumcision before the child has the ability to discern his religious faith; communitarians are correct in asserting the value of raising children according to particular values and beliefs, perhaps necessary to process future experiences, even before they reach the age of reason. Liberals are wrong in emphasizing choice as a necessary component of all goods; indeed, some of the most vital goods, e.g., good parents, innate skills, etc., cannot be chosen. Yet, while communitarians are right in criticizing Rawls for believing that individuals are capable of abstracting from their fundamental commitments, they do not go far enough by asserting these commitments are formed by society alone; many fundamental human interests are inherent to human nature. Certain objective and universal interests transcend both individual and societal choice and are common to all individuals by virtue of their being human.

Human well-being cannot be defined merely in terms of subjective interests; an objective notion of man’s purpose is necessary to move from statements of fact to prescription, moving from “is” to “ought.” Though Rawls makes a Machiavellian move to divide personal from political interests, Hobbes, Aristotle, and other political philosophers have viewed politics as a continuation of the study of man’s moral and physical well-being. The preservation and advancement of human welfare, in its entirety rather than a thinner political conception, must be the foundational goal of a just society.

The invocation of transcendental assumptions, necessary to formulate an adequate notion of human well-being, suggests both the existence and discernibility of an objective set of truths. The subject recognizes, rather than creates, the value and force of political principles. The limitations of humanity do not limit matter, creation, and ultimately truth; such a view exaggerates the importance of human beings and belittles reality. Every question has a definite answer, but that answer may not be known or even knowable.

Though man may never fully comprehend all of reality, intuitions, observations, and reasoning allow individuals to grasp partial truths and the implications of fuller truths. Partial truths, involving the rejection of competing claims
without fully accepting an alternative as comprehensively accurate, may be the best man can achieve. Often, it is easier to reject falsehoods than to do the reverse and accept complete truths. Thus, a theory of justice must be built on a foundation of partial truths; man's evolving understanding of the world will necessarily lead to modifications in his conception of justice.

It may be argued, as it has been in the past, that transcendental morality has no place in the political sphere. Indeed, an English politician remarked that "humanity is a private feeling, not a public principle to act upon." The official was objecting to the use of inherent dignity arguments to oppose the slave trade in nineteenth-century England.\textsuperscript{104} Yet, natural rights have been at the forefront of every major political and social change, whether the abolition of slavery, the outlawing of child labor, the establishment of a minimum wage, the advancement of women's rights, etc. The Declaration of Independence, which established the United States as a nation, talks of man as being created and endowed with inalienable rights. Whether derived in a humanist or a religious context, man's rights and his inherent dignity have long been a part of the political process, and it would be difficult, if not impossible, to defend much of modern social legislation without such notions.

Historians can testify to the role that belief in natural law and ordering has played in legitimizing government. Sociologist Daniel Bell argues that "the ultimate support for any social system is the acceptance by the population of a moral justification of authority."\textsuperscript{105} Rulers are provided with "just and reasonable" standards, and the ruled are "bound to respect and obey those given charge over them."\textsuperscript{106} Indeed, Napoleon claimed, "[r]eligion is what keeps the poor from murdering the rich."\textsuperscript{107} He might have added that it also keeps the rich from murdering the poor. Brazilian death squads, policemen hired by middle-class merchants to protect their inventories, murder homeless children who are likely shoplifters. Such horrific actions are implicitly condoned in any society which does not explicitly recognize the transcendental worth of each individual and his inherent dignity. It is impossible to reconcile one's liberty with the justice that another must have something to eat if it is not clear where the right to liberty or justice originates.

An honest theory of justice makes explicit its transcendental assumptions, though it must refrain from asserting any claim to comprehensive knowledge of objective truth. Despite liberal protestations to the contrary, all theories depend upon transcendental claims. Whereas communitarianism has been shown to promote the wrong transcendental good, liberalism may defend the right goods for the wrong reasons. Man's inherent nature and dignity serve as the foundation for a fuller universal moral code, a collection of values external to the individual, which includes principles of justice.

\textsuperscript{104} Charles Colson, Kingdoms in Conflict 149 (1987) (quoting the Earl of Abingdon).
\textsuperscript{105} Colson, supra note 104, at 326 (quoting Daniel Bell, The Cultural Contradictions of Capitalism 77 (1978)).
\textsuperscript{106} Colson, supra note 104, at 276.
\textsuperscript{107} Colson, supra note 104, at 276, quoted in Robert Byrne, The Other 637 Best Things Anybody Ever Said 6 (1984).