
Epistemology at a Time of Perplexity

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That is not what I meant at all.
That is not it, at all.¹

These essays weave many brightly-hued strands into a complex tapestry. It would be a scatter-shot essay that seeks to respond to them all. Fortunately a single transcendent pattern emerges from these thoughtful analyses of my work.

While it is necessary, for literary purposes, to describe this pattern in order to respond to it, none of the essays precisely fit my summation of it; and so the precise content is not ascribed by name to any of the authors. Yet each of them, in various ways, focuses on the same problem: the dilemma of epistemology at a time of perplexity. Their concern is with the bias introduced into my work by who I am. Each understands, of course, that this is a universal problem inherent in the enterprise of scholarship. So let us address it as such. How can we claim to know what we think we know when we know that our knowledge is [entirely/largely/substantially] culturally determined and, moreover, that many others, otherwise culturally conditioned, will think otherwise?

Even Immanuel Kant's thought, one essay points out, was culturally and historically confined and determined, although the author concedes that the invention of the bicycle, by making persons mobile, could have helped loosen those self-restraining shackles. Or, he wonders, did the bicycle only create the illusion of personal mobility? And, what of jet engines and computers? Have they created a world in which, well, yes, the diplomats come and go (talking of Michelangelo) but real decisions are made by secret cabals over which we have no control and which seek to shape, while subordinating, the disparate, self-defining values and customs of our authentic socio-cultural selves? Where's the 'fairness' in that? Where does that leave individual 'empowerment'? Only a 'Panglossian', this essayist scolds — one wearing 'rose-tinted Washington Square spectacles' — could detect in such a world much in the way of a transcendent notion of fairness or a global personal empowerment.

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¹ T. S. Eliot, *The Love Song of J. Alfred Prufrock* (1915).

Another essay, in a similar vein, seems also to find this Panglossian streak in my tendency to see history as (her phrase) ‘progressive in the sense of constant improvement’. This, the author maintains, is an ahistorical personal value judgement manifesting only my bias towards liberal triumphalism (my phrase) and, moreover, exhibiting a rather naive approach to intertemporality: confusing, or noticing only selectively, the road markers measuring the distance societies have travelled from one historic condition to another.

A different author, similarly, wonders: ‘In a world characterized by radical diversity in moral and political practice, how can “fairness” be anything more than a name for a culture-specific value-construct that Franck is proposing arbitrarily to foist on adherents of other cultures through international law and institutions?’ This, in a word, is the problem of ‘ethnocentrism’ that is said to infect aspects of my work. To be Panglossian is surely bad enough, but an *ethnocentric* Panglossian?

The same Panglossian streak is detected by a fourth essay which challenges my notion of the existence of an ‘international community’ — with its concomitant implications of ongoing reciprocity in recognition of, and adherence to, universally applicable rules — an illusion the falseness of which has been amply demonstrated: for example, when the parties to the Genocide Convention ‘stood back in 1994 when Rwanda was overtaken by the very murderous convulsions that the Convention was designed to prevent’. What does this say about the sense of community, the author asks? ‘Just how ‘deep’ is the commitment of this community to universal human rights, to disarmament and world peace, to economic and environmental justice, to the self-determination of all peoples?’

In a fifth essay, another charge of Panglossianism. It is claimed that I put forward ‘an avowedly individualist vision of the human condition in which man, in the Kantian tradition, is capable of choosing his own ends and, importantly, is best able to do so.’ That author’s key words are *best* and *able*. How many persons — the question hangs heavy in the air — actually have the means to be ‘able’? And how, except through the prism of culture and ethnic, can we judge what choice is ‘best’? Isn’t Professor Will Kymlicka right, this essay demands, when he warns that genuine personal, autonomous choice is an illusion, citing his comment that ‘what enables this sort of autonomy is the fact that our societal culture makes various options available to us’?² But, the author asks, if our notions of fairness, as also of freedom, are culturally determined can they be said to reflect more than our peculiar, anything-but-global values? What kind of fairness or freedom is it that is actually culturally determined rather than derived from the common experience of humanity?

These epistemological questions have suddenly shaken off their cobwebs of erudite but irrelevant scholasticism and became ‘real’ after the destruction of the New York World Trade Center on 11 September 2001 and the subsequent US and British campaign in Afghanistan.

Al Qaeda, and, specifically its leader, Osama bin Laden, have defended that attack as a legitimate and just response to US support of Israel and Kuwait in conflicts that have

² W. Kymlicka, *Politics in the Vernacular* (2001), at 53.

claimed the lives of Palestinian and Iraqi civilians. Both the attack's choice of *objective* (The Towers) and its *justification* (giving America a taste of its own medicine) are defended as perfectly fair. Thus, the two office towers, although clearly not themselves a military target, were fair game as symbols of Western globalizing capitalist culture, just as the Taliban's blowing up of the giant 1,500-year-old Bamiyan Buddhas — statuary carved into an Afghan mountain — was justified as a response to the cultural provocation of the foreign invaders who built them, even while UNESCO was describing those artifacts as 'part of the conscience, history and identity of humankind'. But to the Taliban's supreme leader, the Mullah Omar Mohammad, 'these idols [were] the gods of infidels'.³ He, like our author-commentators, saw no such claimant constituency as 'humankind'. As for motive, those who plotted and carried out the 11 September attack, as well as the government that sheltered them, were justified in killing 3,000 civilians — and in plotting exponentially to expand that toll — as fair reprisal for many civilians killed in Israeli-occupied Palestine and in Iraq. To their way of thinking, there are no innocent civilians and the death of American employees near Wall Street is far from 'collateral' damage but, rather, fair retaliation.

So there we are at the nub of the matter. Al Qaeda's applied moral principles of fairness, as evidenced by their justifications for the strike of 11 September, challenge all fairness theory that claims to be universal. What is left to say about fairness that does not merely reflect the cultural fault-lines between us and them? What are the possibilities of discourse across that cultural chasm about executing disbelievers or denying women education?

Professor John Rawls tackles that question by excluding from an imagined discourse intended to frame a Law of Peoples all societies that are not 'liberal democratic' or 'decent hierarchical'.⁴ He proposes this in the belief that the cultural chasms between 'us' and 'them' are simply too deep for meaningful discourse about governing principles of morality or fairness.⁵ He specifically rejects 'the possibility of a global original position'.⁶

My approach is different. It argues that there is already general agreement among societies on a broad range of first principles and that this agreement is evidenced by the negotiated texts of the most important global regimes: those governing human rights, trade, aspects of the environment, the use of force and diplomatic immunities, as well as establishing the parameters of treaty obligation. Commitment to these regimes has not been shown necessarily to depend on the liberality or decency of any particular peoples. True, all governments — and not just the rogue regimes — have a tendency to cheat now and then by violating principles to which they have agreed. That, indeed, poses a problem, but it is one of enforcement, not of normativity or principle. Efforts to strengthen enforcement, in turn, confronts the resistance of

³ *NY Times*, 2 March 2001, at A3 and 4 March 2001, at A10.

⁴ J. Rawls, *The Law of Peoples* (1999), at 54–67, 82–83.

⁵ 'If the political conception of political liberalism is sound, and if the steps we have taken in developing the Law of Peoples are sound, then liberal and decent people have the right, under the Law of Peoples, not to tolerate outlaw states.' *Ibid.*, at 81.

⁶ *Ibid.*, at 83.

sovereignty. But sovereignty, too, is not a problem peculiar to states that are illiberal or less than decent, as is evidenced by the US tendency to stay out of so many key international treaty regimes and even to resist the implementation of a few it has ratified.

In my analytical scheme, the culture chasms loom neither so wide nor so unbridgeable as in Rawls' analysis. This may be because I believe that culture is far more malleable than, for example, does Professor Will Kymlicka.⁷ While he concedes that persons' cultural values may change through integrative migration that distributes and scatters ethnic around an established politic (as in the US) I also believe, as he does not, that even the cultures of stationary societies can evolve in response to independent variables such as those often grouped under the rubric of 'modernity'. And since 'modernity' has primarily global components — scientific, technological and economic — it tends to build bridges across traditionally divisive cultural chasms.

I agree with Kymlicka that this cultural change has rarely been brought about by 'foreign' occupation, which tends to provoke a rallying about the culture of those occupied. But while French Canadian identity did not die on the Plains of Abraham, who could doubt that it is now being reconfigured: by Anglo-North American commerce, technological, managerial and scientific networking across cultural and political divides and by social and territorial mobility? The vociferous, often violent opponents of 'globalization' provide all too eloquent testimony to the power of modernity in confronting the particularism of traditional cultures.

My work, however, is not a celebration of globalization. It is, rather, a prediction based on evidence. To say that cultural particularism may yield to the forces of modernity is akin to predicting that irrational belief systems will be threatened by the progress of science, or that burgeoning literacy will empower women and undermine belief in inherent female subalternity. In *Fairness* and *The Empowered Self*, as the preceding essays have noted, I propose a probable causal relationship between separate variables, not a determinist theory of history. Science can be stemmed, as stem-cell research has been in the US. Literacy is reversible, as the Taliban strove to demonstrate. But is it really 'Washington Square Panglossianism' to assert that literacy is likely to continue to spread and, with it, *at different rates in various places*, the concomitants of personal freedom and equality?

This does not argue either for the inevitability of a globalization of fundamental values or the homogenization of cultures, but it does identify factors that seem to have the power to narrow cultural gaps. Modernization alters loyalty systems and affects the personal sense of identity. How many of us have observed that there is nowadays more in common between two international lawyers one of whom is an American than between two Americans one of whom is an international lawyer? While it is true that it is as yet a rather narrow slice of society that thus pulls in the direction of transculturalism, that tranche has a lot of energy and means at its disposal.

I understand that these observations may seem casually to accord with the

⁷ W. Kymlicka, *Multicultural Citizenship* (1995), at 181–192.

melting-pot cosmopolitanism of America and, so, to evince a certain ethnocentricity. I do not believe, however, that it is ethnocentric to try to demonstrate causal links between discrete variables. To observe that vaccination can prevent polio, or that urbanization undermines kinship-based forms of social ordering, is not advocacy but, rather, social scientific hypothesis-building.

International law is both progenitor and evidence of the rapid growth of transcultural values and the norms that promote them. Of course, in the evolution of universal customary law, there is the phenomenon of the 'persistent objector' claiming exemption. The United States is such an exceptionalist vis-à-vis industrialized Western democracies' rejection of capital punishment. The Taliban and Al Qaeda represent a far more extreme form of exceptionalism, one cutting across a broader spectrum of widely-shared values and principles. What, if anything, can one say to such a dissident culture?

First, one needs to speak from a sound data base. We are not as upon a darkling plain, where ignorant armies clash by night. When, for example, the Taliban proclaim the extreme subordination of women they speak only for a small band of religious 'fundamentalists'. These are to be found in most societies, but almost everywhere they are buried beneath a preponderant normative commitment to emancipate women. One does not have to be an historic determinist to observe that the trend is not in the direction of a fanatic version of male dominance. And we need to question closely 'their' claim to religio-cultural authenticity. Most Islamicists reject that brand of exceptionalism. Moreover, the manifest reaction in the streets of Kabul and Hejaz to the Taliban's defeat at least should cause us to question the need to defer to such aberrations, merely because they claim recognition of their status as a 'culture'.

Secondly, we need to remind ourselves that most cultural exceptionalism has ample space within which to have its way within the wide parameters established by agreed global regimes and the liberal principles or values these are designed to advance. Indeed, it is only the Taliban's intolerant absolutist kind of exceptionalism that has reason to fear the growing globalization of freedoms — political, social, economic and cultural — that is promoted by treaties and emerging normative regimes. As Kymlicka has made clear, the only cultures and ethnies that necessarily collide with transnational (or, for that matter, national) liberal regimes are those that deny exit or impose themselves by force on all within an arbitrary genetic or geographic ambit.⁸

Accordingly, in the negotiations leading to the creation of international regimes, there has always been room for participants who do not share the liberal-democratic values of the West. Difficulties arise only when those exceptionalists insist on exempting from generally agreed global norms and values, not only those who voluntarily choose to renounce them but also those who are forcibly subordinated against their will or are denied the opportunity to cultivate their own posture towards communitarian values and rules that subordinate them.

⁸ Kymlicka distinguishes between the claims of liberal tribes to protection for their separate cultural identity and the benevolent role of externally imposed constitutional protection for the rights of persons, regardless of their ethnicity. *Ibid.*, at 94–105.

Liberal values tend to accommodate non-liberal mores provided they leave their exit open. In only a few instances is this not true. There may be certain values and principles that are not merely validated by global treaties or custom but by the very nature of human existence. These may simply be non-derogable because they recognize rights of persons inherent in personhood. Cultures that seek to exempt themselves from global recognition of these rights are not so much in a clash between cultures as in a confrontation with nature. The growing universalization of a right to life and to not be deprived arbitrarily of it may superficially look like humanist cultural imperialism. But is it not really a collision between blind values and scientific evidence, a rerun of the flat-earth feuds of the early second millennium?

We live in a time of perplexity. As humanity makes rapid strides towards cultural, social and political convergence, a certain hysterical undertow is making itself felt in the claims of exceptionalists to exemption from increasingly universally recognized principles and values. Not too much attention need be paid to these claims, since most exceptionalists have little to fear except the evanescence of their values and, in some instances, the inauthenticity of their cultural claims. There is no reason, either, for the rest of us to be apologetic about that evanescence, or to strive inordinately to preserve every exceptionalist value as if it were the last snail-darter or white leopard. Instead of immersing ourselves in guilt over the decline in, say, the cultural practices of human sacrifice or cannibalism, should we not celebrate the growing — albeit very imperfect — coming together of so much of humankind around decent aspirational values: the sanctity of life, right to democracy, participation in governance, freedom of religion and expression, the right to a decent standard of living, the inherently equal worth of all persons? Instead of apologizing for these being values of ‘Western’ culture or characterizing their spread as ‘imperialism’, should we not applaud and be glad, even at the risk of seeming like old Dr Pangloss?

Let theocrats and autocrats mourn the globalization of values. They know for whom the bell tolls. We have heard the mermaids singing; I think they sing to us.