

# THE LIBERAL METAMORPHOSIS WITHIN A HUMAN RIGHTS FRAMEWORK: THE FUTURE OF THE NATION STATE

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Dr. Abdul Wahab Suri

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*"The Man of Knowledge must not only love his enemies, he must also be able to hate his friends"*

*Das Spoke Zarathustra (190)*

## Introduction

We are living in an age in which a unilateral world order is spreading liberal values and regimes across the globe. This phenomenon leads to a transformation in the structure, ideals and virtues of the Nation State in general and of non-liberal States in particular. This dynamic change is marked by cosmopolitan liberalism and is aided by many political, legal and economic international bureaucratic institutions.

In this cosmopolitan world order, the old Westphalian State structure which acknowledged the absolute right of the State has been put in question. The legitimacy and the sovereignty of the State are conditioned by constitutional guarantees and an institutional framework for the realization of human rights.

In this sense, an abstract human rights framework is considered a tool for restructuring non-liberal statecraft. Underlying this presumption is the idea that "right" has an ultimate priority over "good," and that this hierarchy is natural rather than a recent historical development. On this view, then, a cross-cultural application and theoretical acknowledgment of liberal values is seen as the natural culmination of the potential already existing in Neolithic man.

This article attempts to establish that the priority of rights over the good does not ensure a neutral procedure of justice and that the institutionalization of the priority of rights over the good is not the foundation of a just order, but rather acts as a bridge to transform a non-liberal order into a liberal one. The institutionalization of an abstract "rights" framework is actually an attempt to undermine the sovereignty of non-liberal statecraft and to gradually transform it into the liberal socio-political model. This imposed liberal criterion of decency does not reflect the strength of liberalism, but rather its weakness.

The paper will begin with an account of the philosophical defense of the priority of rights over the good in liberalism, and proceed to describe its role in the metamorphosis of non-liberal States. It will then

challenge the theoretical the priority of rights over the good and its legitimacy as a criterion of a just socio-political order.

## Liberalism on: The Neutrality of Principles, The Nature of The State and The Criterion of Justice

### The Notions of Liberty and Equality in Rights-Based Liberalism

The ideas of equality and liberty seem to reinforce each other, but in the political sphere the extension of the one eventually limits the sphere of the other. Discovering the best possible compromise between these competing ideals (liberty and equality) is one of the central problems of contemporary political theory. Deontological liberalism claims to reconcile the paradoxical co-existence of equality and liberty.

Another important problem associated with the issue of liberty and equality is that while neither is quantifiable, it is necessary to presume that they are. The quantifiability of liberty and equality is a necessary "postulate" for the constitution of concrete political structures. This presumed quantifiability principle raises the question of how to demonstrate "lesser" or "greater" liberty or equality in different political arrangements. Thus, the extension of the one and the restriction of the other becomes a matter of interpretation. In contemporary political philosophical discourse the many "isms" (liberalism, socialism, libertarianism, communitarianism, etc.) are all different attempts to reconcile the relatively incompatible issues of liberty and equality within a single framework.

The human rights framework is widely presumed to be the criterion not only for reconciling the paradoxical co-existence of liberty and equality, but also as the quantifiable criterion for assessing the amount of freedom and equality granted by the State structure. The amount of freedom is directly proportional to the number of liberal rights guaranteed and institutionally protected by the State. Moreover, the human rights framework is considered a legitimacy

criterion for the approval or disapproval of State policies and international agreements.

The history of political theory reveals that the priority of rights over the good was first acknowledged as a criterion to judge the legitimacy of political procedure by liberals. The classical contractarians such as John Locke quickly realized that freedom without order does not guarantee a just socio-political society, but also that controlled freedom is a contradiction in terms. In order to resolve this problem Locke introduced the idea of civil society, contrasting it with the "state of nature" which guarantees absolute freedom to the individual in the absence of any legal order. He tried to demonstrate that in the absence of any order, freedom of the individual is unprotected and unsustainable. The unintended consequence of this perfect state of freedom and equality would be the arbitrary expression of ruthless power. This reveals a clear contrast between liberals and anarchists with respect to the relation between freedom and order. Liberals want to enjoy freedom, yet within an ordered structure. That order they derive from an abstract system of rights.

The political theory which has emerged from the politics of rights is generally known as liberalism. Theoretically, we can define liberalism under three core headings: first, liberalism is a socio-political movement which prioritizes the individual over all forms of collectivities, considering man as an end in himself rather than a means towards the realization of certain ends; second, liberalism considers freedom of the individual as the highest ideal and then institutionally protects that freedom through a system of abstract rights; and third, liberalism considers

tolerance to be a fundamental value subject to the constraint that the only public good is the will to freedom.

Liberalism is also a socio-political movement which presumes an organic relation between liberty and commerce.<sup>1</sup> The society which emerges from this organic whole of liberty and commerce is considered a commercial or civil society. Such a society ensures freedom of the individual through the institutional protection of fundamental rights and eliminates poverty through market mechanisms (improving labor productivity) and extra-market strategies (modernizing educational systems and other infrastructures).

The harmony of non-liberal States, including their structure, ideals and virtues, will be determined by the compatibility of the given State with the presumed conception of justice promoted by liberal cosmopolitanism.

#### **Rawls' Vision and an Inherent Contradiction**

The Rawlsian principles of justice<sup>2</sup> provide a presumed foundation for a just and fair socio-economic mechanism and also determine the parameters of a just State.

Contractarian theorists such as Rawls do not reject non-neutral principles on the basis of their possible misuse; rather they consider non-neutral principles impractical regarding their application to particular cases in concrete socio-economic and political affairs. Due to their inconsistent and controversial outcomes, non-neutral principles fail to provide generally agreed upon criteria for distinguishing between correct and incorrect decisions.

1. See John A. Hall, *Liberalism: Politics, Ideology and the Market* (Chapel Hill, NC: The University of North Carolina Press, 1987), pp. 35-38.

2. See Rawls' principles of justice: "First Principle Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all.

Second Principle Social and economic inequalities are to be arranged so that they are both:

a) to the greatest benefit of the least advantaged, consistent with the just savings principle, and

b) attached to offices and positions open to all under conditions of fair equality of opportunity. In John Rawls, *A Theory of Justice* (Cambridge, MA: The Belknap Press of Harvard University Press, 1971), p.302.

According to Dworkin such non-neutral principles “must be replaced by principles whose application to particular cases commands widespread agreement or for which neutral procedures for determining the correct application can be devised.” (Dworkin G. 1976. p.135).

Rawls has differentiated pure procedure from perfect or imperfect procedures. The difference between a pure procedure and a perfect / imperfect procedure is that the former is non-consequentialist and formal. Its validity is not judged by its empirical plausibility. However the perfect / imperfect procedure is consequentialist, functioning as an instrument towards the realization of desirable outcomes. Deriving the specific method to obtain the desired outcome will be considered a perfect procedure. On the other hand, an imperfect procedure does not guarantee a specific method to achieve the desired outcome. Non-neutral principles are fundamentally imperfect according to Dworkin because the concepts (justice, truth, goodness) derived from such “non-neutral principles are defined independently of the processes by which they are achieved.” (Ibid. p.136)

According to Dworkin, the Rawlsian prioritization of liberty of conscience as a first principle is the “strongest substantive argument that has been developed against non-neutral principles.” (Ibid. p.137) He believes that the strength of the Rawlsian moral argument lies in its epistemological validity. Rawls’ “veil of ignorance” provides a framework in which those creating the social contract are deprived of information which directly affects their personal decisions to regard one way of life as objectively better than others. In such an uncertain situation “no policy of suppression will be adopted and toleration will emerge as the solution of the decision-making problem.” (Ibid. p.138) Dworkin notes Rawls’ view that “the flow of information is determined at each stage by what is required in order to apply these principles intelligently to the kind of question of justice at hand, while at the same time any knowledge that is likely to bias and...to set men against one another is ruled out,” (Ibid. p.138) but claims that this makes Rawls’ theory vulnerable to critique regarding

the neutrality and fairness of his procedure; for, exclusion or inclusion of information does indeed directly affect the nature of the derived conclusion at each stage. Adina Schwartz, Thomas Nagel et. al., are not satisfied with the substantive claims and political implications Rawls has derived on the basis of his idea of the veil of ignorance. (Adina Schwartz 1973 p.p. 294-307, Nagel 1976 pp. 1 – 16) The conventional view regarding the neutrality of the principles of justice is that Rawls has revitalized the organic relation between “one’s epistemological views and one’s political views.” (Dworkin G. 1976, p. 139) Also, the Rawlsian derivation of the primary good – on the basis of hypothetical moral situations – as “desirable goods” is a generally accepted moral assumption. Rawls, then, is raising the question concerning what is logical for social contractors to choose behind the veil of ignorance. And so Rawls holds to a prioritization of the principles of justice and primary goods through the institutional procedure of constitutional democracy. But while this view seems to him merely logical, it is actually an epistemological pursuit.

Rawls is actually attempting to provide a socio-political framework in which different ontological accounts regarding the meaning of life are not just able to be realized, but are also not to be restrained by the realization of the others. Due to the blockage of knowledge through the veil of ignorance in the original position, the prioritization of any particular ontological or teleological account is epistemologically not possible according to Rawls. As rational and self-interested individuals, the contractors “cannot risk their freedom by authorizing a standard of value to define what is to be maximized by a teleological principle of justice.” (Rawls, 1971, p.328) Rawls has emphasized that the primary good index (income, power, wealth, authority, and self-respect) should not be confused with the teleologically derived good. He believes that “the index plays a subordinate role in any event, and primary goods are things that men generally want in order to achieve their ends what ever they are.” (Ibid., p. 328) Rawls acknowledges that the principles of perfection cannot be completely excluded from all spheres of life. This is so because in everyday life we cannot make

comparisons between intrinsic values in the absence of principles of perfection. And so he holds that “judgments of values have an important place in human affairs.” (Ibid., p. 328).

However, Rawls identifies within the idea of prioritizing principles of perfection the following two problems:

- i) The conception of justice derived from such a system of values or one of right/duties may not necessarily be secular or politically liberal.
- ii) The conditions of the original position will not allow for the derivation of any principle of perfection.

Rawls believes that the infiltration of any form of perfectionism will eventually lead to the deconstruction of the conditional structure of the original position. For this reason the State apparatus should not be used to enhance the distributive share or liberty of any particular group on the grounds that “their activities are of more intrinsic value,” (Ibid., p. 329) i.e. teleologically superior to that of others. Therefore he does not consider perfectionism to be a just political principle.

In this context Ronald Dworkin has shown that there are two different ways to answer the question concerning how a State can and should treat all of its citizens equally. (Dworkin Roland 1984, p.64) The first runs in this way: the State should remain neutral regarding the prioritization of any conception of the “good,” and provide a neutral framework such that every individual can equally pursue his own conception of the good autonomously. The second answer runs as follows: the State must not remain neutral on the question of the good. Rather, it must endorse a theory of the good in order to determine what ought to be. In this second sense equality would mean that the State is to enforce its theory of the good upon its citizens equally and in an unbiased way.

According to the first perspective political decisions are to be made abstracting from the personal life of any individual. That is, since every individual presumes a different order of preferences, practically speaking

it would be impossible for the State to treat them equally on the basis of their private conceptions of good.

According to the second perspective, in the absence of a definite theory of the good the claim of equal treatment would be fictitious because “[g]ood government consists in fostering or at least recognizing good lives; treatment as an equal consists in treating each person as if he were desirous of leading the life that is in fact good.” (Ibid. p.64).

It appears that Rawls affirms the first interpretation of equality. But is this conception of equality reconcilable with a general theory of distribution, i.e. the distribution of political rights, resources and opportunities? A Naïve egalitarian may claim that political right, opportunities and resources should be equally distributed irrespective of the private ambitions of the citizens of that State. In this context neutrality simply means that an equal share should be given to everyone. But a serious problem here is that not only do people have different conceptions of the good and/or orderings of their preferences, but additionally, they are naturally unequal in their talents, skills, needs and natural endowments. Since the “moral relevance of different sorts of diversity are very different,” (Ibid. p.66) it follows that this theory of equality is not only impractical, but in fact contradicts the very meaning of individual justice.

Liberals traditionally rely on two different institutions to resolve the problems inherent in distribution. The first is the market, which provides a mechanism for the distribution of material resources through the process of competition, i.e. an efficient market mechanism. The second is representative democracy, which provides the mechanism for the distribution of political rights. It is expected that the combination of these two institutions will provide the best egalitarian arrangement. The market provides an efficient price mechanism compatible with the purchasing power of the consumer, as well as “the cost in resources of material, labour and capital that might have been applied to produce something different that someone

else wants.” (Ibid. p.67) The market also helps the individual to rationally quantify “how much should be credited to his account for his choice of productive activity over leisure, and for one activity rather than another.” (Ibid. p.67) The market provides price mechanisms and it also sets the standards for wages, credit, loans, interest etc. In short, the market provides a distributive mechanism of goods and services. This distributive mechanism satisfies the wants and desires of the people having different conceptions of the good and orders in their preferences.

The distribution of goods and services is not egalitarian in a substantive sense. In the market individuals are not treated equally since they are unequal in their skills, physical abilities, mental capacities and natural endowments. As a result of this their capacity to accumulate capital is also not the same. In the market the distributive mechanism prioritizes the principle of “efficiency” over the principle of “equality.” And in the market effective demand is determined by the one who has capital. Therefore, anti-egalitarian consequences are inevitable in a free market economy.

The socialist alternative to counter these anti-egalitarian consequences through a planned economy is not appealing to liberals because such political economy legitimizes the “invasions of privacy to determine what decisions individuals would make if forced actually to pay for their investment, consumption and employment decisions at market rates.” (Ibid. p.67) This invasion eliminates the delicate demarcation between the private and public spheres of life and makes individual freedom impossible at least at the individual level. On the other hand in a socialist economy the distributive and productive functions are determined by the prioritized conception of the good presumed by the State. For example, “in a socialist economy books are simply valued more, because they are inherently more worthy uses of social resources, quite apart from the popular demand for books.” (Ibid. p.68) This prioritization of the “good” over “rights” not only affects the efficient market mechanism but it directly affects the autonomy of the individual’s order of preferences. Therefore this alternative is not acceptable for a liberal like Rawls.

Ironically, the free market mechanism is also not acceptable; because in the market individual decisions are not determined by one’s order of preferences but by one’s capacity to accumulate capital. Since individuals are not equal in their capacity to accelerate the rate of capital accumulation, it follows that in the market every individual is not considered equal. The problem is that in the market there is no substantive mechanism to address these inequalities and this result in catastrophic effects on the lives of individuals.

Two sorts of inequalities are considered natural in a free-market system: (a) Monetary inequalities, and (b) inequalities in natural abilities. Rawls may tolerate monetary inequalities because they are explainable in terms of an individual’s order of preferences, and some preferences are more expensive than others. However, inequalities in natural abilities directly affect the:

- i) The prioritization of the first principle of justice
- ii) The assumption that man is an end-in-himself
- iii) The priority of the rights over the good

Thus, in a free market mechanism the principle of efficiency dominates both the principle of equality as well as that of liberty. Due to the prioritization of the principle of efficiency there is no substantive agency (other than the myth of the invisible hand) which has the capacity to compensate those unfortunates who are left behind due to inequalities in their natural skills and endowments.

It is important to note that in Rawlsian framework, the principles of Justice not only act as a binding force to harmonize different socio-political institutions but it also provides an evaluative criterion of just socio-political order, “[the] principles of justice apply to the basic structure and regulate how its major institutions are combined into one scheme.” (Rawls 1971 p.274) So it implies that the socio-economic irregularities (with respect to the principles of justice) should be resolved within the constraints of deontologism. In order to realize this objective Rawls believes that “it is necessary to set social and economic process within

the surrounding of suitable political and legal institutions" (Ibid. p.275).

The free-market mechanism to regulate the distributive share of the citizens lacks the background institutions which harmonize the over all state process (i.e. socio-political and economic) with the rationale of the prioritized principles of justice. He believes that "[without] the proper arrangement of the background institutions the outcome of the distributive process will not be just." (Ibid. p. 275).

In order to conceptualize the framework of such background institutions Rawls has derived idea of four branches of government explicated by R.A. Musgrave.<sup>3</sup> According to Rawls "each branch consists of various agencies or activities thereof, charged with preserving certain social and economic condition. (Rawls 1971, p.273).

It reveals that Rawls acknowledges "the competitive market by itself is not sufficient for the job of stabilizing" (Fisk, 2000, p.249). Secondly free market mechanism does not guarantee on adequate minimum income or a degree of equality that confirms to the difference principles. (Rawls 1971, p.277).

Therefore, in order to avoid socialist threat the need of strong interventionist state is inevitable not only to institution justice as fairness but also for "developing a strong basis for its [competitive market] own stability." (Fisk, 2000, p.249).

Rawls therefore acknowledges the need of a redistributive agency other than the market in order to sustain the liberal order. This agency will not only perform the efficient redistributive function of resources, but also systematically reconcile the paradoxical co-existence of the principles of equality and liberty. The Rawlsian prioritization of the second principle reveals that Rawls is not convinced by the

myth of the "invisible hand." He believes that there is need of a "visible foot," i.e. the State, to counter socio-economic inequalities and market failures. In the Rawlsian framework the State seems to be a sort of Interventionist State. Therefore in the Rawlsian framework taxation or subsidization is legitimate and it serves to eliminate absolute poverty. It is important to note that Rawls acknowledges that a well ordered society is not a classless society; there is an open possibility of the enhancement of relative poverty along with the elimination of absolute poverty since the State ensures that the greatest benefit goes to the least advantaged section of society.

Rawls claims that representative democracy is a legitimate and institutionally possible political framework because liberal democracy ensures individual rights. A constitutional democracy ensures a system of rights. In it a body of prioritized rights is constitutionally guaranteed and institutionally protected. However, Rawls acknowledges that while the framework of constitutional democracy ensures "equal freedom and rights," there is no institutional guarantee that economic equality is ensured by the State.

The Rawlsian idea of the State is claimed to be anti-perfectionist in that the State deliberately ignores perfectionist ideas (i.e., ideas which direct individual's lives such as the autonomous pursuit of their private conceptions of the good). The Rawlsian State remains neutral regarding the conceptions of the good held by individuals because the purpose of the State is to provide a workable framework within which individuals are free to frame, revise, and rationally pursue their own conceptions of the good.

The Rawlsian idea of the "veil of ignorance" provides a secular framework in which substantive values have no significance in the establishment of just socio-political arrangements in general and principles of justice in particular. It is important to note that in the Rawlsian political theory the role of the State is neutral,

3. See R.A. Musgrave, *The theory of public finance* New York, McGraw-Hill 1939, Ch-I, quoted in Rawls, *A Theory of Justice*, op.cit., p.275

but not in all matters. The liberal State protects the system of rights and provides a framework in which private conceptions of the good are freely realizable. This implies that the State remains neutral regarding the issue of the good, but not neutral in the case of rights.

Thus, in the Rawlsian framework those “ways of life” which contradict, or are in conflict with the body of rights are considered illegitimate. Moreover, it is legitimate to suppress such conceptions of the good and such ways of life in order to restore the sanctity of the body of fundamental rights. Therefore, within the framework of a rights-constrained system there is the open possibility of a hierarchy among substantive conceptions of the good. This is so because in such a State some ways of life are definitively not realizable, since they stand in conflict with the abstract fundamental rights. Thus, while the Rawlsian conception of the State claims to be neutral regarding conceptions of the good, it is not so in its effect. In fact, the State necessarily promotes some ways of life and constrains others.

Those ways of life and conceptions of good which are consistent with the rationale of the liberal rights framework will be protected, rather should be protected by the state. Therefore, the just state can not be neutral between “the religions fundamentalist and secular liberal”. (Mulhall and Swift 1992, p.30)

It is important to note that the state suppression of religions of fundamentalism and its urge to establish religions order, is not legitimized by virtue of any substantive conception of good but in its effect only the liberal public order will be survived. Despite this fact that the basis of favoring one conception of good life “does not involves reference to judgments about the relative merits of those different ways of life” (Ibid. p.30)

Secondly it is obvious that the prioritized system of liberal rights not only compels religious fundamentalists to revise their conception of good according to the spirit of deontology.

It also inculcates that the only valuable life is the life which has autonomously been chosen by the individual, as if he/she is ontologically able to determine his/her conception of good independent of history, cultural, communal attachments and the truth revealed by the God.

### The Nation State and The Human Rights Framework

We are living in an age in which two tendencies are obviously affecting the nation State structure and its ideals. These emerging tendencies are reshaping the legitimacy criteria for the sovereignty of the State. First, there is the tendency inherent in the political side of liberalism, i.e. the emergence of a cosmopolitanism which is concerned with the globalization of liberal values and its corresponding institutions. And secondly, there is the tendency within the market side of liberalism, i.e. the concentration of capital is no longer of a domestic nature, but is intrinsically global.

In this section we will focus on globalization with respect to the political side of liberalism, namely, the implementation of a liberal rights framework and its impact on non-liberal State structures. It is an acknowledged fact that liberal democratic States are “spreading across the whole globe liberal democratic values and regimes.”(Gowan, Swift, Shaw 2001, p.4).

Both of the above mentioned tendencies presume an antagonistic relation towards those nation States which have the institutional capacity to counter the domination of liberal cosmopolitanism and market globalization which are being imposed externally. The authority and sovereignty of non-liberal nation States has been directly challenged. Contemporary political discourse, particularly after the collapse of the former USSR, has been markedly influenced and dominated by liberal theory. The unavailability of any viable political alternative to liberalism has radicalized the discourse of political theory and the legitimacy of political procedures and institutions. As a direct result of this one-dimensional discourse different spheres of

sovereignities are clashing with each other. The nation State has been identified as the common enemy. Liberal discourse has created a theoretical environment in which non-liberal Statecraft has been considered a disease and the ultimate source of injustice. Therefore, it should, it is thought, be countered on all levels. Indeed, it is as if each dimension of liberalism is set up against the State: The market vs. the State, civil society vs. the State, the individual vs. the State, market forces vs. the State, human rights vs. the State and so on." (Ibid. p.30) Another very important question has been raised by Gowan who wants to know in this antagonistic discourse who, exactly, is against whom? On a theoretical level, it is claimed that the cosmopolitan order is that which is against the particular nation State. But this is not true according to Gowan because he believes that there are some States who are pushing for this order. This means that the specific conflict and antagonism is *not* between the so-called international community and the non-liberal nation State. Rather the conflict is one of the liberal State against the non-liberal State.

Fareed Zakaria believes that the scope of illiberal democracy is rising and democratic political procedure has been instrumentalized to abandon the liberal agenda and to legitimize illiberal practices and institutions. He claims that "half of the 'democratizing' countries in the world today are illiberal democracies." (Zakaria F. Nov./Dec. 1997 p.24).

Zakaria suggests to liberal forces (i.e., to liberal State actors) that there is a need to actively counter this tendency of illiberal democracy because "illiberal democracies gain legitimacy, and thus strength, from the fact that they are reasonably democratic." (Ibid. p.42).

Zakaria considers the liberal socio-political order to be uncontestable, and presumes that the institutional realization of liberal rights is the ultimate condition or guarantee of socio-political justice. He thinks that in-order to counter this "spreading virus of liberalism," (Ibid. p.42) there is a need to encourage the "gradual development of constitutional liberalism across the

globe" through active intervention of the world community (i.e., the *liberal* world community) and "most importantly the United States." (Ibid. p.42) But the pertinent question remains: Is the liberal order meta-historic? Is it part of human nature to accept the liberal order? Or, rather, is liberalism an historical phenomenon? It is obvious that Zakaria prioritizes constitutional liberalism over democracy because he thinks that "constitutional liberalism has led to democracy, but democracy does not seem to bring constitutional liberalism." (Ibid. p.28) This is clearly an empirically derived claim that is essentially historical and not an *a priori* truth.

It follows from Zakaria's analysis that democratic rights should be conditioned by the institutional protection and prioritization of a liberal rights framework, even at the cost of democracy itself. He claims that "[m]any of the countries of Central Europe ... moved successfully from communism to liberal democracy... as other European countries did during the nineteenth century." (Ibid. p.28-29) In order to justify a liberal dictatorship, he is ready to embrace British colonization just because it was liberal (Ibid. p.27) yet on the other hand he is not happy with some procedurally democratic, yet practically illiberal Islamic States: "In the Islamic world, from the Palestinian Authority to Iran to Pakistan, democratization had led to an increasing role for theocratic politics, eroding long-standing traditions of secularism and tolerance." (Ibid. p.28) The Western hemisphere has taken four hundred years to become liberal democratic, but Zakaria is not ready to give 40 years to other non-liberal cultures to become liberal. Rather, he wants to change non-liberal cultures and Statecraft by transcending their democratic rights and their religious value structures. This desperation does not show the strength of the promoters of liberalism and its corresponding socio-political institutions, rather it reveals the theoretical fragility and the intellectual bankruptcy of liberalism. The process of mutation in democratic theory – in for example: Dryzek's "Deliberative Democracy" (2002); Young's "Inclusive Democracy" (2003); Goodwin's "Reflective Democracy" (2002); the World Bank's promotion of "Participating Democracy"; and

so on – reveals the intellectual confusion of the liberal intelligentsia regarding the democratic experience of Western Europe. Or in Ansari's words it reveals the "The Living Death of Western European Democracy." (Ansari, April 2008, p.32).

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Democratic theory reveals that democratic political procedure is theoretically compatible only with systems of thought that are essentially anthropocentric. Anthropocentric systems acknowledge an absolute right of the individual, as a free and autonomous law-giver, to determine his own conception of the good, and consider man as an end in himself. Democratic political procedure, which is theoretically (i.e. ontologically and epistemologically) consistent with liberal ideology, is in fact the only political procedure to have attempted to institutionalize the liberal socio-political order. But if that procedure to institutionalize the liberal socio-political order has failed, as Zakaria admits, it follows that the democratic political procedure is not the only ultimate political procedure capable of establishing individual sovereignty and autonomy. Here the following question arises: How does Zakaria know that the political procedures, practiced in the above mentioned Islamic world, will not lead to human freedom and individual autonomy just because they are not culturally liberal? Democracy, the known political procedure derived from liberal political theory, has failed to make society and the State liberal. Therefore, the strategy (suggested by Zakaria) to transform the State and society to liberalism is to impose a human rights framework to protect individual freedom in order to then bring about the institutional condition for a legitimate democratic political procedure. This implies the view that if the socio-cultural transformation is not guaranteed by the political procedure – no matter how democratic it is – then the political procedure should be conditioned within a framework of abstract liberal rights (by considering them universal and culturally neutral) implemented by international bureaucratic institutions. In this sense "individual freedom" is interpreted exclusively in a liberal sense.

#### Globalization through "Globalization"

The human rights framework is thus coming to be

seen as a much more effective means of transforming society or a State into a liberal one. The prioritization of abstract liberal rights is presumed to be a necessary condition for the legitimacy of any political order. Generally, there are five kinds of abstract rights which are to be prioritized above all other conceptions of the good, whether those conceptions are derived from the history of a particular community or revealed by God. The five rights are: the right to participate in the political process, the right to freedom of expression, the right to own property, civil rights, and the right to peaceful association (Human Development Report, 2000, p.56).

It is important to note that the Human Development Report which outlined these five rights not only defines the conditions of legitimate socio-political order but also identifies the institutions through which such rights will be realized: The right to participate in the political process can only be actualized through fair and free elections; the right to freedom of expression is actualized through free media (which leads to commodifying the news); the right to own property is actualized only in a capitalist economy and in extreme cases through a free market economy; civil rights are actualized only through the decentralization of the State; and the right to peaceful association is realizable only within the framework of a "civil society", i.e. a contractually structured society in which individuals are held together by the impersonal bonds of interests, rather than the bonds of kinship, religious particularities, communal attachments. (Ibid. p.56-58).

The nation State is in fact the omnipresent structure in all discourse regarding the institutional realization or violation of fundamental rights. Therefore, in such discourse it is expected that the nation State "often has to be ready to act against itself." (Ibid. p.58) This expectation is not realizable without substantial reforms in the legal structure of non-liberal State craft. In these discourses the human rights framework is presumed to be the ultimate foundation on which the imposition of conditions and pressure on non-liberal States is based in order to bring about major revisions in their penal codes and constitutional amendments. By this

same means, the abolition of supra constitutional bodies is sought, i.e. the Veliate-e-Faqui in Iran, the Islamic ideology Council and Federal Shariat Court in Pakistan and Nigeria, etc. This is done irrespective of the fact that the legitimacy of these institutions is acknowledged through some democratic means. The justification given for this is that these democratic decisions do not respect abstract human rights, and in many cases are instrumentalized, often through an illiberal, but democratic framework, to violate fundamental rights. (Ibid. p.59) For these reasons, many human right activists stress the need for independent auditing of nation States by international bureaucratic institutions, NGOs and other civil society organizations which apply pressure "aimed at advancing the freedoms of the press, speech, and the right of association." (Ibid. p.59).

The old Westphalian concept of world order, which acknowledged the absolute right of the State, is not in practice anymore; rather, the only legitimate world order in this discourse is liberal cosmopolitanism. In the contemporary emerging world order, or in Gowan's words the "liberal cosmopolitan order," State sovereignty has been conditioned upon the constitutional guarantee and institutional protection of abstract liberal rights, and "thus the old Westphalian concept of sovereignty becomes conditionalized rather like a dog license in Britain." (Gowman 2001, p.4).

Since this cosmopolitan order has been pushed by some States, i.e. liberal States, the license for the legitimacy will be issued by the Union of these liberal States or in Michael Doyle words the "pacific union." (Ibid. p.5) If a nation State has failed or created obstacles to either the process of the accumulation of capital in general (which is in the economic and political interest of the pacific union) or the institutional protection of the abstract liberal rights then, "the sovereignty license will be taken away and these States who are the representatives of the so-called 'international community' will intervene in...various ways within the delinquent State." (Ibid. p.5).

The above discussion reveals that in this process of externally imposed metamorphoses, States have become

passive victims of international bureaucratic institutions and human rights imperialism. But Leo Panitch believes that this is not the whole truth. He thinks that the nation State is an active participant in this process of State metamorphosis, and in fact that the nation State itself is managing the imposition onto itself of human rights as an inevitable condition of the global world. He acknowledges that the globalization of cosmopolitan liberalism and free market capitalism do affect the structure of nation States, and particularly those States which are not culturally liberal or economically capitalist. But interestingly, he believes that "what was taking place was certainly a restructuring of States (but not a bypassing of the State)" (Panitch 2001, p.10) with the State acting as an active agent in this process of globalization. The State is in fact acting in a subservient way to the global market. The objectivity of this claim is evident because, "those State departments that were more closely associated with the forces of international capital, treasuries, central banks and so forth were increasing their status at the cabinet table." (Ibid. p.10) Panitch also tries to identify an interesting phenomenon called the "internationalization of the State" by which he means that the nation State increasingly takes responsibility in managing the global market, rather than taking responsibility for its own domestic economy. Since capital is concentrating at the global level, there is an antagonistic relationship between global capital (i.e., capital in general) and national capital. He thinks that the nation State has become more committed to maintaining equilibrium in the global economy and to protecting the interest of capital in general. In addition to this, he believes that this process of restructuring the nation State is not just the result of international agencies and the forceful impositions of liberal States, but that a class has emerged within each nation State contributing to it. The interest of this class is global rather than national, and as a result of this very powerful portion of antecedently individuated people, this class is oriented towards globalization. They, in fact, represent the interest of capital in general and therefore their commitment to domestic matters of State has become minimal. In fact, a weak nation State is in the *interest* of this global oriented class, and that is one of the

unintended consequences of the global concentration of capital. The members of this class protect themselves by means of the shield of the human rights framework. These are the real agents of globalization, because they think globally and act locally; they have created a framework known as “globalization.”

58 The framework of local activity will be considered legitimate if it is constrained by abstract liberal rights. This liberal rights constraint provides the rationale for the legitimization and naturalization of the liberal value structure. It also abandons the possibility of the prioritization of any conception of the good which is not consistent with the prioritization of the abstract rights framework. The acknowledgment of the liberal rights framework as the only legitimate criterion of socio-political justice rests upon the assumption that the priority of rights over the good is essentially deontological. Thus, there is a need to analyze the philosophical limitations of this deontologism and to demonstrate that the liberal rights framework itself is ontologically grounded and derived from a conception of the good which is historically specific and culturally determined.<sup>4</sup> If the priority of rights is ontologically grounded and reflects the moral intuitions of a particular community then the institutionalization of the abstract rights framework is actually an attempt to institutionalize a particular conception of the good and to eliminate those conceptions of the good which are not compatible with it. Thus, a historically specific and culturally determined conception of the good is at the foundation of the rights based framework after all.

The globalization oriented class makes this mechanism of globalization function. It not only emphasizes the institutionalization of the liberal rights framework, but it also interprets the so-called human rights in a global context while practicing them at the local level. In this

way the institutionalization of the liberal rights framework is being instrumentalized by these so-called enlightened people to de-legitimize the local hermeneutical context within which those rights are inserted. The good of the local community, which is independent of the liberal abstract rights framework because of its ontological underpinnings, is thus “transcended.” By practicing such rights locally and interpreting them globally, the process of globalization transforms the axiological mechanism of traditional non-liberal societies and also destroys the communal cohesion which served to restrain individuals from acting, thinking and pursuing their own conceptions of the good as antecedently individuated selves. In this way society becomes atomized, resulting in communal disintegration which then paves the way for the metamorphosis of the State from a non-liberal one into a market friendly liberal one.

The process of globalization, according to Penitch, is in fact the constitutionalizing of neo-liberalism. The liberal conception of justice is being imposed upon nation State structures through international bureaucratic institutions. And the abstract human rights framework is being instrumentalized for the realization of the liberal socio-political and economic orders. The juridifying and codifying elements of liberalism are being imposed upon nation States through the mechanisms of international law and international courts of justice. These impositions are not merely affecting, but reconstituting the priorities, ideals and virtues of nation States. In the long run they will transform the whole socio-cultural fabric of non-liberal societies. All of this is occurring even though the juridifying aspect of abstract rights is incorporated within the legal framework of each State and the preamble of their constitutions. And Penitch believes that these liberal legal codes “make it difficult, not impossible, but difficult, to break with the disciplinary

4. Substantial work has been done regarding the excavation of the ontological foundations of deontological liberalism, particularly by Charles Taylor, McIntyre, Sandel, Walzer and J. Raz etc. To some extent they all emphasize the priority of the good over rights, and contest the priority of rights over the good. Javed Akbar Ansari, Ali Mohammad Rizvi, Z. Arshad and I have written extensively on this issue as well. Deontological liberalism is an equally contestable claim, and it has its own limitations and ontological underpinnings.

financial order, free-trade provisions, and above all the free capital mobility provisions that are the essence of economic globalization.” (Panitch, p.11) Panitch stresses the need to develop a “theory of imperialism appropriate to our time which avoids all these dangerously misleading connotations.” (Ibid. p.17)

### **Bridging The Gap Between Liberals and Non-liberals**

Offering incentives to relatively decent non-liberal societies to become liberal is generally presumed to be the best option liberals have. Rawls considers this strategy not only offensive, but also strategically invalid, since any coercive strategy will be counter productive and eventually lead to conflict. For instance, he claims that organizations of reasonable and decent peoples such as the United Nations, “should not offer incentives for its member peoples to become more liberal, for this would lead to serious conflicts among its own members.” (Rawls, 1999, p.84) Funding and loans, according to Rawls, should not be conditioned on the institutionalization of the liberal order. He acknowledges that “[a]ctually, today’s IMF often attaches political conditions to loans, including conditions that do seem to require a move toward more open and liberal democratic institutions.” (Ibid. p.85, no.30) He thinks that such conditional aid adversely affects the scope and expansion of liberal values and its corresponding institutions because such strategies “arouse conflict between liberals and [non-liberal] decent peoples.” (Ibid. p.85)

He was also not satisfied with the liberal foreign policy framework which encouraged liberal State actors to offer different incentives and subsidies to non-liberal people to become liberal. (Ibid. p.85) He claims that the contemporary coercive attitude of liberal States to impose their liberal values and corresponding institutions will be counter-productive in the long run. The foreign policy framework of “liberal peoples should recognize that good [of self-determination] and not take on the appearance of being coercive.” (Ibid. p.85).

It is important to note that Rawls is not satisfied with the above mentioned violent and coercive strategies

to expand and spread liberal values and socio-political institutions since, they are not consistent with the rationale of the Law of Peoples. The Law of Peoples, according to Rawls is “a particular political conception of right and justice that applies to the principles and norms of international law and practice.” (Ibid. p.3) The history of post-colonial States reveals an antagonistic relationship between society and the State. Most post-colonial societies define or interpret their own statecraft as exploitative, unfaithful or as an “agent” of their imperial masters. It follows that State sponsored liberalism will necessarily be unpopular among the people of post-colonial, non-liberal societies. Interestingly, Rawls has offered a different strategy. The Law of Peoples is concerned with the parameters of just society; however its acknowledgement may directly affect the nomenclature and the foreign policy framework of both liberal and non-liberal State structures. He then employs the term “Society of Peoples” to mean “all those peoples who follow the ideals and principles of the Law of Peoples in their mutual relations.” (Ibid. p.3).

Rawls acknowledges that the Law of Peoples is not to be derived from formal or transcendental abstraction, but that “the content of the Law of Peoples might be developed out of a liberal idea of justice similar to...the idea I called *justice as fairness*.” (Ibid. p.3) However, according to Rawls the criterion of justice presumed in the Law of Peoples is more general than that of justice as fairness.

The defenders of cosmopolitan liberalism claim that the Rawlsian Law of Peoples compromises the universality of liberal values and its corresponding institutions. It is claimed that Rawls, in his attempt to generalize the idea of justice as fairness, compromises many of the fundamental rights of The Universal Declaration of Human Rights: “Most obviously absent from Rawls’s list are the rights contained in Articles 19 through 21 of the Universal Declaration, which guarantee freedom of expression, freedom of association, freedom of assembly and freedom to participate in the governance of one’s country ‘directly or through freely chosen representatives.’ (Chartier Gray, 2004, p.60)

It is for this reason that many people claim that the Rawlsian Law of Peoples is not sufficiently liberal. Rawls' Law of Peoples demands the institutional protection of a "special class of urgent rights, such as freedom from slavery and serfdom, liberty (but not equal liberty) of conscience, and security of ethnic groups from mass murder and genocide." (Rawls, 1999, p.79) It is obvious that the rights which are demanded by Rawls to be institutionally guaranteed are very limited as compared to the rights protected in the liberal order. Apparently, the institutionalization of these rights does not affect the nomenclature of a non-liberal socio-political order in any substantive sense. This shows that the Law of Peoples is not necessarily conditioned by the same rights that the individual has in a reasonable liberal democratic regime.

The prevailing cosmopolitan view about non-liberal people is different than that of Rawls. It encourages liberal State actors to "recognize that members of a nonliberal society are deprived of what, by its lights, are significant rights, and it has good reason, within appropriate limits, to pursue policies designed to help them acquire opportunities to exercise these rights." (Chartier Gray, 2001, p.68) Unlike Rawls, the promoters of contemporary liberal cosmopolitanism consider it legitimate to affect and undermine the organizing capacity of illiberal associations and Statecraft by using "various sorts of pressures short of legal sanctions" (Ibid. p.69) to moderate illiberal ways of life. The statistics show that the internationalization of liberal values and its corresponding institutions outside the liberal world is one of the important policy agendas of the liberal foreign policy framework. Liberal political authorities consider themselves free to promote or protect liberal values and socio-political institutions in the transnational arena: "Even if the costs of exiting decent nonliberal societies were minimal, so that those who wished to leave were free to do so, liberals might still, similarly,

employ propaganda and other means to persuade such peoples to protect the complete array of liberal human rights." (Ibid. p.29 of 40).

It is clear that Rawls has compromised the coercive imposition of liberal values and its corresponding institutions. Such compromises not only question the expansion of the human rights constrained civil society framework, but also the universalizing capacity of liberal values as such, along with their corresponding institutions. This creates the impression that Rawls has lost his faith in the superiority of liberal values and institutions.

In light of the above, it is important to note that Rawls' commitment to deontology and the priority of rights over the good has not been compromised in any substantive sense. The acceptance of the Law of Peoples for reasonably liberal democratic societies is actually "the adoption of certain familiar principles of equality among peoples." (Rawls 1999, p.p.35-36) And acceptance of the Law of Peoples brings no anti-liberal consequences to the paradigm of reasonable liberal democratic societies.

The basic eight principles of justice among free and democratic peoples identified by Rawls, he says, "constitute the basic charter of the Law Peoples."<sup>5</sup> The Principles, which determine the basic charter of the Law of Peoples are as follows,

1. Peoples are free and independent, and their freedom and independence are to be respected by other peoples.
2. Peoples are to observe treaties and undertakings.
3. Peoples are equal and are parties to the agreements that bind them.
4. Peoples are to observe a duty of non-intervention.
5. Peoples have the right of self-defense but no right to instigate war for reasons other than self-defense.
6. Peoples are to honor human rights.

5. Ibid., p. 37. Rawls acknowledges that the list of the principles he has presented is similar to the lists prescribed by J.L. Brierly, *The Law of Nations: An Introduction to the Law of Peace*, 6th ed. (Oxford: Clarendon Press, 1963), and Terry Nardin, *Law, Morality, and the Relations of States* (Princeton: Princeton University Press, 1983), see Ibid., p. 37, n. 42.

7. Peoples are to observe certain specified restrictions in the conduct of war.
8. Peoples have a duty to assist other peoples living under unfavorable conditions that prevent their having a just decent political and social regime. (Ibid. p.37)

The above mentioned principles which determine the basic charter of the Law of Peoples are embrionically liberal. There is no doubt that Rawls has reinterpreted these principles within the rationale of deontological liberalism. The formalization of these principles does not contradict the fair principles of justice 6 nor does it affect the domestic policies of liberal States or contradict the priority of rights over the good as the preamble of all legal formalization.

On the other hand, the acknowledgement of the Law of Peoples is preferable for non-liberal people, such as Muslims, for many reasons. Firstly, it clearly limits the contemporary coercive liberal foreign policy agenda by providing elbowroom for a non-liberal State apparatus to function within a non-liberal but decent hierarchical socio-cultural order. The second reason comes from the fact that there is no foreign policy agenda among Muslim States to change the liberal character of liberal democratic societies (because right now they are struggling to protect their own religious values within their own societies). In this situation it is preferable for Muslim States to accept the parameters of the Law of Peoples. And thirdly, deontologism gives the impression that there are other decent Peoples (i.e., nonliberal ones) which are acknowledged by liberals.

Rawls finds liberal cosmopolitanism to contain an unjustified assumption, namely, that nonliberal societies "are always properly subject to some form of sanction – political, economic or even military – depending on the case." (Ibid. p.60) This leads, Rawls says, to a liberal foreign policy which would "gradually shape all not yet liberal societies in a liberal direction, until eventually (in the ideal case) all societies are liberal." (Ibid. p.82) Rawls *rejects* the assumption within this view that "only liberal democratic societies can be acceptable." (Ibid.

p.p.82-83) This policy of exclusion undermines the distinction between decent nonliberal hierarchical societies on the one hand, and mere outlaw States on the other. (Ibid. p.83) The Law of Peoples wants to extend the criterion of acceptance to include decent hierarchical societies, (Ibid. p.83) which, by the way, could contribute in efforts aimed at reforming outlaw States and other states suffering from unfavorable conditions.

### Who Really Creates Problems For Liberals?

This Rawlsian analysis reveals that liberals should restrain themselves. In fact, the foreign policy framework of liberal States is not in the interest of liberals. It has become clear that many of the representatives of liberal values act against those very values, reflecting an intolerant, arrogant and impatient attitude towards any argument, state apparatus, or political will which are judged inconsistent with the presumed values of the liberal socio-political theory and institutional order.

The question arises: Why are the liberal intelligentsia and the liberal establishment not coordinating with each other? Established liberal thinkers such as Rawls apologetically defend the priority of liberal values and institutions in a spirit of philosophical tolerance. And so, if we cannot provide any metaphysical, ontological or epistemological justification for the universalization of the liberal socio-political order and its corresponding values, then why should we accept the liberal conception of justice? Is it just because it seems like the most reasonable system of justice under the conditions of deontologism?

The communitarian critique of the ontological basis of deontological liberalism has shown the incapacity of the human mind to derive an abstract system of rights independent of any specific conception of the good. This fact reveals that liberals desire to institutionalize an abstract rights framework by imposing a particular conception of the good, one which is historically specific and culturally determined. The liberal rights framework reflects the moral intuitions

of a particular community and its conception of the good, and they should admit this fact.

Post-modernists have noted the one dimensionality of the modern way of life and questioned the universalizing capacity of modern values and socio-political institutions. Post-modernism has also questioned the organic relation between freedom and rationality which legitimize the liberal order. The emergence of post-structuralism and deconstructionism directly affects the foundation of the modern socio-political order which is essentially foundationalist. The emergence of anti-foundationalism has raised substantive problems with liberal foundationalism. And, in fact, it is philosophically difficult if not impossible to provide a foundationalist defense of the liberal order. The post-modern critique may not be presented as an alternative to modernism and its corresponding socio-political and economic institutions, but it has severely damaged its theoretical foundations provided by the modern thinkers of the 17th – 19th centuries.

The emergence of hermeneutics, particularly philosophical hermeneutics, has brought about an abandonment of the demarcation line between text and interpretation, and legitimized the hermeneutical relevance of legitimate prejudices. It claims that to transcend the hermeneutical circle is ontologically impossible. Thus, according to Gadamer, it is unreasonable to demand that a given community abandon its legitimate prejudices because they are not consistent with the legitimate prejudices of liberalism.

This brief sketch reveals that contemporary intellectual dynamics has shaken the faith of those intellectuals who consider liberalism and its corresponding socio-political institutions universal and uncontestable. It also compels them to acknowledge other forms of “decent Peoples” who, even though not liberal in a substantive sense, are at least reasonable.

The reason for the intolerance of liberal state actors is that they are losing faith in their own vision. The strength of any civilization is determined by its capacity

to survive within an order that attempts to reject its metaphysical, epistemological, moral and axiological assumptions – not by its capacity to impose its values after its inability to defend them has been felt. Perhaps it is for these reasons of weakness that liberal state actors have turned to military interventions and economic pressures through international bureaucratic institutions.

### Conclusion

The post *A Theory of Justice* view acknowledges the significance of community, since in order to be fair, any conception of justice depends upon the public recognition and justifiability of community. Thus, the prioritization of rights over the good is publicly recognized and reflects the moral intuitions of at least the Western world. However, the deontological basis fails to provide any ultimate epistemological foundation for the universality of the priority of rights over the good. The organic, functional and institutional relation granted between the body of prioritized rights and the realization of those conceptions of the good that fit within the confines of those rights leads to the suppression by the State of those ways of life which conflict with the prioritized body of rights: such ways of life are deemed illegitimate. The institutional protection of an abstract system of rights considered deontological is in fact an attempt to protect a conception of the good which is derived from the historical experience of a particular community. It not only prioritizes a particular conception of the good (from which it has been derived), but further, it directly affects the nature, ideals, virtues and structure of the State and society. It is claimed that the State is neutral regarding the issue of the good, but eventually it will not be neutral in its effects. The State will necessarily promote some ways of life and, under the formal mechanism of liberal rights, will constrain or eliminate others. The imposition of an abstract body of liberal rights is in fact an attempt to impose a derived conception of the good which reflects the moral intuitions of a particular community. Thus, the globalization of cosmopolitan liberalism is a message to the non-liberal world to prioritize a liberal rights framework and to turn a blind eye to its organic relation

to the particular conception of the good from which it has been derived.

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